

CONSULTING SERVICES AGREEMENT

South Texas College

(Short Form)

This Consulting Services Agreement (“Agreement”) is made and entered into between:

South Texas College

Attn:
3201 West Pecan Blvd.
McAllen, TX 78501
956.

@southtexascollege.edu

hereinafter called “STC,” and

Name:

Attn:

Address:

Telephone:

Email:

hereinafter called the “Consultant;” this Agreement shall be signed by both parties and shall be effective on the date of the last signature (“Effective Date”).

WHEREAS, STC wishes to obtain the consulting services of an independent contractor, and

WHEREAS, the Consultant has demonstrated knowledge and expertise in providing these services;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Consultant and STC agree as follows:

1. The Consultant shall provide the following services, work product and deliverables (the “Services”):

2. The period of this Agreement shall be from _____, 20__ to _____, 20__, inclusive, unless earlier terminated pursuant to the terms hereof. This Agreement shall not be renewed by its own terms, and any further services provided by the Consultant beyond the term of this Agreement shall require the execution of a new agreement.

3. The Consultant's Duties and Representations:
 - a. STC and the Consultant agree and acknowledge that STC is entering into this Agreement in reliance on the Consultant's special abilities with respect to the performance of the Services. The

Consultant agrees that the Services shall be performed in a manner consistent with the degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession and industry practicing in the same locality.

b. The Consultant represents and agrees that all persons, including the Consultant's owners, officers, employees, agents, and any authorized subcontractors, who are in charge of or responsible for any of the Services, are duly registered and/or licensed under all applicable laws, rules and regulations and that the Consultant has acquired any licenses, certifications and permits which are required to provide the Services.

c. The Consultant represents that, to the best of the Consultant's actual knowledge, in connection with providing the Services there are no conflicts of interest between STC and any other person or entity for whom the Consultant is providing or has provided professional services. If the Consultant becomes aware of facts or circumstances that constitute or may reasonably lead to such conflicts of interest, the Consultant shall promptly notify STC.

d. The Consultant represents that if the Agreement requires the Consultant's presence on STC's premises or in STC's facilities, the Consultant will cause its employees, representatives and agents to comply with all applicable STC rules and policies relating to personal health, security, environmental quality safety, fire prevention, noise, smoking, parking, access restrictions and security directives.

4. Payment Terms / Invoicing:

a. STC shall pay the Consultant for the successful performance of the Services, subject to adjustments, additional services and reimbursable expenses, if any, at the following rates:

[Check if Applicable ____]: In addition to the fees stated above, STC shall reimburse the Consultant for reasonable, out-of-pocket costs actually incurred as a direct and exclusive result of the Consultant's performance of the Services. Such reimbursement shall be in accordance with STC's standard reimbursement policies, billed at the Consultant's actual cost, supported by original receipts, and pre-approved by STC. **Initials: STC ____ / Consultant ____]**

b. In no event will the amount paid to the Consultant, including the consulting fee and total expense reimbursement, exceed the amount of \$ _____. This not-to-exceed amount may be modified only by prior written agreement, signed by both parties. Payment(s) shall be made within 30 days following STC's receipt of a valid invoice along with any required supporting documentation.

c. In order to process any payment, the Consultant must provide STC with a current W-9 tax form.

5. In performing the Services, the Consultant is, and undertakes performance thereof, as an independent contractor with sole responsibility for its own debts, obligations, acts, and omissions as well as for all persons employed in connection with the Agreement, including exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees as well as all social security and other taxes and contributions payable in respect of such persons, from and against which liability the Consultant agrees to indemnify, exonerate and hold harmless STC. The Consultant

shall have no authority to act for or on behalf of STC or the State of Texas except as expressly provided for in the Agreement.

6. The Consultant must obtain STC's written consent prior to subcontracting any portion of the Services or changing any previously approved subcontractor. In any subcontract, the Consultant shall, unless STC otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions substantially similar to those in this Agreement.
7. Representations, Warranties, and Covenants:
 - a. The Consultant represents and warrants that:
 - i) it has full power and authority to enter into and fulfill its obligations under this Agreement; and
 - ii) none of the Services infringe on the intellectual property rights of any other person, and STC shall have the right to receive and use the Services without any restriction or obligation to any other person.
 - iii) if it is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, the Consultant is duly organized, validly existing and in good standing under the laws of the state of its organization and is authorized to do business in the State of Texas.
 - b. The Consultant agrees that it will maintain adequate liability insurance coverage, and provide proof of such coverage to STC when requested, for claims that may be asserted by any party as a result of the Consultant's performance of the Services.
 - c. The Consultant agrees that the Consultant, as well as any employees and agents of the Consultant, and any subcontractors, if permitted:
 - i) will interact with STC employees and third parties in a professional and respectful manner and will not access any external websites through STC that could compromise or cause embarrassment to STC; and
 - ii) will not use STC's or its own devices, systems or networks for any illegal or unauthorized purpose including, without limitation, any use that could disable, damage, overburden, or impair any STC device, system or network or interfere with any third party's enjoyment of such third party's device, system or network.
 - d. The Consultant agrees to perform all of the Services in accordance with STC policies of which the Consultant has actual knowledge as well as all applicable local, state and federal laws, rules, ordinances and regulations and acknowledges that any alterations, additions, or deletions to the terms of the Agreement that are required by changes in the applicable laws or regulations are automatically incorporated into the Agreement without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
 - e. Each individual who performs any of the Services must be the Consultant or an employee of the Consultant or an employee of a permitted subcontractor engaged by the Consultant. The Consultant is responsible for the performance of all individuals performing any of the Services. If requested by STC, the Consultant will provide STC with a list of all individuals who perform any of the Services ("List") and cause an appropriate criminal background screening to be performed on all such individuals. The Consultant will not knowingly assign any individual to provide any of the Services on STC's campus

