

## AGREEMENT FOR CONSULTING SERVICES

AGREEMENT (“Agreement”) made on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Hudson Valley Community College (“HVCC”), 80 Vandenburg Avenue, Troy, New York 12180, and \_\_\_\_\_ of \_\_\_\_\_ (“Consultant”).

WHEREAS, HVCC desires to engage Consultant to perform certain consulting services, and Consultant desires to be retained by HVCC to perform said consulting services, all upon the terms and subject to the conditions hereinafter stated,

NOW, THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

1. Term

This Agreement will become effective upon its execution and will terminate upon completion of the Work as described in Exhibit A (the “Work”) unless extended by mutual agreement of the parties or earlier terminated in accordance with its terms.

2. Services

The Work to be performed by Consultant is described in Exhibit A attached hereto and made a part hereof. HVCC may, but is not obligated to, engage Consultant to perform other services upon mutually agreed terms and conditions by means of an addendum to this Agreement.

3. Confidential Information

(a) In the course of performing the Work pursuant to this Agreement, Consultant may come into contact with, or acquire knowledge about, HVCC's technical, proprietary, trade secrets or business information including information or data pertaining to specifications, drawings, sketches, models, samples, computer programs, information about HVCC's network or facilities, and associations, which information may be in written or oral form (“Information”). Such Information is, and shall remain, the exclusive property of the HVCC. Consultant shall treat and maintain all such Information as confidential, whether or not it has been physically marked as Confidential. The Information may be used by Consultant only if required to perform the Work under this Agreement and may only be distributed to those employees of Consultant who have a need to know in order to perform the Work pursuant to this Agreement; the Information may not be released to any other person, entity, or the public without the written consent of HVCC

(b) The foregoing obligations shall not apply to any Information lawfully in Consultant's possession prior to its acquisition from the HVCC; received in good faith from a third

party not subject to any confidential obligation to the HVCC; now is or later becomes publicly known through no breach of confidential obligation by Consultant.

(c) In the event, Consultant receives a request to disclose any Information (whether pursuant to a valid and effective subpoena, an order issued by a court or other governmental authority of competent jurisdiction or otherwise) on advice of legal counsel that disclosure is required under applicable law, Consultant agrees that, prior to disclosing any Information, it shall (i) notify HVCC of the existence and terms of such request or advice, (ii) cooperate with HVCC in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure, if requested to do so by HVCC, and (iii) if disclosure is required, use its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to such portion of the Information as is required to be disclosed;

(d) At the conclusion of this project, upon demand of HVCC, all information, including written notes, photographs or memoranda, supplied to Consultant shall be returned by Consultant.

(e) The obligation of confidentiality and use with respect to Information shall survive termination of this Agreement.

#### 4. Privacy Requirements

(a) In the course of performing the Work pursuant to this Agreement, Consultant may come into contact with Personally Identifiable Information (“PII”). PII is information relating to an individual that reasonably identifies the individual and, if compromised, could cause harm to that individual or to the College, its employees, administrators, students or agents. Examples may include, but are not limited to: Social Security Numbers; credit card numbers or bank account information with passcode for access; student grades or disciplinary information; salary or employee performance information; donations; protected health information; or account passwords or encryption keys used to protect access to PII.

(b) Consultant shall maintain adequate administrative, technical and physical safeguards against unauthorized access, use, or disclosure of PII or any other Confidential Information as defined in paragraph 3 of this Agreement. This requirement includes but it is not limited to, the following components:

(i) PII or Confidential Information may only be stored on electronic computing devices that are current in their anti-virus software and security patches and that are protected by a firewall; on portable electronic computing devices, which may include, but not limited to laptop and notebook computers, that are current in their anti-virus software and security patches as well as protected by a firewall and storage encryption; on portable storage devices which may include, but not limited to mobile devices or USB drive, unless such data is protected with encryption.

(ii) All electronically access to PII or Confidential Information shall be via a unique user ID and a unique password that is not shared with others;

(iii) PII or Confidential Information transmitted electronically must be encrypted in transmission.

(iv) When PII or Confidential Information is no longer required under this Agreement, and is no longer required to be maintained by applicable law or the terms of this Agreement, Consultant shall securely destroy such information including any backups..

