

EXHIBIT B: SAMPLE CONSULTING AGREEMENT



CONSULTING AGREEMENT

THIS AGREEMENT is made effective on _____, 202_ and it is made by and between _____, hereafter called "Consultant," and the Orange Unified School District, hereafter called "District."

RECITALS

- A. The District desires to obtain special services and advice regarding accounting, administrative, economic, engineering, financial, legal and like matters, as provided in this Agreement in accordance with Government Code section 53060.
- B. The Consultant is specially trained, experienced, qualified, competent and authorized under State and Federal law as applicable, to provide the special services and advice required by the District.

Accordingly, the parties agree with the above and as follows:

AGREEMENTS

- 1. In consultation and cooperation with the District, the Consultant shall provide professional and diligent services consistent with generally acceptable industry practices or better as follows:

Attachments to this agreement – please check, if applicable:

- Statement of Work
- Proposal / Price Quotation
- Price / Fee Schedule
- Requirements Summary
- Other attachment(s) described as: _____

Any attachment is hereby incorporated into this Agreement and made a part of it. In the event of any conflict between the language in this Agreement and any attachment incorporated herein, the language in this Agreement will govern and take precedence over any attachment.

- 2. The Consultant will commence providing services under this Agreement on _____, 202_, and will diligently, properly and in full compliance perform as required and complete the performance of services by _____, 202_. Time shall be of the essence in the performance of this Agreement. If the Consultant at any time during the term of this Agreement becomes noncompliant with any of the terms and conditions hereof or noncompliant with any applicable regulatory requirement including any suspension, revocation or termination of any permit, certification or license which is required in order for the Consultant to properly perform under this Agreement, then the Consultant shall immediately notify the District’s Administrative Services or Purchasing Department in writing.
- 3. The Consultant is an independent contractor and will perform said services as an independent contractor and not as an employee of the District. Accordingly, nothing in this Agreement shall be construed as establishing a relationship of employer and employee, or principal and agent, between the District and the Consultant or between the District and any of Consultant’s agents or employees. Consultant is solely responsible for its own acts and the acts of any of its agents or employees as they relate to any services provided. Consultant and its agents and employees shall not be entitled to any rights and or privileges of the District’s employees and shall not be

considered in any way to be the employees of the District since Consultant is operating under a personal services agreement pursuant to Education Code section 45103.1(b)(2) and has only the rights defined by this Agreement. Each party acknowledges that the Consultant is not an employee for state or federal tax purposes or any other purpose.

4. The District will prepare and furnish to the Consultant upon request such existing information as is reasonably necessary for the performance of the Consultant. The Consultant shall provide its own equipment, vehicle, materials, supplies, food, incidentals and tools, etc. which may be required for the proper performance of this Agreement. Each party shall cooperate with the other party.
5. The total amount to be paid to the Consultant for any and all services satisfactorily rendered inclusive of all expenses, supplies and materials pursuant to this Agreement shall not exceed \$ _____

If this is an Agreement to pay the Consultant by the hour, then this box shall be checked and the hourly rate indicated as follows: \$ __. It is the sole obligation of the Consultant to ensure that the sum of the hours worked multiplied by the hourly rate does not exceed the total not to exceed amount authorized under this Agreement.

The total not to exceed amount and any hourly rate of the Consultant shall be inclusive of any and all expenses such as overhead and profit, fees, subcontract costs, automobile insurance to the amount required under California State law or more, materials, supplies, taxes, workers compensation, mileage, travel, incidentals, food and the like.

6. Payment shall be made to the Consultant within thirty (30) days after receipt of an approved and fully supported and detailed invoice which clearly indicates as applicable any progress completed, milestones achieved, any reports (draft, preliminary or final) issued, dates worked, increments of hourly work (rounded to the nearest quarter hour increment), subcontract cost, etc. The District will not be obligated to make more than one (1) payment to the Consultant eachmonth.
7. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, work products and other materials (regardless of form or medium) produced by Consultant under this Agreement shall be, and remain, the sole and exclusive property of District. No such materials produced, either in whole or in part, under this Agreement shall be subject to private use, copyright or patent right by Consultant in the United States or in any country without the prior written consent of the District. The District shall have unrestricted authority to publish, disclose, distribute, transfer and use copyright or patent any such materials produced by Consultant under this Agreement.

