



CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (Agreement) is by and between Cooperative Personnel Services, dba CPS HR Consulting, a California Joint Powers Authority (CPS HR), with offices at 2450 Del Paso Road, Suite 220, Sacramento, CA 95834 and the Agency named in the signature block at the end of this Agreement (Agency, hereafter referred to as Client), and is effective as of _____ (Effective Date). CPS HR and the Client shall be collectively referred to herein as the "Parties" and individually as a "Party."

- A. Purpose.** This Agreement defines CPS HR consulting services, policies and procedures.
- B. Services.** CPS HR will provide certain consulting services (Services) to Client as set forth in the Statements of Work (attached hereto as Exhibit ("A")). CPS HR shall perform only the Services requested by Client, at the times, dates, and locations specified by Client.
- C. Compensation.**
 - 1. Payment.** Client will compensate CPS HR for Services by paying certain fees as set forth in the Statement of Work. Client will reimburse CPS HR for business expenses as set forth in the Statement of Work. Client will pay all invoices within thirty (30) days from receipt of invoice.
 - 2. Funding.** Client certifies that funding for compensation payable to CPS HR under this Agreement has been approved by Client's governing body, either as a part of the general operating budget or as a specific item. Client further certifies that it anticipates sufficient cash will be available for payment of compensation as required above.
 - 3. Late Payment.** Any invoices not paid within thirty (30) days may incur a service charge of the lesser of two percent (2%) or the maximum allowable by law per month on any outstanding overdue balances. In addition, reasonable collection costs may be added to any invoice not paid within ninety (90) days.
- D. Taxes.** Except as expressly stated in the Statement of Work, the fees listed therein are

in addition to, and not in lieu of, any additional fees, assessments, levies, taxes, etc. assessed against the transactions contemplated herein (Taxes). With the exception of Taxes imposed on CPS HR's net income, all Taxes shall be Client's responsibility. Client shall pay any Taxes, which CPS HR may be required to collect and remit, upon invoice.

E. Term and Termination of Agreement.

1. Term. The term of this Agreement is _____.

2. Immediate Termination upon Material Breach. Either Party may terminate this Agreement immediately upon any material breach by the other Party.

3. Termination without Cause. Either Party may terminate the Agreement without cause upon thirty days written notice to the other Party.

4. Payment on Termination. Upon termination without cause, Client shall pay CPS HR for all work performed through the effective date of termination. For termination upon material breach, Client shall pay CPS HR for all work performed which is in compliance with the terms of the Statement of Work.

F. Limited Warranty.

1. Warranty. CPS HR represents and warrants that: (i) it has the authority to enter into this Agreement; (ii) it will comply with applicable law; and (iii) it will provide Services in a workmanlike manner consistent with industry standards.

2. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CPS HR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND THE WORK PRODUCT INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR IN RESPECT OF ANY THIRD-PARTY

PRODUCTS OR SERVICES AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING AND NO REPRESENTATIVE OF CPS HR IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY.

G. Work Product.

1. Ownership. Upon CPS HR' receipt of fees due under the Agreement, all studies, reports, documents and other writings prepared by CPS HR and its subcontractors, produced as a result of CPS HR' work, or delivered by CPS HR to Client in the course of performing services (collectively, "Work Product") shall become the property of Client and Client shall have the right to use the materials without further compensation to CPS HR or its subcontractors.

2. Retention of Rights. Notwithstanding Client's ownership of the Work Product, Client acknowledges and agrees that: (i) CPS HR has the right to re-use any of its know-how, ideas, concepts, methods, processes, or similar information, however characterized, whether in tangible or intangible form, and whether used by CPS HR in the performance of Services or not, at any time and without limitation, and (ii) CPS HR retains ownership of any and all of its intellectual property rights that existed prior to the Effective Date including, but not limited to, all methods, concepts, designs, reports, programs, and templates as well as all training materials, testing or assessment products, survey content, and copyrightable works.

H. Release of Information to Third Parties.

Each Party understands that information provided to government entities may be subject to disclosure under a public records or freedom of information act. Each Party hereto (each, a Recipient) shall protect and keep confidential all non-public information disclosed to Recipient by the other Party (each, a Discloser) and identified as confidential by Discloser, and shall not, except as may be authorized by Discloser in writing, use or disclose any such Confidential Information during and after the term of this Agreement. If CPS HR or Client receives a request for disclosure of Confidential Materials, such as a subpoena or a public records or freedom of information request, that Party shall immediately notify the other Party of the request. Upon request, Client or CPS HR shall maintain the confidentiality of the Confidential Materials pending the grant or denial of a protective order or the decision of a court or administrative body as to

whether the requested materials must be disclosed under the applicable public records statute. Client and CPS HR shall cooperate with each other in seeking any relief necessary to maintain the confidentiality of the Confidential Materials. Each Party shall defend, indemnify and hold the other harmless from any claim or administrative appeal, including costs, expenses, and any attorney fees, related to that Party pursuing protection of the Confidential Materials from disclosure.

I. Indemnification. CPS HR agrees to indemnify, defend, and hold Client, its agents, officers, employees and volunteers harmless from and against loss or damage (including reasonable attorney's fees) arising from or related to a claim of bodily injury or property damage resulting from CPS HR' willful misconduct or negligent performance of this Agreement; provided that, Client notifies CPS HR in a commercially reasonable time, in writing of any such claim and gives CPS HR (at CPS HR' expense) sole control of the defense of same and all negotiations for its settlement or compromise. CPS HR' liability to indemnify Client shall be reduced to the extent that such loss or damage was caused or contributed to by the act, omission, direction or negligence of Client, its agents, officers, employees and volunteers over which CPS HR does not have direct control.

J. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY HERETO SHALL HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF PROFITS OR DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CPS HR' LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO CPS HR.

K. Miscellaneous.

1. Notices. Any notice to the parties required or permitted under this Agreement shall be given in writing and shall be sent to the persons at the address listed in the Statement of Work.

2. Dispute Resolution; Remedies.

(a) In the event of a dispute, the parties may agree to pursue mediation or either binding or

nonbinding arbitration to resolve their dispute, under such rules as the parties may agree.

(b) If either CPS HR or Client determines it appropriate to file a judicial action, then, in addition to any other remedies available at law or in equity, Client acknowledges that breach of this Agreement may result in irreparable harm to CPS HR for which damages would be an inadequate remedy and, therefore, CPS HR shall be entitled to seek equitable relief, including injunction.

3. Attorneys Fees. If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.

4. Governing Law. This Agreement will be governed by the laws of the State of California without regard to its rules concerning conflict of laws.

5. Force Majeure. Neither Party shall be liable for delays caused by fire, accident, labor dispute, war, insurrection, riot, act of government, superior force, or any other cause reasonably beyond its control.

6. Waiver. The failure of any Party at any time or times to require performance of any provision of this Agreement shall in no manner affect its right to enforce that

provision at a later time. Nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the Party granting the waiver.

7. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all other agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.

8. Counterparts; Facsimile Signature; Electronic Signature. This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed or e-mailed by PDF or otherwise, the faxed or -mailed copy bearing the signature shall be as good as the original, wet-ink signed copy for all intents and purposes.

9. Authority to Sign. The person signing this Agreement on behalf of the Client (the Principal Signer) represents that he or she is the head of the agency or is otherwise duly authorized to sign this Agreement and to bind the Client.

10. Ambiguities. As this Agreement has been voluntarily and freely negotiated by both parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.

**Cooperative Personnel Services dba
CPS HR Consulting,**
2450 Del Paso Rd, Ste 220, Sacramento, CA 95834

By: _____
Authorized Signature

Name: _____

Title: _____

Client Name

By: _____
Authorized Signature

Name: _____

Title: _____

Exhibit A

Statement of Work

All changes to this SOW must be mutually agreed to and executed in writing by duly authorized representatives of both parties as an amendment to this SOW. Capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

1. SERVICES: CPS HR shall perform the following services:

2. CLIENT RESPONSIBILITIES:

a. Client must timely perform all those Client roles and responsibilities set forth in this SOW. Successful completion of this project within the time specified depends largely upon an effective working relationship between Client and CPS HR project staff. For this reason, CPS HR requests that Client designate an individual to coordinate communication, meetings, interview schedules, and review of products with the project team. Client's Project Representative will be responsible for the following activities:

1. Coordinating all meeting schedules, conference calls, facilities and equipment needs
2. Coordinating interview schedules and facilities and distributing project update information

b. Any work products developed during the activities described above will be submitted to Client's Project Representative for review, comment and/or approval. This is a critical step to ensure accurate, reliable, and valid products.

3. START DATE:

4. COMPLETION DATE:

5. CPS HR PROJECT MANAGER: Phone Number:

6. CLIENT MANAGER: Phone Number:

7. BUSINESS EXPENSES:

8. SERVICE FEES:

a. **[For T&M work.]** All Services provided to Client by CPS HR hereunder are priced on a TIME AND MATERIALS basis. Any estimates provided by CPS HR to Client, whether written herein or given orally, shall not be binding on CPS HR or convert this SOW into a fixed price engagement with respect to such Services. Any such estimates are for informational purposes only, and the actual fees payable by Client may be higher or lower than such estimates.

b. CPS HR will invoice Client at the rate of \$ _____ per hour for Project Manager hours, \$ _____ per hour for Consultant hours and \$ _____ per hour for Technical hours. Incidental expenses such as lodging, parking, meals, mailing costs, advertising, printing, etc., will be billed at actual cost, if applicable. Mileage will be billed at the current U.S. Internal Revenue Services approved rate. Expenses are estimated at \$ _____. Total cost not to exceed \$ _____.

a. All Services provided to Client by CPS HR hereunder are priced on a FIXED PRICE basis. All amounts are based upon the following assumptions. Any deviations from the following assumptions may result in an increase in the Fees: (i) Client will timely perform its responsibilities as set forth in this SOW; and (ii) Services will normally be performed during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding CPS HR holidays ("Normal Business Hours").

b. CPS HR will invoice Client at the fixed fee rate of _____ plus expenses, billed in _____ monthly installments. Incidental expenses such as lodging, parking, meals, mailing costs, etc., will be billed at actual cost and estimated to be \$ _____. Mileage will be billed at the current U.S. Internal Revenue Service approved rate.

Client Name

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DATE

- c. Invoices will be submitted for payment on a monthly basis. Client will pay CPS HR within thirty (30) days following receipt and approval of a proper consultant invoice.
- 2. In the event the project is terminated early, CPS HR will be paid such amount as is due for professional services performed and out-of-pocket expenses incurred up to and including the effective date of termination.
- 3. This SOW covers work requested and performed prior to the commencement of this SOW.