(c) Notice of incident involving PII or Confidential Information - Consultant shall immediately report to the Office of the President of HVCC and the HVCC representative to whom the Consultant directly reports any unauthorized access, use, loss, disclosure, modification or destruction of PII or Confidential Information within 24 hours of discovery. In such event Consultant shall (i) use best efforts to determine the scope and nature of the breach; (ii) cooperate with HVCC, in light of the circumstances and applicable law, to determine risks posed by the breach and whether and how those persons whose data was accessed, acquired or disclosed should be notified; (iii) complete the New York State Cyber Security and Critical Infrastructure Coordination incident notification report; and (iv) restore the reasonable integrity of the data system which hosts the PII or HVCC's Confidential Information without compromise to forensic investigation.

## 5. Indemnification

(a) Consultant shall defend, indemnify and hold harmless HVCC and its affiliates, officers, agents and employees from all claims, suits, actions, demands, damages, liabilities, expenses (including fees and disbursements of counsel), judgments, settlements, and penalties of every kind related to Consultant's (either directly or through its officers, agents, subcontractors or representatives) performance of the Work under this Agreement or violation of any term of this Agreement or the matters referred to in Subsection 5(b) below. The foregoing indemnity shall not apply in the case of claims which arise from the sole negligence, misconduct or other fault of HVCC. The parties agree that the price for the Work provided under this Agreement includes consideration for the obligation to indemnify as set out in this Section 5. The obligations in this Section are in addition to Consultant's duty to provide insurance and shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by Consultant under any employee benefit act.

(b) Without limitation of 5(a) above, Consultant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless HVCC, its officers, agents and employees, from all claims, suits, actions, demands, damages, liabilities, expenses (including fees and disbursements of counsel), judgments, settlements and penalties of every kind arising from or related to the following matters:

1. Consultant's failure to comply with all federal, state or local laws, rules or regulations applicable to Consultant's employees
2. Consultant's failure to comply with the terms of Section 3, CONFIDENTIAL INFORMATION, regarding proprietary information of HVCC;
3. Consultant's failure to comply with the terms of Section 4, PRIVACY REQUIREMENTS, regarding Personally Identifiable Information and Confidential Information.
4. Any claim of infringement or misappropriation of patent, trademark, copyright, trade secret or any actual or alleged violation of any other

intellectual property rights arising from or in connection with the goods provided or the Work performed under this Agreement.

(c) The indemnification obligation as provided herein shall survive termination of this Agreement.

6. Insurance

Consultant shall furnish the HVCC with an insurance certificate declaring that the HVCC and its respective officers, agents, and employees are afforded primary public liability insurance coverage as additional insureds for any and all claims, including personal injury and property damage, which may be made against the HVCC as a result, directly or indirectly, of the uses herein granted. The limits of the coverage shall not be less than \$1 million per occurrence and \$2 million aggregate for personal injury and property damage. The certificates shall include an “Additional Insured – Owners, Lessees or Contractors – (Form B)” endorsement, ISO form CG CG 20 10 11/85 and further provide that said policy is as required by written contract, primary and noncontributory and shall not be changed or cancelled without prior written notice having been given to the HVCC at least thirty (30) days prior to the change or cancellation. AUTHORIZED USER acknowledges that failure to obtain such insurance on behalf of HVCC, the County and SUNY constitutes a material breach of the contract and subjects it to liability for damages, indemnification and other legal remedies.

7. Project Management

The Project Manager to perform and supervise the Work shall be as identified on Exhibit A. Consultant shall pay the compensation of all persons and firms engaged by it connection with this project, and shall be legally liable for any acts or omissions on the part of said persons or firms arising from such engagement.

8. Proprietary Methods and Information

(a) The manner and means by which Consultant performs the Work provided hereunder involve proprietary tools, utilities, standards, techniques, concepts, ideas, know-how and information developed by Consultant prior to or independent of this engagement (collectively, “Consultant’s Property”). Consultant shall retain all rights, title and interest in and to such Consultant’s Property.

