

Professional Services Agreement



FOUNDATION *for* CALIFORNIA
COMMUNITY COLLEGES

Agreement No. 00005333

This Professional Services Agreement (“Agreement”) is entered into by Las Positas College, and the Foundation for California Community Colleges, a California 501(c)(3) nonprofit organization (collectively referred to as the “Parties”), for the purpose of engaging the expertise of Las Positas College to provide services as described in Exhibit A.

By signing this Agreement, the Parties acknowledge their acceptance of all the terms and conditions in this Agreement and any exhibits attached hereto (collectively the “Agreement”).

For the purposes of this Agreement, the Foundation for California Community Colleges is referred to as “FOUNDATION” and Las Positas College is referred to as “CONTRACTOR”.

The term of this Agreement is August 02, 2021 through June 30, 2023

The maximum amount of this Agreement is \$21,739.13

The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A	Services and Deliverables	Pages <u>2</u>
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THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

CONTRACTOR

FOUNDATION FOR CALIFORNIA
COMMUNITY COLLEGES

By: _____

By: _____

Print Name: Jonah R. Nicholas

Print Name: _____

Title: Vice Chancellor of Business Services

Title: _____

Date: _____

Date: _____

CONTRACTOR – second signature, if required

FOUNDATION FOR CALIFORNIA COMMUNITY
COLLEGES – second signature, if required

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SERVICES AND DELIVERABLES

Purpose for Contracting Services:

The college will be using the funds that are provided by the Foundation for California Community Colleges to advance the implementation of the REACH grant initiative at their college.

Agreement No. 00005325

Deliverable	Due Date
Attend 6 CA REACH collaborative virtual convenings	- Orientation/Kickoff: 11/17/21 - Convening #2: 2/11/22 - Convening #3: 8/5/22 - Convening #4: 10/21/22 - Convening #5: 2/10/23 - Convening #6: 4/21/23
Asset Mapping Tool (college self-assessment)	December 2021
Identify 2-3 (at most 8) pathways to integrate existing high-value non-degree credentials based on local context by examining labor market and college data	March 2022
Provide baseline data	March 2022
Create student-facing materials that show stackability of high-value NDCs in degree pathways	June 2022
Develop strategies for providing comprehensive supports	October 2022
Data Pull #2	October 2022
Develop strategies for active learning	January 2023
Data Pull #3	March 2023
Develop strategies for sustainability and improvement	May 2023

EXHIBIT B

BUDGET & PAYMENT TERMS

1. Compensation

FOUNDATION shall compensate CONTRACTOR for Services provided under this Agreement, retaining the right to withhold payment for any unsatisfactory Services until such time as the Services are performed satisfactorily. The total fee to be paid by Foundation for the services described in Exhibit A, (“Services and Deliverables”) shall not exceed \$21,739.13 including all applicable taxes. If additional work is requested, it must be approved by the Parties in advance. CONTRACTOR shall inform FOUNDATION within 10 business days of the completion of each deliverable, if necessary. CONTRACTOR shall invoice FOUNDATION within 10 business days of the end of the month being invoiced to accountspayable@foundationccc.org

[Travel costs, if provided:] Any travel costs will be paid on a cost reimbursable basis at actual costs when supported by receipts and approved by the FOUNDATION Program Director identified in Exhibit D (Notices). CONTRACTOR shall not incur any travel costs unless the travel is specifically approved by the FOUNDATION and is in conformance with Section 13 of the FOUNDATION’s Travel Policies and Procedures

EXHIBIT C

SPECIAL TERMS

1. Term, Termination, Stop Work Notice

1.1 Term. The period of this Agreement is from **August 02, 2021 through June 30, 2023** (“Term”) at which time, this Agreement will automatically terminate. Any extension to this Agreement must be in writing and signed by authorized signatories of FOUNDATION and CONTRACTOR.

1.2 Termination for Cause. FOUNDATION shall have the right to terminate this Agreement, without penalty, within a reasonable time period should CONTRACTOR be found to be in material breach of this Agreement as determined in FOUNDATION’s sole discretion or if CONTRACTOR fails to comply with any legal and regulatory provisions referenced in the Agreement.

1.3 Termination for Funding or Other Contingencies. It is mutually understood and agreed that if sufficient federal, state, local, or philanthropic funds are not appropriated for this contract, FOUNDATION shall have the right to terminate this contract within thirty (30) days’ notice. In the event appropriate funding is not appropriated for this contract, FOUNDATION may propose an amendment to this Agreement for a reduced scope of services, any such amendment shall require mutual agreement of the parties.

1.4 Procedures at Termination. CONTRACTOR must cease or reduce work immediately upon receiving the notice of termination or as required by the written notice and take all steps possible to mitigate losses. FOUNDATION shall only be liable to CONTRACTOR for the actual performed services CONTRACTOR delivered pursuant to this Agreement, up until the effective date of the cancellation or as otherwise identified, in writing, by FOUNDATION. This provision does not preclude FOUNDATION from raising disputes concerning CONTRACTOR’s Services rendered. CONTRACTOR hereby waives any other claim for damages including but not limited to damages claims for lost profits, liquidated damages, punitive damages, general or special damages, indirect or consequential damages arising from FOUNDATION’s termination of this Agreement.

