Instructions / Face Sheet

for

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES (CONSTRUCTION-RELATED)

Contract Number:	
Funding Source:	
Budget Number:	
Site/Department:	
Program Responsibility:	

The District employee that is providing the attached Consultant Services Agreement for Construction-Related Professional Services should first do the following:

- 1. Determine which of the following statutory provisions the District is relying on in entering into this contract:
 - If Contractor is furnishing architecture, landscape architecture, engineering, environmental services, land surveying, or construction management, then Government Code section 4529.12 requires the District to procure contract through a fair, competitive selection process (e.g., by obtaining proposals, using a request for proposal or request for qualification process).

— OR -

- If Contractor is furnishing special services and advice in financial, economic, accounting, engineering, legal or administrative matters, and those persons are specially trained and experienced and competent to perform the special services required, then Government Code section 53060 authorizes the District to procure contract through direct negotiation.
- 2. Review the insurance requirements for the District and revise the insurance provisions of the agreement accordingly.
- 3. Review the forms under section 3 and determine which of those documents should be attached to the agreement.
- 4. Completely fill in all blanks and delete unused options in the agreement.
- 5. Ensure there is an accurate and complete description of the Consultant's Scope of Services.
- 6. Require the Consultant to complete the following before it begins working under the Agreement:
 - Complete and return all required certificates and documents, including insurance documents and bonds (if required).
 - Fill in all information regarding the Consultant located after the signature block.

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES (INSERT TYPE OF CONSULTANT)

en Co	tered i mmun	rpendent Consultant Agreement for Professional Services ("Agreement") is made and not not as of the day of, 20 by and between the Solano ity College District, ("District") and, 20 by and consultant"), for the consultant of the consultant o
	N	OW, THEREFORE, the Parties agree as follows:
1.	as fur	ices. The Consultant shall provide [INSERT TYPE OF PROFESSIONAL SERVICES] services ther described in Exhibit "A," attached hereto and incorporated herein by this reference vices").
2.	, :	Consultant shall commence providing services under this Agreement on
3.	Agree	nittal of Documents. The Consultant shall not commence the Services under this ement until the Consultant has submitted and the District has approved the certificate(s) ffidavit(s), and the endorsement(s) of insurance required as indicated below:
	X X X	Signed Agreement Workers' Compensation Certification Insurance Certificates and Endorsements W-9 Form Other:
4.	pursu	pensation. District agrees to pay the Consultant for services satisfactorily rendered ant to this Agreement a total fee not to exceed
	4.1.	Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverable Services to be produced is as follows:
		4.1.1.
	4.2.	[OPTIONAL] The Services shall be performed at the hourly billing rates and/or unit prices included in Exhibit "B." If hourly billing applies, the itemized invoice shall reflect the hours spent by the Consultant in performing its Services pursuant to this Agreement.
	4.3.	[OPTIONAL] If Consultant works at more than one site, Consultant shall invoice for each site separately.

- 4.4. **[OPTIONAL]** District will withhold 2% of each billing until the Division of the State Architect certification is received for the entire project.
- 5. **Expenses**. District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows:
 - 5.1. Not applicable.
- 6. Independent Contractor. Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
- 7. **Materials**. Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

7.1.			

- 8. Performance of Services.
 - 8.1. **Standard of Care**. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California community college districts.
 - Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
- 9. **Originality of Services**. Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue,

compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

- 10. Copyright/Trademark/Patent. Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 11. **Audit**. Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. Termination.

- 12.1. **For Convenience by District**. District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 12.2. **[OPTIONAL]** For Convenience by Consultant. Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 12.3. **For Cause by District**. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - 12.3.1. material violation of this Agreement by the Consultant; or
 - 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall

cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. **Indemnification**. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum	
	Requirement	
Commercial General Liability Insurance, including Bodily		
Injury, Personal Injury, Property Damage, Advertising Injury,		
and Medical Payments		
Each Occurrence	\$ <mark>_,</mark> 000,000	
General Aggregate	\$ <mark>_,</mark> 000,000	
Automobile Liability Insurance - Any Auto		
Each Occurrence	\$ <mark>_,</mark> 000,000	
General Aggregate	\$ <mark>_,</mark> 000,000	
Professional Liability	\$ <mark>_,</mark> 000,000	
Workers Compensation	Statutory Limits	
Employer's Liability	\$ <mark>_,</mark> 000,000	

- 14.1.1. Commercial General Liability and Automobile Liability Insurance.

 Commercial General Liability Insurance and Any Auto Automobile Liability
 Insurance that shall protect the Consultant, the District, and the State from all
 claims of bodily injury, property damage, personal injury, death, advertising
 injury, and medical payments arising performing any portion of the Services.

