

**INDEPENDENT CONTRACTOR AGREEMENT
FOR CONSULTING SERVICES**

This Agreement is made effective this 9th day of January, 2009, by and between the SOLANO COMMUNITY COLLEGE DISTRICT (hereinafter referred to as the "District") and The Education Management and Assistance Corporation (EdMAC) (hereinafter referred to as "Consultant"). It is understood that certain provisions of this Agreement are intended to benefit the Chancellor's Office for the California Community Colleges (hereinafter referred to as "CCCCO") even though CCCCCO is not a party to and has no obligations under this Agreement.

WHEREAS, it is acknowledged that it is in the best interests of the District to ensure that the District continues to move forward in resolving issues that have been identified by both the Accrediting Commission for Community and Junior Colleges ("ACCJC") and the CCCCCO; and

WHEREAS, the District desires to exercise "best practices" in areas of governance and administration, collegiality and college community relationships, title 5 compliance, education and accreditation standards, finances, accounting and other economic issues, and other related areas; and

WHEREAS, Government Code section 53060 authorizes the District to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal and administrative matters with persons specially trained, experienced and competent to perform such services; and

WHEREAS, it is acknowledged that Consultant possesses special training and experience and can monitor the District, provide a significant level of advice and guidance, and make recommendations to the District in financial, economic, accounting, and administrative matters, and that engaging the services of Consultant will assist the District in making significant progress in these and other important areas relating to the operation of the District; and

WHEREAS, it is expected that, at the request of the District, the CCCCCO has designated, or will designate a Special Trustee who will be assigned duties specified in subdivision (d) of section 58312 of title 5 of the California Code of Regulations, except that the Special Trustee will not be empowered to approve or disapprove actions of the board of Trustees of the College pursuant to paragraph (4) of section 58312(d), so long as the College complies with the terms of this Agreement and the Special Trustee does not recommend a greater level of state intervention;

THEREFORE, In consideration of the promises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and the sufficiency of which hereby are acknowledged, the parties hereto agree that the District shall retain the services of Consultant under the terms and conditions set forth below:

1. **Term.** The term of this Agreement shall commence on January 9, 2009 and shall continue in effect until July, 9, 2010, at which time the District and Consultant will consider an extension of the term and the addition of services that may be required.

a. Notwithstanding the above, either Consultant or District may terminate this Agreement at any time with or without cause upon giving thirty (30) days' written notice to the other party.

b. If this Agreement is terminated pursuant to subsection (a) prior to the end of the initial term, the District and Consultant each agree that the following shall occur within thirty (30) days of the receipt of written notice from the other party:

- i. The District and Consultant shall notify the CCCCCO of the effective date of termination and provide a brief explanation of the reason therefore; and
- ii. The District shall pay Consultant in full for all fees and costs accrued up to the time of termination.

Upon receipt of notice from the other party, both the District and Consultant agree to execute any documents necessary to complete Consultant's discharge or withdrawal.

2. **Compensation.** Consultant shall be compensated as follows:

a. The District shall pay Consultant a fee for consulting services rendered to the District at the rate of Two Hundred Dollars (\$200.00) per hour for actual services performed during the initial term of this Agreement. Consultant shall charge for all time expended by its agents and representatives in connection with District's needs including, but not limited to, research, interviews, preparation for and/or attendance at meetings, travel time (billed at half the hourly rate), and communication with administration and board, including telephone/e-mail communication, and any expenses incurred necessary to comply with any provisions of this agreement or any of the exhibits there too.

b. In addition, the District shall reimburse Consultant for actual and reasonable expenses necessary for the agents and representatives of Consultant to perform the services required by this Agreement, including reasonable travel expenses (air or ground), lodging, meals, long distance telephone calls, postage, parking, and photocopying or other reproduction costs. Other reasonable expenses not identified in this subsection shall be subject to approval by the District, which shall if possible be obtained in advance.

c. Consultant shall provide District with detailed billing statements for costs, charges and services performed. The statements shall indicate the services rendered, the amount of time expended, the rate and basis for calculation of fees, the dates of services, and an itemization of any costs incurred. Billing statements shall be provided on a monthly basis. The District shall pay all fees and costs within 30 days of receipt of a billing statement.

3. **Scope of Services.**

a. Consultant hereby designates THOMAS E. HENRY as its agent and representative to perform all services and obligations required to be performed by Consultant under the terms of this Agreement. Consultant shall not change of its designated agent/representative without the express prior written consent of the District and the CCCCCO, which may be refused for any reason.

b. Consultant shall, at times and locations determined by the Consultant, review and monitor the operation of District, provide advice and counsel, and make recommendations on all matters relating to the operation of the District, including, but not limited

to: Governance and administration; finances, accounting and other economic issues; collegiality and college community relationships; title 5 compliance; education and accreditation standards; and any other matters that may arise regarding the operation of the District. These duties shall specifically include, but are not limited to, the following:

