

REQUEST FOR PROPOSAL (RFP) #2019-012
STRUCTURAL ENGINEERING DESIGN SERVICES
for
MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT
for
Engineering Structural Support for the San Jacinto Theater



RFP Issued: December 20, 2018

RFP Response Due: January 23, 2019 @ 10:00 a.m.

Submit Response to: Carole Ward
cward@msjc.edu
Contract Coordinator
and
Tammy Cunningham
tcunningham@msjc.edu
Director of Procurement and General
Services

**Questions or
Clarification:** All questions must be submitted in
writing, via e-mail to:

Carole Ward (cward@msjc.edu) and
Tammy Cunningham
(tcunningham@msjc.edu)

1. REQUEST FOR PROPOSALS

1.1 Purpose

As a vendor for the Mt. San Jacinto Community College District ("District"), the District is requesting that you submit a proposal to provide full service Structural Engineering Services to the District for the Structural Support at San Jacinto Theater ("Project"). Each Structural Engineering Firm ("Consultant") responding to this RFP should be prepared and equipped to provide full services to the District in an expeditious and timely manner and on relatively short notice so as to enable the District to meet critical time deadlines and schedules.

1.2 Proposal Submission

If your firm is interested in providing full service Structural Engineering Services for the Project, proposals must be delivered to the address below, no later than **10:00 AM on Wednesday, January 23, 2019**. Late proposals will not be considered. The District is not responsible for late mail or postal delivery errors. Proposers shall submit one electronic version of the proposal on a flash drive; one (1) printed original proposal including any supporting documentation in a sealed box or package addressed as follows:

Attention: Tammy Cunningham
Mt. San Jacinto Community College District
Purchasing Department
Building 200, Room 223
1499 N. State Street
San Jacinto, CA 92583

1.3 Response Format

Each Consultant is required to submit a Proposal it deems appropriate to this RFP. Submittals should be brief and concise, but provide sufficient clarity to meet the criteria in the evaluation process. Each Consultant shall submit one (1) electronic proposal on a flash drive and one (1) printed original proposal. The District will evaluate the Proposals based on the responsiveness to District requirements listed in part 6, Section, Selection Criteria/Evaluation Process.

NOTE for Firms teaming with Sub-Consultants: Each responding firm shall select its proposed sub-consultants based on its own criteria. However, MSJCCD reserves the right to approve sub-consultants proposed for any projects that may be awarded. Sub-Consultants do not need to complete all the Exhibits in this RFP. Carefully read each section to determine which forms the Sub-consultants need to submit.

1.4 Questions

Consultants must carefully read the entire RFP prior to submitting questions as most questions will be answered in this RFP. All questions must be submitted in writing via e-mail to Carole Ward (cward@msjc.edu) and Tammy Cunningham (tcunningham@msjc.edu). The question deadline for this RFP is **Wednesday, January 16, 2019 by 10:00 AM**. After this deadline, the District will not answer, address, and/or review any questions that interested Consultants might submit. Responses to all questions received prior to the deadline will be provided to all Consultants.

1.5 Request for Proposals

Pre-Qualified Consultants are in no way guaranteed to receive any work from the District. Each Proposal shall describe the Consultant's experience and expertise with respect to the services, if any, which are unique to the property or project that is the subject of this RFP. In addition, the Proposal shall set forth a detailed scope of services, a completion schedule, a schedule of professionals that will be used to supervise and staff the project, and a not-to-exceed dollar amount for the services to be performed. The District will allocate work to said Pre-qualified Consultants without having to request and evaluate additional information as to Consultant's qualifications. Consultant shall assign only trained and experienced personnel, support staff, and other Consultants to the requisite tasks. Consultant shall provide cost to perform the tasks outline in the Scope of Services referenced in this RFP.

1.6 Mandatory Pre-proposal Site Visit/Review of Project Documents:

A Mandatory Pre-proposal Site Visit is scheduled for Monday, January 14, 2019 at 10:00 a.m. at the San Jacinto Campus, Building 1500, located at 1499 N. State Street, San Jacinto CA 92583.