1.5 Stop Work Notice. FOUNDATION reserves the right to issue an order to stop work in the event that: (1) a dispute should arise regarding the Services of CONTRACTOR; (2) funding for the Success Center for California Community Colleges program is reduced, suspended, terminated, discontinued, or fully expended for any reason. The stop work order will be in effect until the dispute has been resolved or as otherwise agreed to by FOUNDATION.

2. Intellectual Property

CONTRACTOR hereby irrevocably and unconditionally assigns, transfers, releases, and conveys to FOUNDATION all rights, title and interest to such Work Product produced pursuant to this agreement, including but not limited to all Services rendered and documents or other materials, inventions, processes, patents, patent rights, copyrights, trademarks, trademark rights, and trade secret rights and service marks first created, first developed or first produced pursuant to this Agreement.

CONTRACTOR represents and warrants to FOUNDATION all of the following: (a) that CONTRACTOR owns and controls all the intellectual property rights for any work not first created, first developed or first produced pursuant to this Agreement, or if licensed by CONTRACTOR, CONTRACTOR has all necessary rights and licenses to grant the license and rights granted herein; trade secret know-how, moral rights or other intellectual property rights of any third party; and (b) there are no contracts which prohibit CONTRACTOR from (i) performing the Services necessary to fulfill the terms of this Agreement and (ii) licensing to FOUNDATION all the rights granted hereunder.

If this Agreement is terminated, CONTRACTOR will promptly, upon request, provide to FOUNDATION all Work Product prepared, in both hard and soft format. FOUNDATION retains the right to use Work Product regardless of any disputes including but not limited to disputes over compensation.

3. Insurance and Indemnification

3.1 Indemnification. CONTRACTOR, its heirs and/or its (“Indemnitor”) will indemnify, defend and hold FOUNDATION, and its directors, officers, and employees (collectively “Indemnitees”) harmless from all losses, liabilities, claims, demands, costs, expenses and damages, including reasonable attorneys’ fees and costs, resulting from, arising out of, or connected with (a) the performance of Services or omissions relating to same by Indemnitor, Indemnitor’s employees, Indemnitor’s subcontractors, or any person or entity for whom Indemnitor is responsible; (b) any breach by Indemnitor of this Agreement; (c) Indemnitor’s or Indemnitees’ infringement or misappropriation of any intellectual property rights relating, in any way, to the performance of Services and/or (d) any willful or negligent act or omission by Indemnitor or any person or entity for whom Indemnitor is responsible. Indemnitor’s indemnification obligations will not be limited by any assertion or finding that (1) Indemnitees are liable by reason of non-delegable duty, or (2) losses were caused in part by the negligence, breach of contract, or violation of law by Indemnitees. FOUNDATION must approve the extension of all settlement offers and approval will not be unreasonably withheld. The Indemnitor will furnish Indemnitees with all related evidence in its control regardless of any disputes. The duty to defend (including by counsel) shall arise regardless of any claim or assertion including, but not limited to, those claims or assertions that Indemnitees caused or contributed to the losses, liabilities, claims, demands, costs, expenses or damages. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Indemnitees may have under applicable law, including without limitation, the right to implied/equitable indemnity.

3.2 Insurance. CONTRACTOR, the CONTRACTOR's sole cost and expense, will obtain, keep in force, and maintain insurance as listed below. Coverages required will not limit any liability of CONTRACTOR and will include:

- Commercial general liability insurance with a combined single limit of no less than \$1 million per occurrence. The commercial general liability policy shall name FOUNDATION, its directors, officers, and employees as Additional Insureds;
- Automobile liability insurance, including comprehensive and collision coverage, for all owned, scheduled, or hired automobiles, if CONTRACTOR will drive an automobile in connection with CONTRACTOR’s performance of services under this Agreement;
- Professional Liability covering liability arising from any error, omission, negligent or wrongful act of the CONTRACTOR, its officers or employees with limits of not less than \$1 million per occurrence and \$2 million aggregate; and
- Workers’ compensation as required under the Workers’ Compensation and Safety Act of the State of California, as amended from time to time.

Insurances required by this Agreement shall contain a thirty (30) day notice of cancellation provision. CONTRACTOR shall transmit all certificates of insurance, including the additional insured endorsement, to the FOUNDATION, within 15 days of CONTRACTOR’s execution of this Agreement. All insurance required to be carried by CONTRACTOR and/or Indemnitor shall be primary, and not contributory, to any insurance carried by FOUNDATION. Any failure of FOUNDATION to require Certificates of Insurance and Additional Insured endorsements shall not operate as a waiver of these requirements. CONTRACTOR shall require that all

insurance coverage obligations of CONTRACTOR shall be required of subcontractors if using subcontractors for any purpose under this Agreement.

