



## **PERRIS ELEMENTARY SCHOOL DISTRICT PROFESSIONAL CONSULTANT AGREEMENT**

**THIS AGREEMENT** is made effective on \_\_\_\_\_(date) by and between \_\_\_\_\_, hereafter called "Consultant," and the **Perris Elementary School District**, hereafter called "District."

### **RECITALS**

- A. The District desires to obtain special professional services and advice or other professional services, as provided in this Agreement.
- B. The Consultant is specially trained, experienced, qualified, competent and authorized under State and Federal law, as applicable, to provide the special services and advice required by the District.

### **AGREEMENT:**

1. In consultation and cooperation with the District, the Consultant shall provide the professional services described herein (the "Services") consistent with generally acceptable industry standards or better. The Services are described in further detail:

- ☐ In the Statement of Work, attached
- ☐ In the Specification, attached.
- ☐ In the Proposal, Estimate, Scope of Work, attached.

Any attachment is hereby incorporated into this Agreement and made a part of it. In the event of any conflict between the language in this Agreement and any attachment incorporated herein, the language in this Agreement will govern and take precedence over any attachment.

2. The Consultant is an independent contractor and will perform the Services as an independent contractor and not as an employee of the District. Accordingly, nothing in this Agreement shall be construed as establishing a relationship of employer and employee, or principal and agent, between the District and the Consultant or between the District and any of Consultant's agents or employees. Consultant is solely responsible for its own acts and the acts of any of its agents or employees as they relate to any Services provided. Consultant and its agents and employees shall not be entitled to any rights and or privileges of the District's employees, including but not limited to, permanent status, health insurance benefits, sick leave, paid vacation, or any other employee benefit. Each party acknowledges that the Consultant is not an employee for state or federal tax purposes and that the District will not withhold federal or state income tax deductions from payments made to Consultant under this Agreement. Consultant must provide District with his/her Social Security Number or Taxpayer ID number. District will provide Consultant and the Internal Revenue Service ("IRS") with a statement of earnings at the conclusion of each calendar year as required by the IRS.
3. **TERM:** The term of this Agreement shall begin on \_\_\_\_\_ and terminate automatically on \_\_\_\_\_, unless terminated earlier by either party as provided in this Agreement. The District's termination of the Agreement shall in no way affect Consultant's obligation to hold harmless and indemnify the District in accordance with Section 10 below.

4. **PAYMENT/SCHEDULE:** Consultant shall furnish to the District the Services ☐ at a rate of \$ \_\_\_\_\_ per hour, for a total cost not to exceed \$ \_\_\_\_\_ -- or -- ☐ per RFP, request or proposal attached. Payments will be processed upon satisfactory completion of the Services and receipt of an approved invoice. (A rate sheet may be attached and incorporated into this Agreement.) It is the sole obligation of the Consultant to ensure that the sum of the hours worked multiplied by the hourly rate does not exceed the total "not-to-exceed" amount authorized under this Agreement. The total "not-to-exceed" amount and any hourly rate of the Consultant shall be inclusive of any and all expenses such as overhead and profit, fees, subcontract costs, automobile, workers' compensation (as required by law), professional negligence, and general liability insurance, etc., materials, supplies, and taxes.
5. **WORK PRODUCT OWNERSHIP:** Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively, the "Work Product") developed in whole or in part by Consultant in connection with the Services shall be the exclusive property of the District. Upon request, Consultant shall sign all documents necessary to confirm or perfect the exclusive ownership of the District to the Work Product. No consultant, firm, or corporation may use the District logo without prior approval from the Superintendent.
6. **AGREEMENT/AMENDMENT/MODIFICATION:** This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written. Any amendment or modification of this Agreement shall be effective only if it is in writing and signed by the parties, except that the District may unilaterally amend this Agreement in writing to accomplish the following changes:
- Increase dollar amounts;
  - Effect administrative changes;
  - Effect other changes as required by law; and
  - Term of agreement.
- Amendments may require Board approval and will not be paid until Board approval is received. If you need assistance with this matter, please contact the Business Services Department at (951) 657-3118.**
7. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior or contemporaneous oral or written agreements.
8. **INDEPENDENT CONTRACTOR:** Consultant will provide Services under this Agreement as an independent contractor and not as an employee of the District. District will not withhold federal or state income tax deductions from payments made to Consultant under this Contract and will not provide Consultant fringe benefits, including health insurance benefits, sick leave, paid vacation, or any other employee benefit.
9. **TERMINATION:** The District may at any time and for any reason suspend performance by the Consultant or terminate this Agreement and compensate Consultant only for Services satisfactorily rendered to the date of such suspension or termination. In addition, and notwithstanding anything to the contrary contained in this Agreement, due to the current budget crisis and the fiscal constraints under which the District operates, the District may terminate the Agreement at any time without penalty, cost, or damages of any kind. The District's termination of the Agreement shall in no way affect Consultant's obligation to hold harmless and indemnify the District in accordance with Section 8. Written notice by the District shall be sufficient to suspend or terminate any further performance of Services by the Consultant. The notice shall be deemed given when received, upon electronic confirmation of a facsimile transmission, or no later than three (3) days after the day of mailing, whichever is soonest. Upon receipt of any notification of termination by the District, the Consultant shall promptly provide and deliver to the District any and all Work Product in progress or completed to date including any reports, drafts, electronic information, or the like to the District. Unless otherwise identified, notice will be provided to the address shown at the signature block on the last page of this Agreement. Facsimile or electronic mail notices shall be accepted.
10. **HOLD HARMLESS AND INDEMNIFICATION:** Vendor/Consultant agrees to defend, indemnify and hold harmless the Perris Elementary School District, its Governing Board, officers, agents, volunteers, and employees, individually and collectively, from and against all costs, losses, claims, demands, suits, actions, expenses, liability,