Engineer must attend job walk. Any Engineer submitting a proposal who fails to attend the entire mandatory job walk and conference will be deemed a non-responsive bidder and will have its proposal returned unopened. Any Engineer who fails to arrive on time (**10:00 a.m.**) will not be able to participate in the Pre-Proposal site visit.

1.7 Pre-qualification of Bidders

As a condition of bidding for this Project, and in accordance with California Public Contract Code Section 20651.1, prospective bidders are required to submit to the District a completed set of prequalification documents on forms provided by the District. Prequalification documents are available at the Mt. San Jacinto Community College District, Office of Procurement and General Services, Room 223, located at 1499 N. State St., San Jacinto, California 92583 or go to the Mt. San Jacinto Community College Purchasing Office website located at

<http://www.msjc.edu/Purchasing/Pages/UPCCA.aspx> to download the UPCCA Pre-Qualification Questionnaire. The prequalification documents must be submitted prior to 10:00 a.m. on January 16, 2019. Bids will not be accepted if a Contractor has not been prequalified where qualification is required. Contractors will be notified by telephone or e-mail of their prequalification status within a reasonable period of time after submission of their prequalification documents.

1.8 DIR Registration of Engineer:

An Engineer shall not be qualified to submit a proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public works pursuant to Section 1725.5. It is not a violation of this section for an unregistered engineer to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Engineer is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

This Project is a public works project as defined in Labor Code section 1720. Each contractor bidding on this Project and all subcontractors (of any tier) performing any portion of the Work must comply with the Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with DIR and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Project. For more information and up to date requirements, architects are recommended to periodically review the DIR's website at www.dir.ca.gov. Architect shall be solely responsible for ensuring compliance with Labor Code section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the term of the Agreement and in no event shall contractor be granted increased payment from the District or any time extensions to complete the Project as a result of contractor's efforts to maintain compliance with the Labor Code or any requirements implemented by DIR. Failure to comply with these requirements shall be deemed a material breach of this Agreement and grounds for termination for cause. The contractor and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. The District reserves the right to withhold contract payments if the District is notified, or determines as the result of its own investigation, that contractor is in violation of any other the requirements set forth in Labor Code section 1720 et. Seq. at no penalty or cost to the District. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/Department of Labor Standards Enforcement (DLSE).

2. PROJECT NARRATIVE/PROJECT DESCRIPTION

- 2.1 Mt. San Jacinto Community College District is in need of theater lighting support/structural improvements in Building 1500 (Theater) at the San Jacinto Campus.

The selected firm will include the following as part of services:

Existing overhead lighting and equipment in room 1512 needs to be designed to provide equipped with a secondary restraining device. The secondary restraining device should be able to support the lighting or equipment in the event of a primary mounting hardware failure.

Prepare recommendations and details to retrofit existing structural supports to meet current CBC standards. Attend pre-bid and construction meetings, prepare meeting minutes , respond to RFIs and review submittals. Perform final punch list and prepare a preliminary and final punch list.

Advise if this project is within the cost parameters of DSA exemption. Include in cost as an alternate DSA submittal.

During the design phases, the firm shall prepare and update as needed a schedule on a project scheduling software.

Project Location: Mt. San Jacinto Community College District
San Jacinto Campus
1499 N. State Street
San Jacinto, CA 92583



San Jacinto Campus Map

100	Business & Technology	1150	Student Center-Enrollment	1500	Theater
200	Administration, Business Services, Human Resources		Services, Career/Transfer Center, Counseling, Financial Aid	1540	Future Construction
300	Library/Learning Resource Center	1200	Classrooms-Humanities, Assessment Center (1210)	1550	Theater Annex
700	Facilities Planning Management, M&O, Receiving	1250	Classrooms-Science	1560	Veterans Resource Center
750	Campus Safety, Trio Program (751)	1300	Science Annex	1600	Music Building
800	Printing Department	1400	Fine Arts Center & Gallery	1900	Gymnasium & Dance Studios
900	Auto Shop	1420/1421	Classrooms		Wellness Center (1918)
950	Warehouse	1425	Institutional Effectiveness, Planning Office, DELTA	1950	Coach Offices
1100	Student Center-Cafeteria, SGA, Instruction, Eagle Access Center (1120), EOPS/CARE, Disabled Students Programs & Services	1450	Bookstore, Community Education (1455A), Job Connect/CalWORKs (1456A), Learning Skills Program, TV Studio, Student Athlete Support	1960	Athletic Dept. Offices
				1970	P. E. Offices & Locker Rooms
				2100/2150	Child Development Center

2.2 District Schedule

The schedule currently anticipated by the District is shown in the Preliminary Schedule below. Please note that although the timeframes indicated below represent current expectations, they are approximate and subject to change.

