SOUTH SAN FRANCISCO UNIFIED SCHOOL DISTRICT
BUSINESS SERVICES
Ted O, Assistant Superintendent
398 B Street, South San Francisco, CA 94080-4423
(650) 877-8707 / Fax (650) 866-4719

PROFESSIONAL SERVICES AGREEMENT
INDEPENDENT CONTRACTOR / CONSULTANT

This Agreement ("Agreement"), made this ____ day of _____, _____, by and between the South San Francisco Unified School District of San Mateo County, a subdivision of the State of California ("District") and _____, a duly qualified consultant ("Consultant").

District and Consultant hereby agree as follows:

1. Scope and Description of Services:

   (Attach additional pages if necessary, note any attachment)

2. Agreement Documents:
   The Agreement documents consist of the Agreement for Consultant Services, the following General Provisions, any attachments, a completed W-9 (Attachment A), and completed insurance forms.

3. Compensation:
   For the full performance of this agreement, District shall pay the Consultant:

   Consultant's Total Fee: Up to $_____

   Expenses not to exceed (if any):$_____

Note: Request for payment must be submitted to the District on the itemized Request for Payment – Professional Services Form (Attachment B).

4. Term of Agreement:
   The term of this Agreement shall be from _____ to _____ inclusive, subject to the provisions of Section 11 of the General Provisions.

In witness whereof, the parties hereto have executed this Agreement on the day and year first written above. No Agreement is valid until approved by the Board of Trustees.

South San Francisco Unified	**Consultant**
_____	_____
Superintendent/Designee	Name/Title
Date of Board Approval:_____	_____

GENERAL PROVISIONS

1. Consultant's Warranty: District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant here by warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Consultant's work by District shall not operate as a waiver or release.

2. Status of Consultant: the parties intend that consultant, in performing the services herein specified, shall act as an independent consultant and shall have control of the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District and is not entitled to participate in any pension plans, workers' compensation plan, insurance, bonus or similar benefits District provides its employees.

3. Conflict of Interest: Consultant represents that it presently has no interest which would conflict in any manner or degree with the performance of services contemplated by this Agreement. Consultant further represents that in the performance of this Agreement, no person having such interest will be employed. If Consultant participates in the planning, development, or negotiation of a contract for the District, Consultant may not subsequently acquire a financial interest in that contract in violation of Government Code Section 1090. Section 1090 violations include, but are not limited to, entering into a contract to perform any part of a project if Consultant assisted the District in preparing the plans and specifications for that project.

4. Extra (Changed) Work: Only the Superintendent may authorize extra (and/or changed) work. The parties expressly recognize that District and school personnel are without authorization to either order extra (and/or changed) work or waive Agreement requirements. Failure of the consultant to secure proper authorization for extra work shall constitute a waiver of any and all rights to adjustment in the Agreement price or Agreement time due to such unauthorized extra work and the Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

5. Nondiscrimination: Consultant shall comply with all applicable federal, state and local laws rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, handicap or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

6. Transfer of Rights: Consultant assigns to District all rights throughout the work in perpetuity in nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications now or later prepared by Consultant in connection with the project, if any. Consultant agrees to take such action as are necessary to protect the rights assigned to "District in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's

responsibilities under this Agreement include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Consultant may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of District.

7. Ownership of Work Product: District shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of all design computations, plans, correspondence or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement by District or upon completion of the work pursuant to this Agreement.

8. Indemnification:

   (a) Consultant shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitations, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the project or its failure to comply with any of its obligations contained in these Agreement documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.
   (b) Consultant shall be liable to District for any loss or damage to District property arising from or in connection with Consultant's performance hereunder.

9. Insurance: With respect to the performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, if any, to maintain insurance, including but not limited to: general liability, automobile liability, and professional liability coverage in such an amount as may be reasonably necessary to assure compliance with the Indemnification provision (Section 8) above. **In addition, Consultant shall provide proof of coverage as specified below.**
   (a) __*Required* / __*Not Required*: Worker's compensation insurance with statutory limits as required by the Labor Code or the State of California. The policy shall be endorsed with the following specific language: "this policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the District." (Note: Consultant is not entitled to coverage by District workers' compensation regardless whether policy is required).
   (b) __*Required* / __*Not Required*: Commercial or Comprehensive General Liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than $1,000,000 per occurrence, $2,000,000 aggregate. Such insurance shall include, but not be limited to: premises and operations liability, independent consultant's liability, and personal injury liability.
   (c) __*Required* / __*Not Required*: Automobile liability insurance covering bodily injury and property damage in an amount no less than $300,000 combined

single limit for each occurrence. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

(d) __*Required* / __*Non Required*: Professional Liability (errors and Omissions) Insurance for all activities of the consultant arising out of or in connection with this Agreement in an amount no less than $1,000,000 combined single limit for each occurrence endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District."

(e) Each general liability, automobile liability, and professional liability insurance policy, shall be endorsed with the following specific language:

(1) District, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
(2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
(3) The insurance provided herein is primary coverage to District with respect to any insurance or self-insurance programs maintained by District and no insurance held or owned by District shall be called upon to contribute to a loss.
(4) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to District.

(f) Documentation: The following documentation shall be submitted to the District:

(1) Properly executed certificates of insurance clearly evidencing all coverages limits, and endorsements required above. The certificates shall be submitted prior to commencement of services under this Agreement.
(2) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.
(3) Upon District's written request, certified copies of insurance policies. Such policy copies shall be submitted within thirty (30) days of District's request.