- i. Review, provide advice and make recommendations regarding recent ACCJC reports, appropriate audit reports, reports submitted by the CCCCCO, State title 5 Compliance and Federal Compliance Reports}, and prior year's Board Minutes and Agendas;
- ii. Schedule meetings with individual members of the Board of Trustees, members of the administration, faculty and classified staff, representatives of the student government, community Leaders and other local elected officials, and appropriate members of the Chancellor's Office Staff;
- iii. Provide advice and make recommendations regarding Board agenda items where appropriate and attend Board meetings as determined necessary; and
- iv. Providing advice and recommendations regarding title 5 compliance, minimum conditions issues, and assisting with the development of a fiscal and educational recovery plan.

c. The Governing Board agrees that the District will rely primarily upon the advice and judgment of the Consultant. This means that the recommendations of the Consultant will normally be accepted by the District and approved by the Governing Board, and only in exceptional circumstances and for compelling reasons will the recommendations of the Consultant not be accepted or approved.

d. The District understands that an agent and representative of Consultant may concurrently be designated by the CCCCCO to serve as the Special Trustee and, notwithstanding any provision of this Agreement to the contrary, shall make reports to the CCCCCO as deemed necessary and be responsive to suggestions by CCCCCO pursuant to title 5, section 58312(d) of the California Code of Regulations. The District shall be provided with a copy of any written report.

e. The District further understands that should it unreasonably or repeatedly refuse to follow the recommendations of the Consultant, or refuse to follow the recommendations of the Consultant regarding any matter of substantial importance (as determined by the Consultant), the Consultant may at its option, do any or all of the following: Notify the CCCCCO of such refusal by the District; make any recommendations to the CCCCCO it deems necessary and prudent; or terminate this Agreement with 10 days notice, notwithstanding the provisions of Paragraph 1 above (with full payment for all work performed).

f. It is understood and expected that Consultant will spend approximately two days per week at the District, although that may increase or decrease depending upon the mutually agreed need of the District.

4. **Access to Information.** To the extent permitted by law, Consultant shall have full access to all minutes, agendas, complaints, records and reports in the District's possession. District staff will further be expected to cooperate fully with Consultant. Except as provided herein, Consultant shall provide all other equipment, materials and supplies necessary for the performance of the Agreement.

5. **Independent Contractor Relationship.** The parties acknowledge and agree that the relationship between Consultant and the District is that of independent contractors and neither party is the agent, representative, employee, partner or joint venturer of the other for any purpose not specified in this Agreement. In no event shall this Agreement be construed as establishing the relationship of employee, partnership, joint venture, or association between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

During the term of this consulting relationship, Consultant shall be provided with an annual Form 1099 reflecting the compensation paid to it for any such services as are rendered hereunder. Consultant acknowledges that it shall be solely responsible for any federal, state and local taxes, including but not limited to any self-employment taxes, owed based upon its receipt of such compensation. Consultant further agrees to be responsible for and to pay all wages, benefits, workers' compensation premiums and/or all payroll taxes that are paid to or are required on behalf of any employees it may utilize in performing its duties under this Agreement. Consultant shall secure workers' compensation insurance coverage for all persons employed by it to perform the services under this Agreement, and, upon request, shall furnish the District with a certificate attesting to such workers' compensation insurance coverage. It is further understood that the District is under no obligation to withhold federal, state or local tax deductions from payments made to Consultant or from compensation that may be paid by Consultant to Consultant's employees.

Neither Consultant nor its agents or representatives shall, at any time, or in any way, be entitled to sick leave, overtime pay, vacations, retirement, or other fringe benefits from the District. Consultant's agents or representatives shall not be included in the classified or faculty service of the District, have any property rights to any position, or have any other rights an employee of the District may otherwise have in the event of termination of this Agreement. Consultant shall not supervise or direct the work of any District employee nor shall the District supervise or direct the work or the manner of the work of the Consultant or its agents or representatives.

Consultant and the District agree to refrain from representing themselves as having any relationship other than that of independent contractors with the other.

The provisions set forth herein shall survive expiration or other termination of this Agreement regardless of the cause of such termination. The parties stipulate that Consultant is not being retained to perform academic work for the District, and will not be performing any duties under this Agreement that requires qualification as an academic administrator or any

service as an academic employee of a community college. It is specifically not the intent or expectation of the parties that either Consultant or its agents or representatives will perform “creditable service” under this Agreement for purposes of STRS, as defined in Education Code section 22119.5.

6. **Licenses and Permits.** Consultant shall obtain and keep in force all licenses, permits and certificates necessary for the performance of this Agreement.

7. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.

8. **Disclaimer of Guarantee.** District acknowledges that Consultant has made no promises or guarantees to District about the outcome or result of Consultant’s advice or recommendations to the District, and nothing in this Agreement shall be construed as such a promise or guarantee.

9. **Non-Assignment.** The obligations of Consultant under this Agreement shall not be assigned or subcontracted by Consultant without the express prior written consent of District and the CCCCCO, which may be refused for any reason. Any assignment or subcontract of rights under this Agreement absent consent of District and the CCCCCO shall be void.