<u>Selection of Design Consultant</u>	
Issue RFP for S/E Services	12/20/18
Mandatory Project Walk Through	1/14/19 @ 10:00 p.m.
RFI Deadline	1/16/19 by 10:00 a.m.
RFP Responses Due	1/23/19 @ 10:00 a.m.
Review/Evaluate	1/24/19
Board of Trustees Approval	2/14/19
Commence S/E Work	2/28/19

<u>Duration of Design Services (including CA services)</u>	
Planning	TBD
Design	TBD
DSA Review and Approval	TBD
Bid and Award	TBD
Construction	TBD
Closeout	TBD

3. SCOPE OF SERVICES

- 3.1 Mt. San Jacinto Community College District is in need of theater lighting support/structural improvements in Building 1500 (Theater) at the San Jacinto Campus.

4. GENERAL

4.1 Responsible Charge

All licensed professionals in responsible charge of the work MUST be directly employed by responding Consultant and NOT employed as a sub-consultant.

4.2 District's Agreement

The Consultant, upon selection, will be required to enter into the District's Services Agreement ("Agreement"), provided as Exhibit D –Services Agreement for reference. Consultant shall be familiar with the District's indemnity clause and insurance

requirements and must have the ability to secure insurance coverage and provide Certificated Proof of Insurance in conformance with the Agreement.

4.3 Compliance with all Applicable Laws

Consultants response must set forth Consultant's understanding of all applicable Health and Safety laws, guidelines, and requirements including Cal/OSHA Title 8, the EPA (Environmental Protection Agency), the Education Code, the Chancellor's Office, and DSA regulations (including the new Inspection Card requirements and PR 13-01), and local ordinances and/or other applicable zoning or planning ordinances/regulations, relative to the work to be undertaken as well as Consultant's ability to comply with the same and the methodology by which Consultant will do so. The proposal must confirm that the nature of the Work to be completed will meet all the aforementioned requirements for said Work as set by the applicable codes and regulations and all other applicable ordinances and guidelines.

4.4 Working Conditions

Each Consultant shall be capable of working indoors, in all weather and site conditions including, but not limited to, rain, dirt, mud, and ice. The Consultant's activities may require kneeling, bending, climbing ladders, and other similar physical activities.

4.5 Disabled Veteran Business Enterprise Participation Goals

The Mt. San Jacinto Community College District supports a participation goal of at least 3 percent (3%) of overall dollar amount expended each year to Disabled Veteran's Business Enterprises (DVBE). If Consultant is selected to provide services to the District, Consultant will be required to sign and return a Certification form (copy included with previous RFQ document) certifying that they will provide the District with information regarding the use of any DVBE contractors or consultants on the project. Information about DVBE resources can be found on the Executive Branch's website at <http://www.dgs.ca.gov/default.htm> or by calling the Office of Small Business and DVBE Certification at 916-375-4940. The DVBE documentation will be required if the Consultant is chosen to provided services as a result of an RFP process.

5. PROPOSAL STATEMENT

5.1 Firm Information

Provide a cover letter and introduction, including the company name, address, telephone number, and e-mail address of the person (s) authorized to represent the

institution regarding all matters related to Consultant's proposal. A person authorized to bind the Firm to all commitments made in Consultant's proposal shall sign this letter.

5.2 Current Workload and Availability

State Consultant's ability to provide the required Structural/Engineering services in a timely manner, and indicate if those types of services are offered exclusively. Provide a list of current and anticipated commitments that involve any of the personnel (Project Team) that Consultant intends to assign to this project, and define the anticipated start and completion dates of the involvement of those personnel in such other projects.