or other premises who has a history of criminal conduct unacceptable for a college campus or facility including violent or sexual offenses. The Consultant will update the List each time there is a change in the individuals assigned to perform any Services. If requested by STC, the Consultant will provide a letter signed by an authorized representative certifying compliance with this section. The Consultant will provide STC with an updated certification letter each time there is a change in the individuals assigned to perform any services.

8. Intellectual Property:

a. Intellectual Property Rights ("IP Rights") means all intellectual and industrial property rights which include rights to inventions and patents for inventions including reissues thereof and continuations in part, copyrights, designs and industrial designs, trademarks, know-how, trade secrets and confidential information, and other proprietary rights.

b. The Consultant agrees:

i) that STC will be the exclusive owner of all IP Rights that are created or developed by the Consultant, whether by it alone or jointly or with the contribution or assistance of others, as a direct result of its engagement with STC under this Agreement;

ii) that it has no rights in any such IP Rights and hereby assigns to STC all rights, title and interest that may accrue to the Consultant as a result of its engagement with STC; and

iii) that all works created in full or in part by the Consultant in providing the Services may be maintained, changed, modified and/or adapted by STC without the consent of the Consultant.

c. Notwithstanding the foregoing, the Consultant and STC may agree in writing that certain identified and designated IP Rights will remain with the Consultant.

d. STC acknowledges that the Consultant possesses knowledge and expertise relating to the subject matter of the Services ("Consultant Know-How"), which may include intellectual property rights in certain pre-existing tools and materials used by the Consultant in performing the Services. Any rights in Consultant Know-How are not transferred to STC and shall remain the property of the Consultant. However, to the extent that any Consultant Know-How is included in the work product resulting from the Services, the Consultant grants to STC a perpetual, non-exclusive right and license to use and reproduce the Consultant Know-How to the extent reasonably necessary to exercise STC's rights in the work product and to share the work product outside of STC at its sole discretion.

9. Termination:

a. This Agreement may be immediately terminated by either party at any time upon its discovery of a material breach by the other party of its obligations thereunder, provided however that the party seeking termination shall first give the other party written notice of its material breach and that such breach not be cured within fifteen (15) days after receiving such written notice.

b. This Agreement may be immediately terminated by one party, without providing the opportunity to cure, if the other party becomes insolvent (generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors.

c. THE CONSULTANT ACKNOWLEDGES THAT STC'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED EXCLUSIVELY TO, AND UNDER NO CIRCUMSTANCES SHALL EXCEED, THE MAXIMUM

AMOUNT PAYABLE TO THE CONSULTANT AS SET FORTH IN SECTION 4. STC SHALL NOT BE LIABLE TO THE CONSULTANT FOR ANY LOST REVENUES; INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES (WHETHER OR NOT FORESEEABLE OR CONTEMPLATED BY THE PARTIES AT THE EFFECTIVE DATE); OR EXEMPLARY OR PUNITIVE DAMAGES AS A RESULT OF STC'S DEFAULT OF OR ANY PERFORMANCE UNDER THIS AGREEMENT.

