

CONSULTANT AGREEMENT
OHLONE COMMUNITY COLLEGE DISTRICT
 CONTRACT NUMBER
377 -0901

THIS AGREEMENT, made and entered into this 5th day of August, 2008 in the State of California, by and between Ohlone Community College District, hereafter called the District, through its duly elected and appointed governing board and the person(s), company, corporation or firm listed below, hereafter called the Consultant.

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| CONSULTANT <u>Richard C. Thompson, President/CEO RPM Consultant Group</u> | Tax ID Number <u>SS#156341031</u> |
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WITNESSETH: That the Consultant for and in consideration of the covenants, conditions, agreements, and stipulations of the District hereinafter expressed, does hereby agree to furnish to the District the services and materials, as follows:

Consultant to provide all labor, supplies, equipment, and transportation necessary for completion of GASB 43 & 45 Consulting Services as outlined in the Exhibit A attached to this contract as further described herein, hereinafter called the "Work", for Michael Calegari, CBO of Ohlone Community College District in accordance with the Exhibit C-Service Provisions and General Conditions, Exhibit B-Insurance Requirements, which are all attached and, by this reference, made a part of this Agreement.

The terms and provisions of this Agreement are intended to be complementary. Any conflict between the provisions of this Agreement shall be resolved in favor of the following order: Most recent Amendment, this Agreement, Exhibit C, Exhibit B, Exhibit A.

The total amount of this Agreement shall not exceed **Ninety-Seven Thousand Eight Hundred Dollars (\$97,800.00)** which includes all applicable taxes and expenses. Progress payments are authorized but shall not exceed the amount of Work completed. Payment shall be made after receipt of invoice in duplicate and upon approval of Michael Calegari, CBO, net 30 days. The Work under this Agreement shall begin September 1, 2008 and be completed by August 31, 2010.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto, upon the date first above written.

| DISTRICT | CONSULTANT |
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| BY <i>Authorized Signature:</i> X | BY <i>Authorized Signature:</i> X |
| Printed name and title of person signing: <p style="text-align: center;">Mark Robbins Director of Purchasing & Contracts</p> | Printed name and title of person signing: <p style="text-align: center;">Richard C. Thompson President/CEO</p> |
| 43600 Mission Blvd. Fremont, Ca 94539 (510) 659-6263 fax: (510) 979-7492 | 5776-D Lindero Cyn Rd # 406 Westlake Village, California 91362 Office 805 449-1830 Fax: 805 449-1830 |

SERVICE PROVISIONS and GENERAL CONDITIONS

1. The Consultant, and the agents and employees of Consultant, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Ohlone Community College District. Consultant assumes the full responsibility for the acts and/or omissions of his/her employees or agents in connection with the services to be provided under this Agreement. Consultant shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, Workers' Compensation, social security, and income taxes, with respect to Consultant or Consultant's employees.
2. The Consultant agrees to indemnify, defend and save harmless Ohlone Community College District, its officers, governing board members, agents, volunteers and employees from any and all claims, demands, or losses accruing or resulting to any and all persons, firms or corporations who may be injured or damaged in any way by the Consultant, directly or indirectly, in connection with or during the performance of this Agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District, its officers, employees or agents.
3. Without the written consent of the District, Consultant may not assign or subcontract, in whole or in part, this Agreement.
4. Consultant shall submit itemized invoices in duplicate to the District's Accounts Payable Department referencing this contract number. Payment shall be made per the terms specified on page 1 of this Agreement and only after acceptance of the Work and the approval of the person(s) designated on page 1 of this Agreement.
5. Consultant accepts this contract or agreement under the terms and conditions specified herein and performance shall be deemed acceptance thereof. Conflicting terms on Consultant's form or proposal are rejected and shall be deemed a material alteration hereof. Notwithstanding inclusion or reference herein should any such terms be conflicting with these General Conditions or the Service Conditions, these terms shall apply, unless specifically excluded.
6. The consideration to be paid Consultant, as provided herein shall be in compensation for all of Consultant's expenses incurred in the performance hereof, including, but not limited to, materials, taxes, insurance, reproduction, renderings, travel and per diem, unless otherwise expressly so provided.
7. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of Consultant's profession. Consultant agrees that all reports, recommendations, technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, 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, unless fully disclosed to the District in advance, except that submitted to Consultant by District as a basis for such services. 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.
8. The services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Consultant agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances that are now or may in the future become applicable to Consultant, Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. Consultant shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

9. The Consultant's signature affixed hereon shall constitute a certification under the penalty of perjury under the laws of the State of California that the Consultant has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12940 and 12926.1.
10. This Agreement shall be governed and interpreted in pursuant to the laws of the State of California with venue in Alameda County. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect. The failure of District or Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition. Any provision required by law to be included in this Agreement, shall be deemed inserted herein and interpreted as though it were originally included. Time is of the essence in this Agreement.
11. District may, at any time, with or without cause, 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. District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Consultant; or (b) any act by Consultant exposing the District to liability to others for personal injury or property damage; or (c) Consultant is adjudged as 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 ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the District may secure the required services from another Consultant. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Consultant. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Consultant may, with cause, terminate this Agreement. Cause shall include: (a) material violation of this Agreement by the District; or (b) any act by District exposing the Consultant to liability to others for personal injury or property damage; or (c) District is adjudged as bankrupt, District makes a general assignment for the benefit of creditors, or a receiver is appointed on account of District's insolvency. Written notice by Consultant shall contain the reasons for such intention to terminate and unless within thirty (30) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) days cease and terminate. This Agreement will automatically terminate at the end of the District's fiscal year (June 30) without prior notice, unless otherwise stated in the Agreement.
12. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail with postage prepaid. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.
13. The parties to the Agreement shall be excused from performance hereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
14. 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 expended in the execution of the services under this Agreement. Consultant represents that he/she is not an employee of the District and will not utilize the services of any District employee in the execution of this Agreement.
15. This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

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INSURANCE

The Consultant shall maintain insurance adequate to protect him from claims under Workman's Compensation Acts, if required, and from claims for damages for personal injury, including death, and damage to property, which may arise from operations under the Agreement. The Contractor may be required to file with the District certificates of such insurance. Failure to furnish such evidence, if required, may be considered default of the Contractor.

- a. The Contractor shall not commence work under this Agreement until it has obtained all the insurance required under this paragraph and satisfactory proof of such insurance has been submitted to the district and said insurance has been approved by the District, if requested.
- b. Except for Workers' Compensation insurance, the District shall be named as additional insured and be furnished a 30 day written notice prior to cancellation or any reduction in coverage. The Contractor shall provide the District with an additional insured endorsement naming the District, its officials, officers, agents, employees and volunteers as an additional insured.
- c. Minimum Limits of Insurance:
 - i. Workers' compensation Insurance in an amount adequate to cover all employees;
Minimum Combined Single Limits:

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| Insured | Statutory |
| Employer's Liability | \$1,000,000 |
 - ii. General Liability with combined single limits of \$1,000,000 to include the following:
 - Contractual Liability
 - Products and completed Operations
 - Errors and Omissions
 - iii. If Commercial General Liability or other form with a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - iv. Automobile Liability Insurance: for all owned, non-owned and hired vehicles with minimum limits of Bodily Injury of accident and property damage with minimum limits of not less than \$100,000