5.3 Project Team and Sub-Consultants

Provide identification of Consultant's Project Team (including sub-consultants) and the District's main point of contact utilizing an organization chart. Identify the following key information for each team member: firm name, contact information, discipline, specific expertise, and experience in structural engineering services, especially as it relates to school sites/facilities and similar project types.

Utilize *Exhibit A – Team Member Resume Form* to provide additional detailed resumes of each team member, all of whom will be part of the designated team, thoroughly knowledgeable, regularly attentive, and fully available to work directly with the District.

Utilize *Exhibit B – Team Member Experience Form* to provide a minimum of five (5) relevant projects completed within the last five (5) years for EACH proposed team member (both for the prime Consultant as well as any sub-consultant). Prime consideration will be given to Consultants who propose team members with experience in community college projects of similar size, type, and difficulty, and which involve the same review and approval processes as those required by the DSA and other agencies having jurisdiction.

Any sub-consultants designated by the Consultant shall be subject to approval by the District in writing prior to performing any work on behalf of the Consultant. The District has the sole discretion to reject any sub-consultants proposed by the Consultant whether designated by Consultant in its RFP or not. Any replacement sub-consultants shall be subject to the District's prior written approval.

The members of the designated team shall not be charged unless agreed upon by the District. The District has the right to request additional sub-consultants in the future if those listed in this RFP are changed. All licensed professionals in responsible charge of the work MUST be directly employed by Consultant and NOT employed as a sub-consultant.

5.4 **Billing Rates**

Consultant shall propose an all-inclusive fixed fee for all the services described in this RFP. Consultant's proposed fee must include and account for all direct labor costs, fringe benefits, insurance, overhead, profit, and all other expenses the Consultant will incur in providing the required Architectural/Engineering services.

Utilizing *Exhibit C – Billing Rate Form*, provide billing rates for all personnel and/or categories of employees **(including sub-consultants)** as well as any overhead or other special charges. If applicable, Consultant's RFP Response should include estimates for certain standardized components of the Architectural/Engineering services process. All rates must include any escalation anticipated by Consultant during the entire duration of the *Architectural Services Agreement*. All other services not included herein shall be negotiable as required.

All proposed reimbursable expenses shall be directly related to the services required for the Project and must be supported by proper documentation and prior District authorization. Reimbursement shall not exceed cost plus 5%. Consultant shall review *Exhibit D – Services Agreement* for acceptable reimbursable items.

5.5 **Structural Engineering Services Agreement**

Consultant shall review the District's *Services Agreement*, attached as *Exhibit D*, and shall note in its Proposal any suggested language revisions. Suggested language revisions **not** noted in Consultant's Proposal will **not** be considered by the District.

6. **SELECTION CRITERIA/EVALUATION PROCESS**

6.1 **Selection Criteria**

Although not necessarily exhaustive of the criteria to be utilized by the District, the District intends to use the following evaluation criteria in selecting the Architectural/Engineering Design Services Consultant for this Project.

- **Timeliness and Completeness:** To receive consideration, Consultant's RFP Response must be received by the Response Deadline. In addition, Consultants RFP Response will be evaluated with respect to organization, clarity, completeness, and responsiveness to this RFP.
- **Technical Qualification and Competence:** This includes Consultant's experience, expertise, and familiarity with providing the Structural Engineering services required by the RFP, Consultant's knowledge of applicable laws and requirements for public works projects in general and school projects in particular, and

Consultant's ability to provide proof of any required and/or certifications for completion of the scope of work, if applicable.

- Record of Past Performance: This includes work quality, completion of work on schedule, adherence to cost controls, and the response of references provided by the Consultant.
- Approach to Work: This includes organization of the project team (including sub-consultants), project management, coordination methodologies, study and analysis approaches, ability to respond to emergencies and delays, and Consultant's ability to communicate effectively with District personnel and offer advice in the best interest of the District.
- Contract Requirements and Cost Control: This includes compliance with contract requirements, cost control procedures, preliminary cost estimates, personnel utilization, billing rates for personnel and Consultant's policies regarding the pass-through of Consultant's overhead cost to the District.