(b) Consultant agrees to furnish HVCC a written report containing full and complete technical information concerning any discoveries or inventions made by Consultant in the field of work called for by this Agreement promptly upon the making of such discoveries or inventions. Consultant hereby assigns all right, title and interest in such discoveries or inventions and any patents or patent applications thereon to HVCC, and Consultant agrees to apply for patents at the request and expense of HVCC. Consultant also agrees to assign to HVCC all copyrights, trademarks and service marks to any materials written or prepared by Consultant pursuant to this Agreement. Consultant shall submit a report prior to settlement of each purchase order listing all discoveries or inventions or certifying that there were no such discoveries or inventions.

9. Independent Contractor

(a) In providing any services pursuant to this Agreement, Consultant is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by the respective parties shall be solely the employees, agents or subcontractors of such parties, respectively, and shall be under the sole and exclusive direction and control of such parties. They shall not be considered employees of the other party for any purpose. Each party shall be responsible for compliance with all laws, rules and regulations involving their respective employees, agents or subcontractors, including (but not limited to) employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each party shall also be responsible, respectively, for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its employees or agents, such as social security, unemployment, worker's compensation, disability insurance and federal and state income tax withholding. Neither party undertakes by this Agreement or otherwise to perform or discharge any liability or obligation of the other party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers.

(b) Consultant shall be free to exercise its discretion and independent judgment as to the methods and means of performance of the Work to be provided hereunder.

10. Fee for Work

(a) HVCC shall pay Consultant for all Work described in Exhibit "A" hereof as follows or as described on Exhibit A:

Upon execution of Agreement	\$ _____, flat fee
Prior to commencement of Project	\$ _____, retainer fee
Phase One, upon completion	\$ _____, plus expenses
Phase Two, upon completion	\$ _____, plus expenses
Phase Three, upon completion	\$ _____, plus expenses
Phase Four, upon completion	\$ _____, plus expenses
Phase Five, upon completion	\$ _____, plus expenses
Additional Services if requested by HVCC	\$ _____, per hour or a mutually agreed fixed fee.

(b) Consultant invoices are due within thirty (30) days of presentation.

11. Expenses

(a) The following expenses shall be paid by Consultant and not charged to HVCC:

1. Telephone, fax, e-mail and first-class postage for communication with HVCC;
2. Preparation, copying, binding and delivery of reports to HVCC; and
3. Any other expense not specifically authorized or approved by HVCC, except those enumerated in paragraph b of this Section.

(b) If initialed by HVCC, the following expenses shall be charged to HVCC in addition to Consultant's fee. If not initialed, any such expenses shall be at the expense of the Consultant:

1. \_\_\_\_\_ Travel: air or rail fare and ground transportation and auto travel at the current rate for the year in which this Agreement is entered into per mile plus tolls and parking expense;
2. \_\_\_\_\_ Lodging and sustenance for overnight travel in connection with this Project;
3. \_\_\_\_\_ Overnight courier charges;
4. \_\_\_\_\_ Additional insurance coverage or limits in excess of Consultant's standard coverage;
5. \_\_\_\_\_ Reproduction of drawings, specifications and other design-related project documents;
6. \_\_\_\_\_ Renderings, models, design presentation drawings, color boards and the like; and
7. \_\_\_\_\_ Any other expense authorized or approved by HVCC.

(c) Expenses incurred will be charged to HVCC as incurred in each phase of the Project. Total expenses charged to HVCC in connection with Phases \_\_\_\_\_ through \_\_\_\_\_ of this Project shall not exceed a total of \$ \_\_\_\_\_, except with the prior approval of HVCC. Consultant expenses shall be charged at net cost.

## 12. Termination

(a) If either party fails to perform any material obligation under this Agreement or violates any material term or condition of this Agreement, and such failure or violation is not cured within ten (10) days following receipt of a default notice from the non-breaching party, then the non-breaching party shall have the right to terminate this Agreement upon written notice to other party.

(b) Notwithstanding anything to the contrary contained in this Agreement, HVCC reserves the right to terminate this Agreement, without cause, at any time by delivering at least thirty (30) calendar days' prior written notice of termination to Consultant. In the case of termination pursuant to this paragraph, HVCC shall pay Consultant the Fees for the Work accomplished for HVCC under this Agreement and delivered to Consultant and reimbursable expenses incurred by Consultant prior to and including the date of termination. Upon termination,

Consultant shall deliver to HVCC all completed work and work in progress, to include notes, draft reports and similar materials.

