

EXHIBIT C

(15 PAGES)

Sample Contract/Agreement

BID # CCC-023
PROJECT: PROP 39 VOC TECH BUILDING LIGHTING UPGRADE



**COMPTON COMMUNITY COLLEGE DISTRICT
CONSULTANT SERVICES AGREEMENT**

This AGREEMENT is made and entered into this ____ (“EFFECTIVE DATE”), between the Compton Community College District, hereinafter referred to as (“DISTRICT”), and ____, hereinafter referred to as “CONSULTANT”. The DISTRICT and the CONSULTANT are sometimes referred to herein as a “PARTY” and collectively as the “PARTIES.” This AGREEMENT is made with reference to the following facts:

WHEREAS, the DISTRICT requires specialized services and/or advice in connection with ____, hereinafter referred to as “SERVICES” and defined in Article I of this AGREEMENT, where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to provide the SERVICES to the DISTRICT; and

WHEREAS, the SERVICES are not available within the DISTRICT and cannot be performed satisfactorily by DISTRICT employees, or are of such a highly specialized or technical nature that the necessary knowledge, training, experience and ability are not available through the DISTRICT at this time; and

WHEREAS, CONSULTANT has indicated its willingness and commitment to provide the SERVICES to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I

SCOPE AND SERVICES TO BE PROVIDED BY CONSULTANT

1. **SERVICES TO BE PROVIDED BY THE CONSULTANT.** The CONSULTANT shall provide the SERVICES to the DISTRICT on the terms set forth herein. The PARTIES agree if there is a proposal or similar document attached or incorporated into Exhibit “A”, that the terms of this AGREEMENT shall be controlling over any of the terms contained within the CONSULTANT’s proposal or similar document. CONSULTANT agrees to perform the following work for the DISTRICT at El Camino College/Compton Community Education Center, or at such other places and

times as the DISTRICT may direct, and the SERVICES shall performed at times and places mutually acceptable to DISTRICT and CONSULTANT:

- a) CONSULTANT ;
- b) CONSULTANT shall not have the right to be the exclusive provider of the SERVICES specified herein.

2. If applicable, the CONSULTANT shall provide any required DSA reports, certifications or forms related to the SERVICES provide pursuant to this AGREEMENT.

3. To the extent that any SERVICES required in the Request for Proposal ("RFP") attached hereto as Exhibit "B" are not set forth in this AGREEMENT, CONSULTANT shall provide any services set forth in the RFP or CONSULTANT's response to the RFP not included in this AGREEMENT.

ARTICLE II

CONSULTANT'S REPRESENTATIONS

1. **CONSULTANT'S CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES.** CONSULTANT makes the following certifications, representations, and warranties for the benefit of the DISTRICT, and CONSULTANT acknowledges and agrees that the DISTRICT, in deciding to engage CONSULTANT pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONSULTANT's engagement hereunder:

a) CONSULTANT is qualified in all respects to competently provide to the DISTRICT all of the SERVICES contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONSULTANT has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such SERVICES as are called for hereunder.

b) CONSULTANT, in providing the SERVICES and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and non-discrimination laws.

2. The CONSULTANT will perform its SERVICES hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing and providing similar services in California.

3. **CONFLICT OF INTEREST.** CONSULTANT warrants that CONSULTANT has no business or financial interests which are in conflict with

CONSULTANTS obligations to the DISTRICT under this AGREEMENT and further agrees to disclose any such interest which may be acquired during the term of this AGREEMENT.

ARTICLE III
TERMS AND CONDITIONS

1. **PERIOD OF PERFORMANCE.** This AGREEMENT shall commence on _____ the EFFECTIVE DATE and shall terminate on _____ ("Period of Performance"). Consultant shall complete all SERVICES within the Period of Performance.

2. **DISTRICT REQUESTOR.** The following named employee is designated as the DISTRICT'S Requestor in coordinating the CONSULTANT'S SERVICES with the DISTRICT program(s) and will be responsible for approving CONSULTANT'S invoices for payment.