6.2 Evaluation

Proposals will be evaluated by an evaluation panel consisting of individuals selected by the District. At the District's discretion, some, one, or all of the responding firms may be requested to participate in an oral interview. The interview will be used as another opportunity to clarify any issues with a given proposal and explore the approaches that may be used to satisfy all the District's requirements. The District reserves the right to request that some or all of the responding firms consent to being interviewed by selected District personnel and/or representatives and/or to submit additional written information. The District reserves the right to extend the Response Deadline and/or send out additional RFPs.

This RFP and any potential future RFP's associated with this solicitation, does not commit the District to award a contractual agreement to any vendor or to pay any costs incurred in the preparation of RFP Responses. The District reserves the right at its sole discretion to: (i) waive or correct any defect or informality in any response, (ii) withdraw this RFP, (iii) reissue this RFP, (iv) reject any and/or all RFP's, (v) prior to submission deadline for RFPs. Modify all or any portion of the selection procedures including deadlines for accepting responses, services to be provided under RFP, or the requirements for contents or format of the RFPs, (vi) waive irregularities, (vii) procure any services specified in this RFP by any other means, (viii) determine that no projects will be pursued and/or (ix) terminate or change the contracting process articulated in this RFP because of unforeseen circumstances.

The District shall not be responsible in any manner for the cost associated with preparing a response/proposal and/or participating in an interview. The RFP's, including all drawings, plans, photos, and narrative materials, shall become the property of the District upon the District's receipt of same. The District shall have the right to copy,

reproduce, publicize and/or dispose of each RFP in any way that the District may choose. The District reserves the right to negotiate the terms and conditions of any agreement for services that may hereafter be let by the District.

CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made and entered into this ____ day of _____ in the year 20__ by and between the MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "DISTRICT," and _____, hereinafter referred to as "CONSULTANT." This AGREEMENT shall include all terms and conditions set forth herein. The DISTRICT and the CONSULTANT are sometimes referred to herein individually as a "PARTY" and collectively as the "PARTIES." This AGREEMENT is made with reference to the following facts:

WHEREAS, DISTRICT desires to obtain services for the ENGINEERING STRUCTURAL SUPPORT FOR THE SAN JACINTO CAMPUS THEATER, hereinafter collectively referred to as the "PROJECT"; and

WHEREAS, CONSULTANT is fully licensed to provide services in conformity with the laws of the State of California;

NOW, THEREFORE, the PARTIES hereto agree as follows:

ARTICLE I SCOPE AND SERVICES AND RESPONSIBILITIES

1. Services to be Provided by the CONSULTANT. The CONSULTANT shall provide to the DISTRICT on the terms set forth herein all the services articulated in the CONSULTANT's proposal which is attached hereto and incorporated herein as **EXHIBIT "A"** (the "CONSULTANT's WORK PLAN"). Where the CONSULTANT's WORK PLAN consists of a proposal or quote submitted in response to a Request for Proposals ("RFP") from the DISTRICT, the CONSULTANT's WORK PLAN shall be considered to include the DISTRICT's RFP. The DISTRICT and CONSULTANT expressly agree to incorporate the terms and conditions of the DISTRICT's RFP into this AGREEMENT by this reference and the PARTIES understand that the RFP shall constitute a binding part this AGREEMENT. In the event of a discrepancy, inconsistency, or other difference between the terms of the RFP or the CONSULTANT's WORK PLAN with this AGREEMENT, the PARTIES agree that the terms of this AGREEMENT shall govern and control.

2. Classification: To the extent it is determined under applicable law that CONSULTANT fails to meet the statutory prerequisites for classification as a professional expert operating under a personal services agreement, CONSULTANT resigns any and all rights and privileges derived from this AGREEMENT and any resulting relationship, which resignation is deemed accepted under such circumstances by the DISTRICT.

3. Contract Term. The effective period of this AGREEMENT is to be _____ through _____.

4. 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 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 workers' compensation and equal protection and non-discrimination laws.

c. 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 in California. The CONSULTANT will furnish, at its expense, those services that are set forth in this AGREEMENT and **EXHIBIT "A"** and represents that the services set forth in said EXHIBIT are within the technical and professional areas of expertise of the CONSULTANT or any subconsultant the CONSULTANT has engaged or will engage to perform the service(s). The DISTRICT shall request in writing if the DISTRICT desires the CONSULTANT to provide services in addition to, or different from, the services described in **EXHIBIT "A"**. The CONSULTANT shall advise the DISTRICT in writing of any services that, in the CONSULTANT's opinion, lie outside of the technical and professional expertise of the CONSULTANT.

