

**Exhibit H: Professional Services Agreement****CLACKAMAS COMMUNITY COLLEGE  
PROFESSIONAL SERVICES AGREEMENT**

A CONTRACT between CLACKAMAS COMMUNITY COLLEGE ("College"), and [REDACTED] ("Provider").

WHEREAS, College and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of [REDACTED] services to the College for [REDACTED].

**1. Term**

The term of this contract shall be from [REDACTED] until not later than [REDACTED] unless sooner terminated under the provisions of this contract.

**2. Provider's Service**

The scope of Provider's services and time of performance under this contract are set forth in Exhibit "A". All provisions and covenants contained in said exhibit are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this contract and Provider's proposal (if any) shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to College, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this contract and Exhibit "A".

**3. Provider Identification**

Provider shall furnish to College Provider's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

**4. Compensation**

College agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit "A".

**5. Project Managers**

College's Project Manager is Patti Miles. Provider's Project Manager is Bruce Korum. Each party shall give the other written notification of any change in their respective Project Manager.

**6. Project Information**

Provider agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of College's Project Manager.

**7. Duty to Inform**

Provider shall give prompt written notice to College's Project Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule or regulation,

or has any objection to any decision or order made by College. Any delay or failure on the part of College to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of College's rights.

**Exhibit H: Professional Services Agreement****8. Provider is Independent Contractor**

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the College or the provision of a defense by the College under the terms of ORS 30.285. This acknowledgment by Provider shall not affect his/her independent ability (or the ability of his/her insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

**9. Overtime**

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

**10. Indemnity and Insurance**

- i. **Indemnity:** Provider acknowledges responsibility for any and all liability arising out of the performance of this contract and to the extent of the Oregon Tort Claims act and The Oregon Constitution shall hold College harmless from and indemnify and defend College for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract.
- ii. **General Liability Insurance:** Provider shall maintain a broad form commercial general liability insurance policy reflecting limits of not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate of \$3,000,000 for bodily injury, personal injury or property damage. Such policy shall contain a contractual liability endorsement to cover Providers indemnification obligations under this Contract. The policy shall also contain an endorsement naming College, elected officials, agents, employees and as an additional insured, in a form satisfactory to College, and expressly providing that the interest of College shall not be affected by Provider's breach of policy provisions.
- iii. **Automobile Liability:** Provider shall maintain an automobile liability insurance policy reflecting limits of not less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury or property damage. The coverage shall include both hired and non-owned auto liability. The policy shall also contain an endorsement naming College as an additional insured, in a form satisfactory to College, and expressly providing that the interest of College shall not be affected by Provider's breach of policy provisions.
- iv. **Primary Coverage:** The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by College shall be excess.

**11. Work is Property of College**

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this contract shall be the property of College.

**12. Law of Oregon**

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Clackamas County, Oregon.

**13. Errors**

Provider shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost.

**Exhibit H: Professional Services Agreement****14. Extra or Changes in Work**

Only the College Vice President or the Project Manager may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**15. Successors and Assignments**

- i. Each party binds itself, and any partner, successor, executor, administrator, or assign to this contract.
- ii. Neither College nor Provider shall assign or transfer their interest or obligation hereunder in this contract without the written consent of the others. Provider must seek and obtain College's written consent before subcontracting any part of the work required of Provider under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

**16. Records**

- i. Provider shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after College makes final payment on this contract and all other pending matters are closed.
- ii. Provider shall allow College, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

**17. Breach of Contract**

- i. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or College notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, College may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.
- ii. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, College may declare Provider in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this contract, College unilaterally may order Provider to suspend all or part of the services under this contract. If College terminates all or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after College ordered suspension of those services. If College suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, College may withhold from any amounts owed by College to Provider, including but not limited to, amounts owed under this or any other contract between Provider and College.

**18. Mediation/ Trial without a jury**

Should any dispute arise between the parties to this contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this contract shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorney's fees.

**Exhibit H: Professional Services Agreement**

The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

**19. Termination for Convenience**

The College may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the College's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the contract.

**20. Intellectual Property**

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the College. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the College any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

**21. Payment for Labor or Material**

Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this contract. (ORS 279B.220)

**22. Contributions to the Industrial Accident Fund**

Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

**23. Income Tax Withholding**

Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS279B.220)

**24. Payment of Claims by the College**

If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this contract as the claim becomes due, the College may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The College's payment of a claim under this Paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.

**Exhibit H: Professional Services Agreement****25. Hours of Labor**

Provider shall pay employees for overtime work performed under the terms of this contract in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)

**26. Workers' Compensation**

Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify College for any liability incurred by College as a result of Provider's breach of the warranty under this Paragraph. (ORS 279B.230)

**27. Medical Care for Employees**

Provider shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Provider's employee(s), all sums which Provider agrees to pay for such services and all monies and sums which Provider collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230)

**28. Tax Representation**

Provider represents it has complied with the tax laws of Oregon and the tax laws of all political subdivisions of Oregon, as applicable, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Provider warrants that it will continue to comply with the tax laws of Oregon and the tax laws of all political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Provider's failure to comply with the tax laws of Oregon or a political subdivision of this state prior to executing this contract, or during the term of this contract, is a default for which the College may terminate this contract and seek damages as well as other relief available under applicable law. (SB 675).