(g) Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(h) Material Breach: If Consultant, for any reason, fails to maintain insurance required above, the same shall be deemed a material breach of Agreement. District, at its sole option may terminate this Agreement and obtain damages from the Consultant resulting from the breach. District may purchase such required insurance, and without further notice to Consultant, deduct from sums due to Consultant any costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

10. Method and Place of Giving Notice, Submitting Bills and Making Payments:
All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notice, bills and payments sent by mail shall be addressed as follows:

South San Francisco Unified School District
398 B Street
South San Francisco, CA 94080
ATTN: Accounts Payable

Consultant: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

And when so addressed, shall be deemed given upon receipt via United States Mail, postage prepaid, provided it is forwarded certified, or registered with proof of receipt. In all other instances, notices, bills, and payments shall be deemed given at the time of actual personal delivery. Changes may be made in names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

11. Termination:

(a) District may terminate this Agreement by giving ten (10) calendar days written notice to Consultant. In the event District elects to terminate the Agreement without cause, it shall pay Consultant for services rendered to such date.
(b) If either party fails to perform any of its obligations hereunder, within the time and in the manner hereunder provided or otherwise violates any of the terms of the Agreement, either party may terminate this Agreement by giving written notice of such termination, stating the reason for such termination. In such event, Consultant shall be entitled to receive payment for all services satisfactorily rendered provided, however, that there shall be deducted from such amount the amount of liquidated damage, if any, sustained by District by virtue of any breach of the Agreement by Consultant.

12. Security: By execution of the Agreement/Contract, the Consultant acknowledges that Education Code section 45125.1 applies to contracts for the provision of school and classroom janitorial, school site administrative, school site grounds and landscape maintenance, pupil transportation and school site food-related services. Section 45125.1 requires that employees of entities providing such services to school districts must be fingerprinted by the California Department of Justice for a criminal records check, unless the District determines that the Consultant and Consultant's employees will have limited contact with pupils. In making this determination, the District will consider the totality of the

circumstances, including factors such as the length of time the Consultant and Consultant's employees will be on school grounds, whether pupils will be in proximity with the site where the Consultant and Consultant's employees will be working, and whether the Consultant and Consultant's employees will be alone or with others. The District further reserves the right to determine, on a case-by-case basis, to require any entity providing school site services to comply with the requirements of this paragraph.

(a) District Determination of Fingerprinting Requirement Application

The District has considered the totality of the circumstances concerning the Project and has determined that the Consultant and Consultant's employees:

__are subject to the fingerprinting requirements of Education Code section 45125.1 and Paragraph (b) below, is applicable.

__are not subject to the fingerprinting requirements of Education Code section 45125.1 and Paragraph © below, is applicable.

(b) If the District has determined that fingerprinting is required, the Consultant expressly acknowledges that:

(1) Consultant and all of Consultant's employees working on the school site must submit or have submitted fingerprints in a manner authorized by the Department of Justice, together with the requisite fee as set forth in Education Code section 45125.1.
(2) Consultant shall not permit any employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a serious or violent felony.
(3) Consultant shall certify in writing to the Governing Board of the District that none of its employees who may come in contact with students have been convicted of a serious or violent felony.
(4) Consultant shall provide to the Governing Board of the District a list of names of its employees who may come in contact with students. The Consultant is required to fulfill these requirements at its own expense.

(c) Even if the District has determined that fingerprinting is not required, the Consultant expressly acknowledges that the following conditions shall apply to any work performed by the Consultant and/or Consultant's employees on a school site:

(1) Consultant and Consultant's employees shall check in with the school office each day immediately upon arriving at the school site.
(2) Consultant and Consultant's employees shall inform school office staff of their proposed activities and location at the school site.
(3) Once at such location, Consultant and Consultant's employees shall not change locations without contacting the school office.
(4) Consultant and "consultant's employees shall not use student restroom facilities.
(5) If Consultant and/or Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact

the school office and request that a member of the school staff be assigned to the work location.

13. Due Performance: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend performance for which the agreed return has not been received.

14. Taxes, Disclosures, and Expenses: Consultant agrees to file federal and state tax returns and pay all applicable state and federal taxes on amounts paid pursuant to this Agreement. District will not withhold or set aside any money on behalf of consultant for federal, state, or social security tax, or unemployment or disability insurance or any other federal or state fund whatsoever. In case District is audited for compliance regarding any applicable taxes, consultant agrees to furnish District with proof of payment of taxes on those earnings.

    Consultant agrees to disclose to District if he/she is a retired or current member of STRS or PERS and to disclose to District if he/she is receiving retirement income from either STRS or PERS.

    Consultant shall be responsible for all costs and expenses incident to the performance of services, including but not limited to: equipment, supplies, fees, fines, licenses, bonds, or taxes required of or imposed against Consultant. District shall not be responsible for any expenses incurred by Consultant except as provided in Section 3 of this Agreement.

    Note: Federal Internal Revenue regulations require District to report all payments to individuals for consultant services.

15. Dispute Resolution: The parties agree to make a good faith effort to resolve any dispute arising from or relating to this Agreement through mediation prior to commencing litigation. Within sixty (60) days following a written request by either party to mediate a dispute that has not been resolved by informal negotiation, the parties shall mutually agree upon a mediator, schedule a mediation, and shall share the costs of mediation equally, except costs incurred by each party for representation by legal counsel.

16. Choice of Law and Venue: This Agreement shall be governed by California law, and venue shall be in the Superior Court of the County of San Mateo, California, and no other place.

17. Merger: This writing is intended both as a final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

18. Assignment/Delegation: Neither party hereto shall assign, sublet or transfer any interest in this Agreement or any duty hereunder without written consent of the

other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

19. No Third-Party Beneficiaries: There are no intended third-party beneficiaries to this Agreement.

20. No Waiver of Breach: The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or a subsequent breach of the same or any other term or promise contained in this Agreement.

21. Force Majeure: If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.

22. Severability: If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

23. Headings: The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

24. Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

25. Authorization: Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.