5. CONSULTANT has been selected to perform the work herein because of the skills and expertise of key individuals. Services under this AGREEMENT shall be performed only by competent personnel under this supervision of and/or in the employment of the CONSULTANT. CONSULTANT shall conform to DISTRICT's reasonable requests regarding assignment of personnel. All personnel, including those assigned at DISTRICT's request, shall be supervised by CONSULTANT.

6. CONSULTANT shall not change any of the key personnel without prior written approval by the DISTRICT, unless said personnel cease to be employed by CONSULTANT. In either case, DISTRICT shall be allowed to interview and approve replacement personnel. CONSULTANT agrees that reassignment of any of the listed personnel during the AGREEMENT period shall only be with other professional personnel who have equivalent experience and shall require prior consultation and written approval by the DISTRICT. Any costs associated with reassignment of personnel shall be borne exclusively by CONSULTANT and CONSULTANT shall not charge the DISTRICT for the cost of training or "bringing up to speed" replacement personnel. If any designated lead or key person fails to perform to the satisfaction of the DISTRICT, then upon written notice the CONSULTANT shall immediately remove that person from the PROJECT and provide a temporary replacement. CONSULTANT shall within thirty (30) work days, provide a permanent replacement person acceptable to the DISTRICT. DISTRICT may condition its approval of replacement personnel upon a reasonable transition period wherein new personnel will learn the PROJECT and get "up to speed" at CONSULTANT's cost.

7. CONSULTANT represents that the CONSULTANT has no existing interest and will not acquire any interest, direct or indirect, which would create a conflict of interest in violation of any applicable laws, and that no person having any such interest shall be employed by CONSULTANT.

ARTICLE II

COMPENSATION TO THE CONSULTANT

1. The DISTRICT shall compensate the CONSULTANT as follows:

a. The DISTRICT agrees to pay the CONSULTANT in accordance with the fee, rate and/or price schedule information set forth in **EXHIBIT "A"** for the services performed pursuant to this AGREEMENT. In no event shall the total payment to CONSULTANT exceed _____ **DOLLARS (\$_____.)** for performing the services required by this AGREEMENT and **EXHIBIT "A"**.

b. CONSULTANT shall invoice costs monthly, or another periodic basis approved by the DISTRICT, for the services provided pursuant to this AGREEMENT from the time the CONSULTANT begins work on the PROJECT. All costs must be supported by an invoice, receipt, or other acceptable documentation as determined by the DISTRICT.

c. Except as expressly provided herein, CONSULTANT agrees that no other compensation, fringe benefits, or other remuneration is due to CONSULTANT by the DISTRICT for services rendered under this AGREEMENT. CONSULTANT shall not apply for or receive statutory benefits available to employees of the DISTRICT because CONSULTANT is not an employee of the DISTRICT; rather, CONSULTANT is operating under a personal services agreement pursuant to Education Code section 88003.1(b)(2) and has only the rights defined by this AGREEMENT.

2. The CONSULTANT shall submit one (1) invoice monthly to the DISTRICT for the fees incurred during the billing period and reimbursable expenses (if any). Invoices for fees must reflect the date of the service, identify the individual performing the service, state the hours worked and rate charged, and describe the service performed. Invoices requesting reimbursement for reimbursable expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g. receipts, invoices) including a copy of the DISTRICT's authorization notice for invoiced item(s). Invoices requesting payment for overtime must reflect straight time and overtime hours being charged, and must include a copy of the DISTRICT's written authorization to incur additional overtime expense. No payments will be made by the DISTRICT to the CONSULTANT for monthly invoices requesting reimbursable expenses or overtime absent the prior written authorization of the DISTRICT. The DISTRICT shall make payment to the CONSULTANT of the approved invoiced amount within forty-five (45) days of the DISTRICT's receipt of the approved invoice.