(c) If the Consultant shall become bankrupt or insolvent, and/or if the business of the Consultant shall be placed in the hands of a receiver, assignee, or trustee, whether by the voluntary act of the Consultant or otherwise, this Agreement shall immediately terminate.

13. Notice

(a) Any written notice either party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means of telegram, facsimile transmission, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties as follows:

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

HVCC: Hudson Valley Community College  
80 Vandenberg Avenue  
Troy, New York 12180  
Fax No.: \_\_\_\_\_  
Attn: \_\_\_\_\_

(b) Written notices for change in ownership, change in name of firm, or change in mailing address must be given by Consultant by mailing to HVCC within thirty (30) days of such change. Notices for change in ownership must include the names of all new owners or officers, registered agent for service of process and state of incorporation or organization.

14. Waiver of Terms and Conditions

Failure to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

15. Precedence of Documents

In case of conflict between provisions of this Agreement (for purposes of this paragraph, meaning just the Agreement document without Exhibit A) and provisions contained in Exhibit A, this Agreement shall govern. In case of conflict between provisions of either this Agreement and Exhibit A and a subsequent written amendment or modification, the subsequent amendment or modification shall govern.

16. Severability

If any term or provision of this Agreement shall be declared invalid, illegal or unenforceable, the invalidity, illegality or unenforceability thereof shall not affect the remaining terms or provisions.

17. Force Majeure

Delays in the performance of, or the nonperformance of, any obligations hereunder resulting from force majeure (including acts of war, labor disputes, natural disasters or other events outside the control of the respective party) shall be excused for the period of such force majeure.

18. Governing Law and Venue

The validity, construction and performance of this Agreement shall be governed by the laws of the United States of America and, in particular, the laws of the State of New York without regard to its conflicts of laws principles, and any action to resolve any controversy between the parties relating to this Agreement shall be brought in New York State Supreme Court, Rensselaer County or the Federal District Court in the Northern District of New York, and each party waives the defense of *forum non conveniens*.

19. Assignment

Except as otherwise provided herein, HVCC hereby specifically contracts for the services of Consultant and Consultant may not assign, subcontract, or delegate the performance of the Work, other duties, or rights under this Agreement without the prior written consent of HVCC, which consent may be withheld in HVCC's sole and absolute discretion.

20. Entire Agreement

This Agreement represents the entire understanding between the parties with the respect to the provisions and cancels and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter. This Agreement may only be modified or amended by an instrument in writing signed by duly authorized representatives of the parties. No verbal changes to the scope of Work shall be permitted, and HVCC shall make no payment for Work performed pursuant to verbal order or agreement.

21. Compliance with Laws

Consultant shall comply with the provisions of all applicable federal, state, and local laws, ordinances, regulations and codes (including procurement of required permits or certificates) in Consultant's performance under this Agreement including, but not limited to, the Fair Labor Standards Act, the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101 et seq.), safety and environmental laws, rules and regulations, any laws, rules and regulations regarding wages, hours, fringe benefits and taxes, and federal and state Occupational Safety and Health Act Laws.

22. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representative:



HVCC:

Dept. Head \_\_\_\_\_

Vice President \_\_\_\_\_

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

Budget Code: \_\_\_\_\_

\_\_\_\_\_  
Chief Financial Officer

CONSULTANT:

By: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_  
\* Consultant S.S. # \_\_\_\_\_

***\*Attach: Copy of Social Security Card***

**EXHIBIT A (to be attached)**

**\*THIS MUST BE COMPLETED IN FULL FOR THE CONSULTANT TO BE PAID**

The Work to be performed under this Agreement is as follows or as described on Exhibit A-1:

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The Work will be performed on the following date(s) or as described on Exhibit A-1:

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**\*PAYMENT INFORMATION:**

**The Consultant Should be Paid Based on:**

**Choose one** (put an X in one of the boxes below):

The consultant will be paid based on this agreement       The consultant will be paid based on invoices

**When Payment Should be Issued:**

**Choose one** (put an X in one of the boxes below):

Upon receipt of this agreement

Upon completion of work

Other (please describe) \_\_\_\_\_

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**Amount of Payment = \$** \_\_\_\_\_

**Project Manager** \_\_\_\_\_ (Signature) \_\_\_\_\_ (Date)

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