District's Requestor	Title	Department/Division
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The DISTRICT may, at any time during the term of this AGREEMENT, change the person identified as the "DISTRICT's Requestor" without notice.

3. **COMPENSATION TO CONSULTANT.**

a) DISTRICT agrees to pay CONSULTANT

- 1) A flat rate not to exceed ("NTE") _____ dollars (\$_____); or
- 2) A monthly rate not to exceed ("NTE") _____ dollars (\$_____)
per month; or
- 3) An hourly rate not to exceed ("NTE") _____ dollars (\$_____)
for _____ hours, on a daily weekly monthly basis; or
- 4) A daily rate not exceed ("NTE") _____ dollars (\$_____)
per day.

b) DISTRICT agrees to pay CONSULTANT as set forth in the Schedule of Contract Deliverables as follows:

Arrears for satisfactorily rendered SERVICES will be made thirty (30) days after the receipt of a "correct" and approved invoice signed off by the DISTRICT's Requestor with the dates and hours that the CONSULTANT has provided SERVICES. Invoices shall be in a form acceptable to the DISTRICT, but invoices shall include a breakdown of activities by date, time (*expressed in tenths of hours, if CONSULTANT is compensated*)

on an hourly rate basis), identification of the individual performing the service, and a description of the service provided during that time period. Three (3) copies of the invoices shall be submitted for payment. All invoices should be mailed to the Account's Payable Department at the address shown below. Payment will be made via First Class U.S. mail addressed per Article VII, Paragraph 2, of this AGREEMENT.

4. **EXPENSES.** Unless specifically provided to the contrary in writing, CONSULTANT shall assume all expenses, including but not limited to travel expenses, reimbursable expenses, and overhead expenses including, but not limited to, CONSULTANT's own employee expenses, office and clerical expenses, incurred by him/her in connection with the CONSULTANT'S performance under this AGREEMENT.

5. The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify in whole or a part of any payment to such extent as may be necessary to protect the DISTRICT from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the CONSULTANT to make payments properly to its employees or sub-consultants; or (3) failure of CONSULTANT to perform its services in a timely manner so as to conform to the DISTRICT's schedule requirements.

ARTICLE IV **ADDITIONAL SERVICES**

1. CONSULTANT shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONSULTANT's control. CONSULTANT shall obtain written authorization from the DISTRICT before rendering any additional services. The DISTRICT may also require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for all additional services shall be negotiated and approved in writing by the DISTRICT before CONSULTANT performs such additional services. CONSULTANT shall not be entitled to any compensation for performing additional services that are not previously approved by the DISTRICT in writing.

ARTICLE V **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon ten (10) days written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONSULTANT; or if the DISTRICT should decide, for any reason, to abandon or indefinitely postpone the SERVICES which CONSULTANT is agreeing to provide pursuant to this AGREEMENT. The DISTRICT also reserves the right to cease making use of CONSULTANT's SERVICES with or without cause at any time. 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 owed to the CONSULTANT.

2. 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 Paragraph 4 below, and CONSULTANT shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONSULTANT.

3. In the event of a termination based upon abandonment, postponement, or notice to cease provision of SERVICES by DISTRICT, the DISTRICT shall pay to the CONSULTANT for all SERVICES performed and all authorized expenses incurred under this AGREEMENT, supported by documentary evidence, and expense reports up until the date of the abandonment or postponement, or notice to cease provision of SERVICES.

4. This AGREEMENT may be terminated without cause by DISTRICT upon ten (10) days written notice to CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay CONSULTANT for all SERVICES performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination.

5. In the event of a dispute between the PARTIES as to performance of the SERVICES or the interpretation of the AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONSULTANT agrees to continue to diligently perform the SERVICES. If the dispute is not resolved, CONSULTANT agrees it will neither rescind the AGREEMENT nor stop performing the SERVICES, but CONSULTANT'S sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the SERVICES provided for in this AGREEMENT have been completed, and not before.