10. **Severability.** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law. In the event that any portion of this Agreement is finally determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

11. **Governing Law.** This Agreement is subject to all applicable laws of the State of California, to the rules and regulations of the California Community College Chancellor’s Office, and to the rules and regulations of the District. Said laws, rules, regulations and policies are hereby made a part of the terms and conditions of this Agreement as though fully set forth herein.

12. **Non-Discrimination.** Consultant shall not engage in unlawful discrimination in the employment of persons because of race, color, national origin, age, ancestry, religion, sex, marital status, medical condition or physical handicap.

13. **Indemnification.** District shall reimburse the Independent Contractor for all reasonable fees and costs with respect to any and all claims or actions initiated by third parties and arising in any way from any activity within the scope of work under this Agreement. Furthermore, if a judgment is awarded against the Consultant, or a claim or action is settled, District shall indemnify the Consultant for any damages or losses incurred by any third parties, other than damages or losses resulting solely from an intentionally wrongful, malicious or corrupt acts or omissions of the Consultant.

14. **Confidentiality of Information.** Consultant acknowledges that through the performance of its consulting duties hereunder, it may have substantial access to information and documents which are not public records and not matters of public or general knowledge,

and which are deemed to be confidential and/or non-disclosable by law. Consultant hereby irrevocably stipulates during the term of the consulting arrangement, and at all times after the termination of this consulting arrangement, Consultant shall not, directly or indirectly, disclose to any other person or entity (without prior written approval by District) any confidential or privileged information, unless compelled by subpoena or force of law.

15. **Binding Agreement.** Each of the parties acknowledges and agrees that this Agreement shall be binding upon their respective heirs, representatives, successors-in-interest and assigns.

16. **Attorney's Fees.** If any litigation is initiated to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees.

17. **Confidentiality of Data and Reports.**

- a. To the extent permissible by law, Consultant will not disclose data or disseminate the contents of the final or any preliminary report without the express written permission of the District or CCCCCO.
- b. Permission to disclose information on one occasion or at public hearings held by the District or CCCCCO relating to the same shall not authorize Consultant to further disclose such information or disseminate the same on any other occasion.
- c. Consultant will not comment publicly to the press or any other media regarding his/her report, or the actions of the CCCCCO on the same, except to CCCCCO staff, appropriate District staff and agents, Consultant's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee.
- e. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality of data and nondisclosure of the same.

18. **Notices.** All notices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

DISTRICT:

A. Marie Young, Board President
Solano Community College District
4000 Suisun Valley Road
Fairfield, California 94534

Consultant:

Thomas E. Henry
President/CEO EdMAC
210 Chapman Lane
Petaluma, California 94952

CCCCCO:

Jack Scott, Chancellor
California Community Colleges
1102 Q Street
Sacramento, California 95811-6549

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party may give written notice of a change in address. The District shall notify Consultant if there is a change in the officers of the Governing Board, and thereafter notices shall be sent to the subsequent or acting Board President at the above address. If there is a change in the Chancellor's Office, notices to CCCCCO shall thereafter be sent to the interim or acting Chancellor until such time as a new Chancellor is named, or to any individual as designated in writing by the CCCCCO, as appropriate.

19. **Joint Agreement.** Consultant acknowledges that this Agreement has been jointly prepared and negotiated and to the extent that any ambiguity should be found to exist, such ambiguity shall not be resolved or construed against any party.

20. **Entire Agreement.** This Agreement contains the entire agreement among the parties and supersedes all prior and contemporaneous oral and written agreements, understandings and representations among the parties. No amendments to this Agreement shall be binding unless executed in writing by all of the parties. This Agreement is the full and complete agreement between the parties and can only be changed or modified in writing.

21. **Errors.** Typographical and clerical errors are subject to correction.

22. **No Third Party Beneficiary.** Nothing contained in this Agreement is intended nor shall it be construed to create rights running to the benefit of third parties, unless otherwise expressly provided in this Agreement.

23. **Headings.** The headings are inserted into this Agreement for reference and convenience only, and will not affect the meaning or interpretation of any provision hereof.

24. **Counterparts.** This Agreement may be executed and delivered in counterparts, each of which so executed and delivered shall be an original, but such counterparts together constitute but one and the same instrument and agreement.

25. **Limitation of Obligations.** Provisions of this Agreement that specifically refer to Consultant and the District are intended to apply only to Consultant and the District only and, unless specifically stated otherwise, are not intended to apply to CCCCCO. Furthermore, CCCCCO shall have no obligations under this Agreement.

26. **Interpretation.** Each and every provision of this Agreement shall be construed in favor of maintaining an independent contractor relationship. In the event any provision of this Agreement may be found to be ambiguous it shall be construed in such a way as to maintain the independent contractor relationship.

IN WITNESS WHEREIN we affix our signatures to this Agreement as full and complete understanding of the relationship between the parties.

Date: _____

Date: _____

THOMAS E. HENRY
President/CEO Education Management
and Assistance Corporation

A. MARIE YOUNG, President
Board of Trustees
Solano Community College District