8. **TERMINATION**

- a. Termination for Cause: This Agreement may be terminated by the District upon three (3) days' written notice to the Consultant in the event of a material breach of this Agreement or substantial failure of performance by the Consultant including insolvency of Consultant. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to the Consultant. Upon receipt of any notification of termination by the District, the Consultant shall promptly provide and deliver to the District any and all work product in progress or completed to date including any reports, drafts, electronic information or the like to the District. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 8.c below, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effectuated in the first instance.
- b. Termination for Abandonment or Postponement: In the event of a termination based upon abandonment or postponement by the District, the District shall pay to the Consultant for all approved services performed and all approved expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the Consultant for approved extra services.
- c. Termination for Convenience/ Without Cause: This Agreement may be terminated without cause by District upon ten (10) days' written notice to the Consultant. In the event of a termination for convenience or without

cause, the District shall pay to the Consultant for all approved services performed and all approved expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the Consultant for approved extra services. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

9. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of this dispute, Consultant agrees to continue its work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind this Agreement nor stop the progress of its work, but Consultant's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after all required work has been completed, and not before. The parties may agree in writing to submit any dispute between the parties to arbitration. The District agrees to pay the Consultant the undisputed amounts due under this Agreement.
10. The Consultant agrees to and shall hold harmless, indemnify, and defend the District, its officers, agents, employees, and volunteers from every claim or demand made and every liability or loss, damage, or expense of any nature whatsoever, which may be incurred by reason of:
 - a. Workers' Compensation and Employers Liability. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Consultant's employees or Consultant's subconsultant's employees arising out of Consultant's work under this Agreement;
 - b. General Liability. Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the District, or any person, firm or corporation employed by the Consultant or the District upon or in connection with the services covered by this Agreement, except for liability resulting from the sole or active negligence, or willful misconduct of the District, its officers, employees, agents, volunteers or independent consultants who are directly employed by the District; and
 - c. Professional Liability. Any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Consultant, or any person, firm or corporation employed by the Consultant, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the services covered by this Agreement, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by sole or active negligence, or willful misconduct of the District.

The Consultant, at Consultant's expense, cost, and risk, shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents, or employees on any such claim, demand, or liability and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents, employees, or volunteers in any action, suit or other proceedings as a result thereof.

11. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subcontractors. The Consultant shall provide Certificates of Insurance, with Additional Insured Endorsements, indicating applicable insurance coverages prior to the commencement of work.

MINIMUM SCOPE OF INSURANCE

- a. Commercial General Liability: For injury or damage that arises out of the other party's use of premises, work, services or products \$1,000,000 per occurrence / \$2,000,000 annual aggregate.
- b. Business Auto Liability: For injury or damage that arises out of the other party's use of automobiles; should include all owned, hired, rented, leases, or other non-owned autos \$1,000,000 per accident.
- c. Workers' Compensation & Employer's Liability: Per Statute for Workers' Compensation; Employer's Liability \$1,000,000 per accident, disease and annual aggregate.
- d. Errors and Omissions/Professional Liability: (If applicable) For financial loss or harm caused to the district

- that arise out of vendor's professional services \$1,000,000 per occurrence / \$2,000,000 annual aggregate.
- e. Sexual Abuse or Molestation Liability: Sexual abuse or molestation limits shall be separate at \$3,000,000 per occurrence. The definition of abuse shall include, but not limited to, physical abuse, such as sexual or other bodily harm, and non-physical abuse, such as verbal, emotional or mental abuse, any actual, threatened or alleged act, and errors, omissions, or misconduct related to abuse.
 - f. Cyber Liability: (If applicable) For financial loss or harm caused to the district that arises out of loss or theft of data, breach of data, disruption of networks, intrusion of virus, malware, disclosure of private information, notification, credit monitoring, breach response costs, regulatory fines and penalties, and infringement of intellectual property \$2,000,000 per occurrence / \$2,000,000 annual aggregate.
12. The Consultant shall maintain and preserve any and all written and electronic records relating to this Agreement, including without limitation, invoice support (e.g. hours and days worked and other detail) for a period of not less than three (3) years after final payment under this Agreement. The District, its employees and agents and the Office of the State Auditor shall have the right to audit, examine, inspect and copy any and all of Consultant's records relating to this Agreement at any time during normal business hours. Additionally, pursuant to Government Code Section 8546.7, the Consultant is hereby advised that every contract involving the expenditure of public funds in excess of ten thousand dollars (\$10,000.00) shall be subject to examination and audit of the State Auditor as specified in the code.
 13. This Agreement is not assignable or delegable by either party, except upon the prior written consent of the other party.
 14. The Consultant shall comply with all applicable District, federal, state, and local laws, rules, regulations, policies and ordinances and workers' compensation laws. The Consultant represents and warrants that it does not have any potential, apparent or actual conflict of interest relating in any way to this Agreement.
 15. The Consultant, if an employee of another public agency, certifies 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 performed pursuant to this Agreement.
 16. Any modification of this Agreement shall be effective only if it is in writing and signed by the parties, except that the District may unilaterally amend this Agreement in writing to accomplish the following changes:
 - a. Increase dollar amounts;
 - b. Effect administrative changes; and
 - c. Effect other changes as required by law.
 17. This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior or contemporaneous oral or written Agreements.
 18. This Agreement shall be governed and construed by the law of the State of California regardless of any conflicts of laws or rules that would require the application of the laws of another jurisdiction. Venue shall be in Orange County, California.
 19. Consultant shall contemporaneously execute, as a part of this Agreement, the attached "Criminal Records Check Fingerprinting Certification" form and submit it to the District.