 (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the
 District.)
- 14.1.2. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 14.1.3. **Professional Liability (Errors and Omissions)**. Professional Liability Insurance as appropriate to the Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.
- 14.2. **Proof of Carriage of Insurance**. The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
 - 14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
 - 14.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 14.3. **Acceptability of Insurers**. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
- 15. **Assignment**. The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
- 16. **Compliance with Laws**. Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
- 17. **Certificates/Permits/Licenses**. Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 18. **Employment with Public Agency**. Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an

- employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
- 19. **Anti-Discrimination**. It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all of its subcontractor(s).
- 20. **Disabled Veteran Business Enterprises**. Pursuant to Education Code section 71028 and Public Contract Code section 10115, the District may have a participation goal for disabled veteran business enterprises (DVBEs) of at least three percent (3%) per year of funds expended each year by the District on projects that use funds California Community College Chancellor's Office. In accordance therewith, the Consultant must submit, upon request by the District, appropriate documentation to the District identifying the good faith efforts the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable. [INCLUDE IF USING FUNDS FROM CHANCELLOR'S OFFICE, OTHERWISE DELETE SECTION]
- 21. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 22. District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors. The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 22.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 22.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
- 23. **Limitation of District Liability**. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
- 24. **Confidentiality**. The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 25. **Notice**. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

<u>District</u> :	Consultant:
Solano Community College District	[NAME]
Fairfield, California 94534	, California 9
[FAX]	[FAX]
ATTN:	ATTN:

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 26. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 27. **California Law**. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
- 28. **Waiver**. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 29. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 30. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
- 31. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 32. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 33. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 34. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

- 35. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 36. **Counterparts**. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 37. **Incorporation of Recitals and Exhibits**. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

Information regarding Consultant:

____ Other:

License No.:		
Address:		
Telephone:		
Facsimile:		
E-Mail:		
Type of Business Entity: Individual Sole Proprietorship Partnership Limited Partnership Corporation, State:		
Limited I	iability Company	

Employer Identification and/or Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date:	
Name of Consultant: _	
Signature: _	
Print Name and Title:	

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

ROOFING PROJECT CERTIFICATION

This form shall be executed by all architects, engineers, or roofing consultants who provide professional services related to the repair or replacement of a roof of a public school where the project is for repair of more than 25% of the roof or that has a total cost more than \$21,000 ("roofing project") and submitted to the District prior to the time professional services are engaged.

Certification of:	□ Architect	□ Engineer
	□ Roofing Consultant	□ Other
financial incentive contract. As used	whatsoever to or from any in this certification, "person	[Name of Firm], certify that I have not offered, or agreed to accept, any gift, contribution, or any person in connection with the roofing project "means any natural person, business, partnership, organization, entity, or group of individuals.
connection with the	ne performance of this contr	[Name of Firm], certify that I do contract, I will not have, any financial relationship in act with any architect, engineer, roofing consultant, that is not disclosed below.
or vendor, or othe	ame],an architect, engineer, roofer person in connection with s of Building, and Contract [[Name of Firm], have the following financial ng consultant, materials manufacturer, distributor, the following roofing project contract(s) [provide Date and Number]:
disclosure are true aware of section 3 therein regarding	e, or are believed to be true 8000 et seq. of the California the penalties for providing f s disclosure. I further certif	to the best of my knowledge, the contents of this I further certify on behalf of the Firm that I am Public Contract Code, and the sections referenced alse information or failing to disclose a financial I that I am authorized to make this certification on
Date:		
Proper Name of Fi	rm:	
Signature:		
Print Name:		
Title:		

EXHIBIT "A" DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is <u>not</u> made part of this Agreement. [IF A CONSULTANT PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES CAN BE ATTACHED <u>WITHOUT</u> ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

[INCLUDE THE FOLLOWING IN THE SCOPE OF WORK]

- 1.1. **[FOR ARCHITECTURAL SERVICES ONLY] Construction Oversight Process.** Prior to commencement of construction, Architect shall:
 - 1.1.1. Ensure that the Project Inspector is approved by the DSA prior to requesting issuance of project inspections cards.
 - 1.1.2. Request issuance of the proper number of project inspection cards from DSA after the construction contract has been awarded and provide project inspection cards to the Project Inspector.
 - 1.1.3. Prepare the Statement of Structural Tests and Special Inspections and submit to DSA. Then provide approved forms to the Project Inspector and Laboratory of Record.
 - 1.1.4. Prepare Contract Information form (form DSA 102 or more current) for all construction contracts and submit to DSA.
- 1.2. **Observation of the Construction.** Consultant shall maintain such personal contact with the Project as is necessary to assure themselves of compliance, in every material respect, with the DSA-approved construction documents. Personal contact shall include visits to the project site by the Consultant or its qualified representative to observe construction.
- 1.3. Interim Verified Reports. Consultant shall submit an interim Verified Report (form DSA 6-AE or more current form) to the DSA electronically and a copy to the Project Inspector for each of the applicable nine sections of form DSA 152 prior to the Project Inspector signing off that section of the project inspection card.
- 1.4. Final Verified Report. Consultant shall submit Verified Reports (form DSA 6-AE or more current form) to the DSA and to the Project Inspector if any of the following events occur: (1) when construction is sufficiently complete in accordance with the DSA-approved construction documents so that the District can occupy or utilize the Project, (2) work on the Project is suspended for a period of more than one month, (3) the services of the Consultant are terminated for any reason prior to completion of the Project, or (4) DSA requests a Verified Report.