10. The Consultant shall keep proper accounts and records of the costs and expenses relating to the Services, including all invoices, receipts and vouchers. If this Agreement includes payment for time spent by the Consultant, including its employees, agents or sub-contractors, in providing the Services, the Consultant must keep a record of the actual time spent by each individual who provides any part of the Services. Unless STC has consented in writing to its disposal, the Consultant must retain all the information described in this Section for three (3) years after either the receipt by the Consultant of the final payment under this Agreement, or the settlement of all outstanding claims and disputes, whichever is later. During this time, the Consultant must make this information available to STC and its representatives for audit, inspection, copying and examination.
11. Confidential and Personal Information:
 - a. Both parties shall maintain as confidential and shall not disclose, reproduce, copy, publish, distribute, or use for purposes other than the performance of the terms of this Agreement or as required by law, any information which relates to the other party's business affairs, products, services, trade secrets, technology, inventions, ideas, know-how, audiovisual media, research and development, pricing, employee information or the terms of this Agreement ("Confidential Information") and each agrees to protect the Confidential Information with the same degree of care that it exercises to protect its own confidential information but in no event with less than reasonable care. Confidential Information shall not include information that: (i) is publicly known through no direct or indirect fault of the recipient; (ii) thereafter becomes, available to the recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the disclosing party; or (iv) was or is independently developed by the recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the disclosing party's Confidential Information.
 - b. Upon expiration or termination of this Agreement or upon the request of the other party, each party agrees to immediately return or properly dispose of the other's Confidential Information and provide written confirmation of disposal. Breach of confidentiality may cause irreparable damage and, therefore, the injured party shall have the right to equitable and injunctive relief and to recover damages (including attorney's fees and costs) incurred in connection with any violation hereof. The recipient may disclose the disclosing party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction, provided that the recipient shall first provide the disclosing party with: (i) prompt written notice of such requirement so that the disclosing party may seek, at its sole cost and expense, a protective order or other remedy; and (ii) reasonable assistance, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.
 - c. STC strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act ("TPIA"). Unless otherwise informed by the Consultant in writing, STC shall consider all information,

documentation and any other materials requested to be submitted in connection with the Agreement to be of a nonconfidential and non-proprietary nature and therefore subject to public disclosure under the TPIA.

12. The Consultant shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of STC except with the prior, specific written authorization of STC.
13. The Consultant may not assign its rights or obligations under this Agreement without the prior written approval of STC and any attempt to do so shall be a breach of this Agreement and void.
14. Consequences of Termination:
 - a. If this Agreement terminates for any reason other than as a result of the Consultant's material default, STC shall pay the Consultant for all of the Services satisfactorily rendered and delivered by the Consultant prior to termination and for all expenses reasonably and properly incurred by the Consultant prior to termination, if such expenses are payable hereunder. STC shall have no further obligation to the Consultant including for any costs, losses or damages of any kind whatsoever as a result of such termination; under no circumstances shall STC be liable to the Consultant for any amounts in excess of the sums described in Section 4.
 - b. If STC terminates this Agreement pursuant to Section 9, STC may withhold any unpaid amounts otherwise due to the Consultant under this Agreement, which amounts may be applied by STC to indemnify it for any amounts owing by the Consultant as well as any additional costs that STC may incur to complete or cause to be completed any of the Services. Any amounts so withheld which are not applied toward such indemnification shall be paid to the Consultant when STC, in its sole discretion, determines that it has been adequately indemnified.
 - c. Upon termination of this Agreement, the Consultant shall immediately return to STC all property belonging to STC including, without limitation, any records, files, documents (including electronic material), equipment, software, intellectual property unless otherwise directed by STC in writing.
15. THE CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS STC, STC'S BOARD OF TRUSTEES AND THE STATE OF TEXAS AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL DAMAGES, COSTS, SUITS, ACTIONS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY KIND, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE SERVICES PROVIDED UNDER THE AGREEMENT, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF THE CONSULTANT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, THE CONSULTANT WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE SERVICES PROVIDED UNDER THE AGREEMENT.

16. This Agreement represents the entire and integrated understanding between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, and shall inure to the benefit of, be binding upon, and be enforceable against each party hereto and their respective permitted successors, assigns, transferees and delegates. Any terms or conditions contained in a quote, purchase order, invoice, order confirmation or other similar document related to this Agreement are void. Any amendment to or modification of this Agreement must be in writing, signed by authorized representatives of both parties, and expressly state that it is amending or modifying this Agreement.
17. If a court of competent jurisdiction finds any provision of the Agreement illegal, beyond the contractual authority of either party, or otherwise unenforceable, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.
18. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
19. Nothing in the Agreement or any conduct prior or subsequent to entering into the Agreement shall be construed as a waiver of STC's or the state's sovereign immunity including any of the privileges, rights, defenses, remedies, or immunities available to STC or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to STC or the State of Texas under the Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
20. Performance by STC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature ("Legislature") and/or allocation of funds by STC's Board of Trustees. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, STC may provide written notice to the Consultant and terminate this Agreement without further duty or obligation. The Consultant acknowledges that appropriation, allotment and allocation of funds are beyond STC's control.
21. This Agreement is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Agreement as a third-party beneficiary or otherwise.
22. All notices must be in writing and addressed to the other party's primary contact listed above. Notices can be by email and will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).
23. To the extent Texas Govt. Code Chapter 2260 is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and the related rules adopted by the Texas Attorney General, must be used by STC and the Consultant to attempt to resolve any claim for breach of contract made by the Consultant that cannot be resolved in the ordinary course of business. STC's Vice President for Finance & Administrative Services will examine the Consultant's claim and any counterclaim and negotiate with the Consultant in an effort

to resolve such claims. The parties specifically agree that: (i) neither the execution of the Agreement by STC nor any other conduct, action or inaction of any representative of STC relating to the Agreement constitutes or is intended to constitute a waiver of STC's or the state's sovereign immunity to suit; and (ii) STC has not waived its right to seek redress in the courts.

24. ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE GOVERNED BY TEXAS LAW, EXCLUDING ITS CONFLICT OF LAWS RULES AND, SUBJECT TO THE PROVISIONS OF *TEXAS GOVT. CODE* CHAPTER 2260, WILL BE LITIGATED EXCLUSIVELY IN THE FEDERAL OR STATE COURTS OF HIDALGO COUNTY, TEXAS; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS.
25. If the Consultant is a taxable entity subject to the Texas Franchise Tax (Texas Tax Code Chapter 171), the Consultant certifies that the Consultant is not currently delinquent in the payment of any taxes due under Chapter 171 or that the Consultant is not subject to those taxes.
26. The Consultant has not given or offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an STC employee, a member of STC's Board of Trustees or any public servant in the State of Texas in connection with the Agreement.
27. The parties may execute this Agreement using electronic signatures, electronic copies, and in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement.
28. Pursuant to *Texas Local Govt. Code*, Chapter 176, STC is a "local governmental entity" as that term is defined in Chapter 176 and all vendors who contract or seek to contract with a local governmental entity such as STC may be required to complete a conflict-of-interest questionnaire ("CIQ") if such vendor has a relationship with an officer of the local governmental entity who is considered a "local government officer" as defined by Chapter 176 or with a family member of such officer. If completion of a CIQ is required as of the effective date or at any time during the term of this Agreement, the Consultant shall file the CIQ with STC's Vice President of Finance & Administrative Services, with a copy to STC's Director of Purchasing. At <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>, the Consultant can find the official CIQ form along with a list of STC officers who are defined by Chapter 176 as "local government officers."
29. Pursuant to *Texas Education Code* §44.034, STC, as a public junior college, is considered a "school district" as that term is defined in §44.034 and a person or business entity, **excluding** publicly-traded companies and certain vendors of library goods and services, that does business with a school district such as STC, must notify the school district if such person, or an owner or operator of such business entity, has ever been convicted of a felony, and must include in the notification a general description of the conduct which resulted in the felony conviction. At <https://finance.southtexascollege.edu/purchasing/purchase/files/Form-Criminal-History.pdf>, the Consultant can find a Criminal History Disclosure Form ("CHDF") which shall be used for this purpose. If the Consultant is required to submit a CHDF pursuant to §44.034 as of the effective date or at any time during the term of this Agreement, the Consultant shall send the CHDF to STC's Vice President of Finance & Administrative Services, with a copy to STC's Director of Purchasing.

30. Texas Education Code Section 51.3525 (*Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives*) prohibits STC, whether acting through employees or third-party contractors, from engaging in certain activities as set forth in Subsection (b), Subdivision (1) and to adopt policies and procedures for appropriately disciplining, including by termination, any STC contractor who engages in conduct in violation of Subdivision (1). The Consultant represents that this Agreement, including any services provided thereunder by the Consultant, shall not violate Texas Education Code Section 51.3525 and acknowledges that if this Agreement is in violation of Section 51.3525, STC has the right to terminate the Agreement without liability in accordance with STC policies and procedures.
31. In accordance with Executive Order GA-48, the Consultant certifies that the Consultant and, if applicable, any of the Consultant's subsidiaries and holding companies, are not: i. listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or, ii. listed in Section 1260H of the 2021 NDAA; or, iii. owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or, iv. controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.
32. The terms and conditions of the Agreement that by their nature require performance by either party after the termination of this Agreement, including, without limitation, confidentiality obligations, limitations of liability, exclusions of damages, indemnification obligations, and governing law, and any other provision or partial provision that by its nature would reasonably extend beyond the termination of this Agreement, shall be and remain enforceable after such termination of this Agreement for any reason whatsoever.
33. The parties acknowledge that they have read and understand this Agreement, and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

(STC) SOUTH TEXAS COLLEGE*

(Consultant) _____

Deyadira Leal / Maria Del Paz
Director of Purchasing / VP - FAS
Date: _____

Name:
Title:
Date: _____

** If the amount payable is less than \$10,000, the Director Purchasing, or designee, is authorized to sign on behalf of STC. If the amount is \$10,000 or more, but less than \$50,000, the Vice President of Finance & Administrative Services is authorized to sign. A Department may, at its option, add signatories to this Agreement pursuant to that Department's internal procedures. However, the signature of the Purchasing Director or the VP of Finance, depending on the amount, is always required.*