3. The DISTRICT may withhold, or on account of subsequently discovered evidence, nullify the 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 subconsultants; or (3) failure of CONSULTANT to perform its services in a timely manner so as to conform to the PROJECT schedule or other time constraints.

ARTICLE III **REIMBURSABLE EXPENSES**

1. Reimbursable expenses are in addition to compensation for basic and extra services, and shall be paid to the CONSULTANT at one and one-tenth (1.1) times the expenses incurred by the CONSULTANT, the CONSULTANT's employees and consultants for the following specified items unless otherwise approved by the DISTRICT in writing:

a. Approved reproduction of reports and/or other documents otherwise not covered in this AGREEMENT and approved in advance by DISTRICT.

- b. Fees advanced for securing approval of authorities in connection with the services rendered pursuant to this AGREEMENT.
- c. Express shipping, overnight mail, messenger, courier, or delivery services approved in advance by the DISTRICT.
- d. Mileage at IRS Rate if site exceeds more than 25 miles from the DISTRICT.
- e. Out of town travel approved in advance by DISTRICT.

2. Reimbursable expenses are estimated to be **THREE HUNDRED DOLLARS (\$300.00)**, and this amount shall not be exceeded without the prior written approval of the DISTRICT.

ARTICLE IV **TERMINATION**

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) 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 to abandon or indefinitely postpone the PROJECT.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the 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 the abandonment or postponement plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the 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.

3. 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 Article IV, 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.

4. This AGREEMENT may be terminated without cause by DISTRICT upon twenty (20) days written notice to the CONSULTANT. In the event of a termination without cause, the DISTRICT shall pay to the 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 plus any sums due the CONSULTANT for Board approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to other documents whether delivered to the DISTRICT or in the possession of the CONSULTANT.

5. 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. Pending resolution of this dispute, CONSULTANT agrees to continue the work diligently to completion. If the dispute is not resolved, CONSULTANT agrees it will

neither rescind the AGREEMENT nor stop the progress of the work, but CONSULTANT's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the PROJECT 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.

6. The PARTIES understand and agree that Article IV of this AGREEMENT 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 V

ADDITIONAL CONSULTANT 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 such services. The DISTRICT may require CONSULTANT to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for such services shall be negotiated and approved in writing by the DISTRICT. Such services shall include:

a. Making material revisions in reports or other documents when such revisions are required by the enactment or revision of laws, rules or regulations subsequent to the preparation and completion of such documents.

b. Preparing reports and other documentation and supporting data, and providing other services in connection with PROJECT modifications required by causes beyond the control of the CONSULTANT which are not the result of the direct or indirect negligence, errors or omissions on the part of CONSULTANT;

c. If the DISTRICT requests additional shifts to complete the services articulated in **EXHIBIT "A"** where the requests for additional shifts does not arise from the direct or indirect negligence, errors or omissions on the part of CONSULTANT and the CONSULTANT's compensation is expressly conditioned on the lack of fault of the CONSULTANT;

d. Providing any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally accepted practice in the CONSULTANT's industry.

ARTICLE VI

ACCOUNTING RECORDS OF THE CONSULTANT

1. Records of the CONSULTANT's direct personnel and reimbursable expenses pertaining to any extra 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.

ARTICLE VII
REPORTS AND/OR OTHER DOCUMENTS

1. The reports and/or other documents that are prepared, reproduced, maintained and/or managed by the CONSULTANT or CONSULTANT's consultants in accordance with this AGREEMENT (regardless of medium, format, etc.) 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 five (5) calendar days. Failure to comply with any such written request shall be deemed a material breach of this AGREEMENT.