damage, injury, payments and judgments, including legal and attorney fees, arising from personal or bodily injuries, property damage or otherwise, regardless of and however caused, brought or recovered against any of the above arising out of or incident to any alleged acts, negligence, omissions or willful misconduct of the Vendor/Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services and/or the Products or this Agreement, including without limitation the payment of all consequential damages and attorney fees and other related costs and expenses. Vendor/Consultant shall defend, at Vendor/Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the District, its directors, officials, officers, employees, agents or volunteers. Vendor/Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding resulting from services rendered by Vendor/Consultant. Vendor/Consultant shall reimburse District and its directors, officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor/Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents or volunteers.

11. **INSURANCE:** Consultant acknowledges Consultant's obligation to obtain appropriate insurance coverage for the benefit of the District and Consultant's employees, if any. **During the term of this Agreement, the Consultant shall maintain:**

- a. Commercial general liability insurance in an amount not less than \$1,000,000 per occurrence /\$2,000,000 aggregate. In the event the Consultant/Vendor will be working directly with students, sexual misconduct must be included in the general liability coverage.

\_\_\_\_\_ Certificate of General Liability Insurance **and** Additional Insured Endorsement is attached

- b. Automobile liability insurance in the following amounts:

\$500,000 per occurrence where students, parents, volunteers or employees will **not** be transported;

**OR**

\$25,000,000 per occurrence when students, parents, volunteers or District employees **will be** transported.

\_\_\_\_\_ Certificate of Auto Liability for \$500,000 per occurrence is attached. The Consultant certifies they will not be transporting anyone on behalf of the District; **OR**

\_\_\_\_\_ Certificate of Auto Liability for \$25,000,000 per occurrence **and** Additional Insured Endorsement is attached. The Consultant will be transporting students, parents, volunteers, and/or employees of the District.

- c. Professional liability insurance in an amount not less than \$1,000,000, **if Consultant has a special or professional license (e.g., nurse, doctor, therapist, dentist, engineer);**

\_\_\_\_\_ Certificate of Professional Insurance is attached.

- d. Educators' Legal Liability insurance for any Consultant providing daycare, afterschool programs, and/or recreational activities for an amount not less than \$1,000,000;

\_\_\_\_\_ Certificate of Educators' Legal Liability is attached.

- e. Workers' Compensation as required under California law with statutory limits and Employers' Liability limits of \$1,000,000 per disease or accident. The workers' compensation policy shall be endorsed with a subrogation waiver in favor of the District for all work performed by the Consultant, its employees, and agents.

\_\_\_\_\_ Workers' Compensation Insurance Certificate is attached, **OR**

\_\_\_\_\_ Sole Proprietor / **NO** Workers' Compensation Insurance is required. **BUT**, must attach a letter stating that they are either the owner or a partner and are exempt from having to provide workers' compensation because they have no employees.

- f. Cyber Liability Insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of at least \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic data, intentional and/or unintentional release of private data, alteration of electronic data, extortion and network security. Coverage is required only if (1) products or services related to information technology for hardware or software are provided to the District and (2) if Consultant has access to personally identifiable information of the District through the provision of such technology-related products or services.

\_\_\_\_\_ Consultant hereby certifies that Consultant will have access to personally identifiable information. Certificate of Cyber Liability is attached.

\_\_\_\_\_ Consultant hereby certifies that Consultant will not have access to personally identifiable information.

Consultant shall maintain such insurance coverage, in the amounts set forth above, unless otherwise agreed in writing by the District. If the contractor maintains higher limits than the minimum shown above, the entity requires and shall be entitled to coverage at the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the entity.