6. Without invalidating the AGREEMENT, the DISTRICT may at any time order the CONSULTANT to suspend all or a portion of the SERVICES required under this AGREEMENT. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the DISTRICT.

7. The PARTIES understand and agree that this Article shall govern all termination rights and procedures between the PARTIES. Any termination provision that is attached to this agreement as an Exhibit shall be void and unenforceable between the PARTIES.

ARTICLE VI
INDEMNITY AND INSURANCE

1. To the fullest extent permitted by law, CONSULTANT agrees to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

a) **Worker 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 subcontractor's employees arising out of CONSULTANT's work under this AGREEMENT; and

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 CONSULTANT or any person, firm or corporation employed by the CONSULTANT upon or in connection with the SERVICES performed under this AGREEMENT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT. The CONSULTANT, at CONSULTANT's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof; and

c) **Professional Liability:** Any loss, injury to or death or 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 performed by CONSULTANT in accordance with this AGREEMENT, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

d) The PARTIES understand and agree that Paragraph 1 above shall be the sole indemnity, as defined by California Civil Code § 2772, governing this AGREEMENT. Any other indemnity that may be attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES. Any attempt to limit the CONSULTANT's liability to the DISTRICT in an attached Exhibit shall be void and unenforceable between the PARTIES.

2. CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONSULTANT and DISTRICT from claims which may arise out of or result from CONSULTANT's actions or inactions relating to the AGREEMENT, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a) The CONSULTANT shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

b) Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury

c) Professional liability insurance, including contractual liability, with limits of \$1,000,000, per claim. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation. In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this AGREEMENT and grounds for immediate termination.

d) Valuable Document Insurance: The CONSULTANT shall carry adequate insurance on all reports, drawings, specifications, record drawings and/or other documents as may be required to protect the DISTRICT in the amount of its full equity in those reports, drawings, specifications, record drawings and/or other documents, and shall file with the DISTRICT a certificate of that insurance. The cost of that insurance shall be paid by the CONSULTANT, and the DISTRICT shall be named as an additional insured.

e) Each policy of insurance required in b) above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONSULTANT hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such

primary insurance; shall state that written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONSULTANT shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONSULTANT shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONSULTANT fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONSULTANT, and in such event CONSULTANT shall reimburse DISTRICT upon demand for the cost thereof.

f) In the event that CONSULTANT subcontracts any portion of CONSULTANT's duties, CONSULTANT shall require any such sub-consultant to purchase and maintain insurance coverage for the types of insurance referenced in this Article in amounts which are appropriate with respect to that sub-consultant's part of work which shall in no event be less than \$500,000 per occurrence.

ARTICLE VII MISCELLANEOUS

1. **FINGERPRINTING REQUIREMENTS.** Education Code Section 45125.1 states that if employees of any CONSULTANT providing school site Administrative or similar services may have any contact with any under age pupils (younger than 18 years of age); those employees shall be fingerprinted by the Department of Justice (DOJ) before entering to determine that they have not been convicted of a serious or violent felony. If the DISTRICT determines that more than limited contact with students will occur during the performance of these SERVICES by CONSULTANT, CONSULTANT will not perform SERVICES until all employees providing SERVICES have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to DISTRICT.

a) DISTRICT has determined that CONSULTANT'S SERVICES (will/ will not) result in contact with under age pupils. If contact will be made CONSULTANT will obtain fingerprinting clearance for all employees before SERVICES can begin and CONSULTANT will provide a list to the DISTRICT of All employees cleared by DOJ who will provide SERVICES under this AGREEMENT. Failure to provide such written certification within sixty (60) days of execution of this AGREEMENT will result in immediate termination of this AGREEMENT.