ARTICLE VIII
INDEMNITY & INSURANCE

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

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

b. General Liability: If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify and hold the DISTRICT harmless from any 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 the DISTRICT, or any person, firm or corporation employed by the CONSULTANT or the DISTRICT upon or in connection with the PROJECT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent Architects who are directly employed by the DISTRICT. The CONSULTANT, at its 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 (other than professional negligence covered by section c below), its officers, agents or employees that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, 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: If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, the CONSULTANT shall indemnify and hold the DISTRICT harmless from any loss, injury to, 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 PROJECT, 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. With regard to the

CONSULTANT's obligation to indemnify for acts of professional negligence, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the DISTRICT, but rather to reimburse the DISTRICT for attorney's fees and costs incurred by the DISTRICT in defending such actions or proceedings brought against the DISTRICT that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT.

d. [NOT USED]

e. The PARTIES understand and agree that Article VIII, Section 1 of this AGREEMENT shall be the sole indemnity, as defined by California Civil Code §2772, governing this AGREEMENT. Any other indemnity that is attached to this AGREEMENT as an Exhibit shall be void and unenforceable between the PARTIES.

f. Any attempt to limit the CONSULTANT's liability to the DISTRICT in an attached Exhibit shall be void and unenforceable between the PARTIES. In no event shall the CONSULTANT's liability be limited to any amount including, but not limited to, the amount of fees received by the CONSULTANT for performing services related to this AGREEMENT.

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 subconsultant 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. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

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 ONE MILLION DOLLARS (\$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 subconsultant 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. Each policy of insurance required in Article VIII, Section 2 (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 not less than thirty (30) days 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.

ARTICLE IX

MISCELLANEOUS

1. 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 Workers' 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.

2. 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.

3. 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.

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

5. This AGREEMENT shall not include or incorporate the terms of any general conditions, conditions, master agreement or any other boilerplate terms or form documents prepared by the CONSULTANT. The attachment of any such document to this AGREEMENT as **EXHIBIT "A"** shall not be interpreted or construed to incorporate such terms into this AGREEMENT unless the DISTRICT approves of such incorporation in a separate writing signed by the DISTRICT. Any reference to such boilerplate terms and conditions in the proposal or quote submitted by the CONSULTANT shall be null and void and have no effect upon this AGREEMENT. Proposals, quotes, statement of qualifications and other similar documents prepared by the CONSULTANT may be incorporated into this AGREEMENT as **EXHIBIT "A"** but such incorporation shall be strictly limited to those portions describing the CONSULTANT's scope of work, rate and price schedule and qualifications.

6. The PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. 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.

7. The rule of construction that any ambiguities are to be resolved against the drafting PARTY shall not be employed in the interpretation of this AGREEMENT. It is expressly understood and agreed that the PARTIES to this AGREEMENT have participated equally, or have had equal opportunity to participate, in the drafting hereof.

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

9. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

10. 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 unless otherwise excluded by the terms of this AGREEMENT. In the event that the provisions of any exhibit conflict with the terms of this AGREEMENT, the terms of this AGREEMENT shall control.

11. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

12. Confidentiality. The CONSULTANT shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this AGREEMENT.

13. Severability. If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

14. Notices. 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, mailed either by registered, overnight, or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth 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 Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:
Mt. San Jacinto Community College District
Attn: Beth Gomez
1499 N. State Street
San Jacinto, CA 92583
Telephone: 951-487-3011

To the CONSULTANT:
<<Name of Contractor>>
Attn: <<Name>>
<<Address>>
<<City, State, Zip>>
Telephone:
Email:

15. Tobacco Prohibited. Any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.

16. Profanity on any DISTRICT property is prohibited, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment.

17. Appropriate dress is mandatory. Therefore, tank tops, cut-offs and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated above in Paragraph 16.

18. Images. If applicable, the CONSULTANT is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

19. Prevailing Wages. If applicable and required, CONSULTANT shall pay, and shall cause all subconsultants of every tier to pay, not less than the specified prevailing wage rates, to the extent applicable, to all workers employed to perform work or services under this AGREEMENT. CONSULTANT shall fully indemnify and defend the DISTRICT from any claims arising from CONSULTANT's failure to meet and prevailing wage requirements.

20. In accordance with California Education Code section 81655, this AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

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

<<NAME OF CONSULTANT>>

**MT. SAN JACINTO COMMUNITY COLLEGE
DISTRICT**

By _____

By _____

Print Name _____

Beth Gomez _____

Title _____

Vice President, Business Services

Date _____

Date _____

Address _____

Phone _____

Fax _____

Tax ID# _____

Email _____

EXHIBIT “A”

CONSULTANT ‘S WORK PLAN, SCOPE OF SERVICES, AND COMPENSATION