The Consultant shall provide certificates indicating applicable insurance coverages within ten (10) days of the effective date of this Agreement NAMING THE DISTRICT AS ADDITIONAL INSURED with the endorsement **on form CG20101185 or equivalent. The certificate holder shall be listed as Perris Elementary School District, its Board, officers, agents, employees, and volunteers. The insurance certificates and/or the endorsements shall state that the policies shall be primary and shall not contribute to any insurance policy of the District.** Insurance certificates shall be mailed to the Business Services Department, 143 East First Street, Perris, CA 92570. Coverage shall not be canceled except with notice to the District.

**Please note: If assistance is needed concerning insurance requirements, please contact the Risk Department at (951) 657-3118 ext. 4032 with a brief description and cost of service that will be performed prior to submitting contract to Business Services.**

12. **COMPLIANCE WITH LAW/CONFIDENTIALITY:** Consultant shall comply with all federal, state and local laws and ordinances applicable to the Services. Consultant will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Consultant, or divulge, disclose, or communicate in any manner any information that is proprietary to the District or protected from disclosure by law (such as student records). Consultant will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, Consultant will return to the District all student records, other records, notes, documentation and other items that were used, created, or controlled by Consultant during the term of this Agreement.
13. **STUDENT DATA PRIVACY:** If Consultant will provide services that involve the digital access, use, storage or management of pupil records, then Consultant must complete and attach a student data privacy agreement for compliance with Education Code section 49073.1. The student data privacy agreement is available through the District. Pupil records includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a District employee.

\_\_\_\_\_ Consultant hereby certifies that Consultant will collect Student Data. The [Student Data Privacy Agreement](#) is attached.

\_\_\_\_\_ Consultant hereby certifies that Consultant will not collect Student Data. The Student Data Privacy Agreement is not required.

14. In signing this Agreement, the District representative acknowledges that he/she has no direct or indirect financial interest in the Consultant, nor does he/she have any knowledge of any District employee involved in selection of the Consultant having any direct or indirect financial interest in the Consultant or the Agreement, such that a prohibited conflict of interest exists.

**IN WITNESS THEREOF**, the parties hereunto have subscribed to this Agreement, including all the Agreement documents listed below:

- \_\_\_\_\_ Specifications/Scope of Work Statement
- \_\_\_\_\_ Purchase Order (will be sent after signature and needed documents are received)
- \_\_\_\_\_ Contractor Background Check Certification (required if working with students unsupervised)
- \_\_\_\_\_ Student Data Privacy Certification (required if using student data)
- \_\_\_\_\_ Insurance Requirements
- \_\_\_\_\_ Workers' Compensation Insurance Certification
- \_\_\_\_\_ W-9 form (company name must be same as the Consultant)
- \_\_\_\_\_ Invoicing Schedule (payments will be made after services have been rendered)
- \_\_\_\_\_ Other:

**PERRIS ELEMENTARY SCHOOL DISTRICT:**

**CONSULTANT:**

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Board Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address, City, Zip

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

**CERTIFICATION BY CONTRACTOR  
CRIMINAL RECORDS CHECK  
AB 1610, 1612 and 2102**

To the Governing Board of Perris Elementary School District:

I, \_\_\_\_\_ (Consultant) certify that:  
Name of Consultant

1. I have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code Section 45125.1) required by the passage of AB 1610, 1612 and 2102.
2. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.
3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at \_\_\_\_\_, California on \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

**EXHIBIT "B"**

List of Individuals Who May Come on School Campus or in Contact with Students:

<u>Name of Individual</u>	<u>State if Employee or Sub-Contractor</u>
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# Perris Elementary School District

## **WORKERS' COMPENSATION INSURANCE CERTIFICATION**

The Contractor/Consultant shall execute the following form as required by the California Labor Code Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

I understand I am not an employee of Perris Elementary School District and I am an independent contractor responsible for my own workers' compensation.

\_\_\_\_\_Consultant hereby certifies that Consultant does not employ any individual(s) in the course and scope of Consultant's business operations.

\_\_\_\_\_Consultant hereby certifies that Consultant employs individuals in the course and scope of business operations and that Consultant is insured against liability for workers' compensation. Attached is a Certificate of Insurance containing the following information:

- Name and address of the insurance producer, agency
- The name and address of the "named insured" or policy holder
- The date the certificate was issued
- Name of the insurance company
- Policy number
- Policy period dates, when coverage began and when it should end
- Proprietor, partners, officer's inclusion or exclusion indicator
- Statutory limits indicator
- Employers liability limits
- Description of operations or special items
- Name and address of the certificate holder, the one who requested the certificate
- Explanation of conditions/notice required for cancellation
- Signature of the person issuing the certificate

Date:\_\_\_\_\_

\_\_\_\_\_  
Contractor/ Consultant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business License #

\_\_\_\_\_  
State Contractors License # (if applicable)

\_\_\_\_\_  
Project Name (if applicable)