**29. Pay Equity**

- i. As required by [ORS 279B.235 or ORS 279C.520], Provider shall comply with ORS 652.220 and shall not discriminate against any of Provider's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.
- ii. Commencing on January 1, 2019 w/ April amendments, Provider must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Provider's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Provider's compliance with this section constitutes a material element of this Contract/Price Agreement and a failure to comply constitutes a breach that entitles Agency to terminate this Contract/Price Agreement for cause.
- iii. Provider may not prohibit any of Provider's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Provider may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

**Exhibit H: Professional Services Agreement**

**30. Modification**

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

**31. No Waiver of Legal Rights**

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

**32. Integration**

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

CLACKAMAS COMMUNITY COLLEGE

VENDOR

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

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

Signature: \_\_\_\_\_

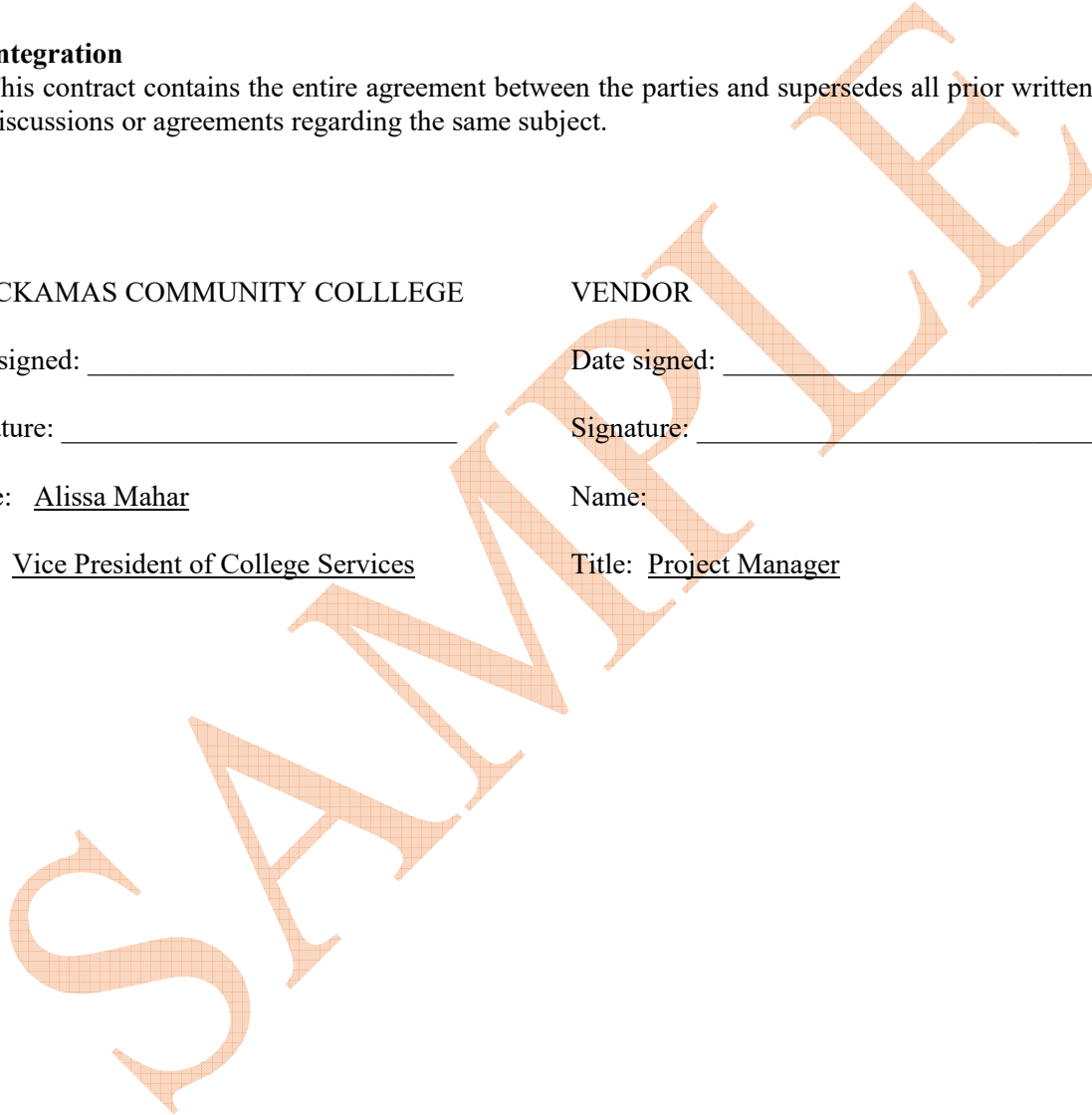
Signature: \_\_\_\_\_

Name: Alissa Mahar

Name: \_\_\_\_\_

Title: Vice President of College Services

Title: Project Manager



**EXHIBIT A  
PROVIDER'S SERVICE AND COMPENSATION**

**Scope of Services:**

- The maximum, not-to-exceed compensation payable to Provider under this contract, which includes any allowable expenses, is **\$00,000.00**. College will not pay Provider any amount in excess of the not-to-exceed compensation for completing the work.
- The College will not pay the Provider for work performed before the term of this contract starts or after the term of this contract ends.
- The College will pay only for completed work that is accepted by the College.
- Provider will submit monthly invoices to the College for work performed by the 10<sup>th</sup> of each month. The invoices shall describe all work performed and shall explain all expenses that this contract requires the College to pay and for which Provider claims reimbursement. Invoices shall be emailed to Elizabeth Cole at [Elizabeth.cole@clackamas.edu](mailto:Elizabeth.cole@clackamas.edu) with a cc to Patti Miles [pmm@inicigroup.com](mailto:pmm@inicigroup.com).