District's Requestor Signature

Date

2. **NOTICES.** All notices required to be delivered under this AGREEMENT to the other PARTY must be in writing and shall be effective (i) when personally delivered by the other PARTY or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective PARTIES as set forth below or to such other address and to such other persons as the PARTIES may hereafter designate by written notice to the other PARTIES hereto:

TO DISTRICT:

COMPTON COMMUNITY COLLEGE DISTRICT
Business Services
1111 E. Artesia Boulevard
Compton, CA 90221
Phone: 310-900-1600, ext. 2111
Attention: Felipe R. Lopez, Chief Business Officer

TO CONSULTANT:

Phone: _____
Attention: _____

3. **LEGAL STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONSULTANT understands and agrees that CONSULTANT and all of CONSULTANT's employees shall not be considered officers, employees or agents 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 assumes the full responsibility for the acts and/or omissions of CONSULTANT's employees or agents as they relate to the SERVICES to be provided under this AGREEMENT. CONSULTANT shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONSULTANT's employees.

Under the provisions of the Internal Revenue Services and Franchise Tax Board regulations, the DISTRICT is required to obtain the CONSULTANT'S Social Security Number (SSN) or Tax Identification Number (TIN) as appropriate, and to file Information Returns for payment made by the DISTRICT on Form 1099-NEC on a calendar year basis.

The CONSULTANT'S copy of Form 1099-NEC will be mailed to the address shown in Article VII, Paragraph 2, of this AGREEMENT. Accordingly, please check the appropriate status box and provide the tax number.

- Individual Consultant SSN: _____
- Proprietorship (One Owner) TIN 95- _____
- Partnership (2 or more Owners) TIN 95- _____
- Unincorporated Association TIN 95 - _____
- Corporation TIN 95 - _____

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONSULTANT.

4. Records of the CONSULTANT's direct personnel hours and expenses pertaining to any additional services provided by the CONSULTANT, which are in addition to those SERVICES already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONSULTANT shall be kept on a generally recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times for a period from the date of this AGREEMENT through two (2) years after completion of providing all SERVICES.

5. Any reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's sub-consultants in accordance with this AGREEMENT, shall be and remain the property of the DISTRICT (hereinafter "PROPERTY"). The DISTRICT may provide the CONSULTANT with a written request for the return of its PROPERTY at any time. Upon CONSULTANT's receipt of the DISTRICT's written request, CONSULTANT shall return the requested PROPERTY to the DISTRICT within seven (7) calendar days. Failure to comply with the requirements in this Article shall be deemed a material breach of this AGREEMENT.

6. The DISTRICT and CONSULTANT, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONSULTANT shall not assign this AGREEMENT.

7. This AGREEMENT shall be governed by the laws of the State of California.

8. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONSULTANT and supersedes all prior negotiations, representations or

agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONSULTANT.

9. Time is of the essence with respect to all provisions of this AGREEMENT.

10. Subject to the restrictions and limitations set forth in this AGREEMENT, all Exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this AGREEMENT by each reference as though fully set forth in each instance in the text hereof.

11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR THE INELIGIBILITY (Federal Executive Order 12549). By executing this contractual instrument, CONSULTANT certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency;
2. Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction (Federal, State, or Local) or contract under a public transaction; or violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State, or Local), with commission of any of the offenses enumerated in Section 11 subsection 2 above, of this certification;
4. Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transactions (Federal, State, or Local) terminated for cause of default.

12. EXECUTION REQUIREMENTS. The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

CONSULTANT:

COMPTON COMMUNITY COLLEGE
DISTRICT

By: _____

By: _____

Felipe R. Lopez, Chief Business Officer

Type or Print Name

Date

Date

Date Approved
By Board, if Required _____

SAMPLE

EXHIBIT "A"
CONSULTANT'S PROPOSAL

SAMPLE

EXHIBIT "B"
DISTRICT'S REQUEST FOR PROPOSALS

SAMPLE