[SIGNATURES ON THE FOLLOWING PAGE]

Authorized representatives of the parties have executed this Agreement as indicated below.

CONSULTANT:

(Signature, Authorized Representative)

Signer's Name: _____

Title: _____

(SSN or Federal ID number)

(Telephone)

(Email Address)

(Date)

DISTRICT:

Orange Unified School District 726
W. Collins Ave.
Orange, CA 92867

(Signature, Authorized Representative)

David A. Rivera
Assistant Superintendent/CBO
Business Services

(Date)

District Board of Education Approval Date: _____

Attachment(s): _____

EXHIBIT B - SAMPLE AGREEMENT

DECLARATION OF WORK



To the Governing Board of the Orange Unified School District:

I _____, acknowledge and certify as follows:
(Name of Vendor)

Checkbox the following that applies:

- Will be working individually with students unsupervised*
- Will be working individually with students under direct site supervision*
- Will be working individually with students under parent/guardian/family member supervision*
- While on location, will not be working with any students

* Vendor is required to comply with molestation insurance coverage requirements and complete and submit the Criminal Records Check Fingerprinting Certification Form and Criminal Records Check Form below and comply with all requirements set forth therein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in the city of _____, California, on ____/____/____

Business Name (if applicable)

Address

Printed Name of Authorized Signer

City, State, Zip

Title of Authorized Signer

Telephone

Authorized Signature

E-Mail Address

NOTICE TO CONTRACTORS REGARDING CRIMINAL RECORDS CHECK

EDUCATION CODE SECTION 45125.1

Education Code Section 45125.1 provides if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

PENAL CODE SECTION 667.5(c)

Penal Code Section 667.5(c) lists the following “violent” felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person’s genital or anal openings by foreign or unknown objects against the victim’s will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

PENAL CODE SECTION 1192.7

Penal Code Section 1192.7 lists the following “serious” felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a nominate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim’s will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

The contractor shall not permit an employee to come in contact with pupils until BOTH the Department of Justice and the Federal Bureau of Investigation have ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony.

CRIMINAL RECORDS CHECK

FINGERPRINTING



CERTIFICATION

To the Governing Board of the Orange Unified School District:

I _____ (Name of Contractor), acknowledge and certify as follows:

1. I have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks ("Notice") (Education Code section 45125.1) required by the passage of AB 1610, 1612, and 2102.
2. Due to the nature of the work to be performed, my employees and volunteers may have contact with students of the District
3. My employees and volunteers who may have contact with District students must complete background checks with the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) and provide written proof of clearance to the District.
4. None of the employees or volunteers who will be performing the work has been convicted of a violent or serious felony as defined in the Notice and in Penal Code sections 667.5 and 1192.7. This determination was made by a background check through the DOJ and the FBI which has been provided to the District.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California, on ____/____/____

Business Name (if applicable)

Address

Printed Name of Authorized Signer

City, State, Zip

Title of Authorized Signer

Telephone

Authorized Signature

E-Mail Address

CRIMINAL RECORDS CHECK

EMPLOYEE / VOLUNTEER

LIST

(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)

Use additional copies of page as needed

Name of Contractor: _____

Name of Employee or Volunteer	Position

IMPORTANT! Changes to the criminal status of anyone listed on this form must be reported immediately.

EXHIBIT C: NONCOLLUSION AFFIDAVIT

TO BE EXECUTED BY AND SUBMITTED WITH RFP

(Public Contract Code Section 7106)

State of California)
)
County of _____)
)
)

ss.

_____, being first duly sworn, deposes and says that he or she is _____, the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham offer, and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Offeror has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Offeror or any other Offeror, or to fix any overhead, profit or cost element of the proposal price, or of that of any other Offeror, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Offeror has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Signature of Offeror

NOTARY FOR NONCOLLUSION AFFIDAVIT

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 202__.

Signature of Notary

[SEAL OF NOTARY]

Typed Name of Notary