EXHIBIT D

NOTICES

Notices

All notices and other communications required or permitted to be given under this Agreement, including but not limited to any notice of change of address, must be directed to the following individuals:

FOUNDATION:

PROGRAM DIRECTOR (All Programmatic Issues):

Jodi Lewis
Director of Strategic Initiatives
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
jlewis@foundationccc.org

CONTRACTS (Contracts Issues Only, including but not limited to Contract Notices):

Contracts Department
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
contracts@foundationccc.org

CONTRACTOR:

Emerald Templeton
Las Positas College
3000 Campus Hill Dr
Livermore, CA 94551
etempleton@laspositascollege.edu

All notices shall be in writing and shall be emailed, personally delivered, certified mail, postage prepaid and return receipt requested, or by overnight courier service. Notice shall be deemed effective on the date emailed, personally delivered, or if mailed, five (5) days after the deposit of the same in the custody of the United States Postal Service or overnight courier service.

EXHIBIT E

GENERAL TERMS

1. General Terms

1.1 Captions and Interpretation. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.

1.2 Independent Status. CONTRACTOR and FOUNDATION agree that CONTRACTOR is, and shall be an independent contractor. CONTRACTOR is being hired with respect to this particular project given their experience, expertise and background relative to the Services. CONTRACTOR acknowledges that CONTRACTOR is an independent contractor and will be solely responsible for any taxes or fees and will not hold FOUNDATION responsible for any taxes, fees, unemployment or disability insurance. CONTRACTOR has their own place of business, own equipment, is responsible for their own employees and is responsible for all legal and governmental obligations of CONTRACTOR as an independent business, including, without limitation, all business licenses, workers compensation and liability insurance requirements and the withholding and transmittal of all fees and taxes from its principals and employees. CONTRACTOR, given their experience and background, shall control the methods used to complete their work relative to this Agreement. FOUNDATION shall not train CONTRACTOR concerning how to complete their work (but FOUNDATION may provide CONTRACTOR with job specifications).

1.3 Assignment and Delegation. This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other party; however, either party will have the right to assign its rights and obligations under this Agreement in connection with a merger, acquisition, or sale transfer of substantially all of its assets. Any assignment by CONTRACTOR not in accordance with this paragraph will be void, at the option of FOUNDATION.

1.4 Subcontracting Conflicts. CONTRACTOR may not employ subcontractors, unless CONTRACTOR submits a request to FOUNDATION to employ subcontractors and FOUNDATION approves said request in writing. All subcontracts approved by FOUNDATION and entered into by CONTRACTOR with an approved subcontractor shall include an assignment clause as would be required of CONTRACTOR in substantial compliance with EXHIBIT C (Intellectual Property) above, by which APPROVED SUBCONTRACTOR would agree to irrevocably and unconditionally assign, transfer, release, and convey to FOUNDATION all rights, title and interest to such Work Product produced pursuant to the subcontract agreement, including but not limited to all Services rendered and documents or other materials, inventions, processes, patents, patent rights, copyrights, trademarks, trademark rights, and trade secret rights and Service Marks first created, first developed or first produced pursuant to the subcontract agreement. Further, all subcontracts approved by FOUNDATION shall include the same insurance coverage requirements of the subcontractor that are required of CONTRACTOR under this Agreement, in accordance with EXHIBIT C 3.2 (Insurance). Notwithstanding the foregoing, CONTRACTOR will not hire any current or past employee of FOUNDATION to perform any Services covered by this Agreement. CONTRACTOR represents and warrants that to the best of its/his/her knowledge, there exists no actual or potential conflict between CONTRACTOR's family, business, or financial interests and FOUNDATION or the Services provided under this Agreement. CONTRACTOR agrees to promptly disclose, in writing, to the FOUNDATION Contract Contact listed under EXHIBIT D (Notices) above any actual or potential conflicts of interests.

1.5 Legal and Regulatory Compliance. CONTRACTOR shall perform all Services in compliance with the applicable requirements of laws, codes, rules, regulations, ordinances, and standards of the State of California, and applicable federal and local laws. Books and records relating to this Agreement will be maintained in

accordance with generally accepted accounting principles by CONTRACTOR. FOUNDATION or its authorized representative will have the right to access, audit and/or copy CONTRACTOR's records. CONTRACTOR agrees to provide FOUNDATION access (with the ability to copy same) to CONTRACTOR's records arising, in any way, under this Agreement ("Records"), within five (5) calendar days of a written request for such access. CONTRACTOR will preserve Records as required by applicable federal, state or local laws, but in no event for a period of less than three (3) years from the date of final payment under this Agreement. This paragraph is deemed material to the formation of this Agreement.

1.6 Accessibility. CONTRACTOR warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). CONTRACTOR hereby warrants the products or services it will provide under this Agreement comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Any materials created under this Agreement shall follow the WCAG 2.1 guidelines for accessibility. CONTRACTOR agrees to promptly respond to and resolve any complaint regarding accessibility of materials, products, or services provided under this Agreement. CONTRACTOR further agrees to indemnify and hold harmless the FOUNDATION from any claims arising out of CONTRACTOR'S failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Agreement.

1.7 Anti-lobbying. CONTRACTOR shall not use any part of the funds rendered for Services to directly or indirectly pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a political candidate for public office or a Member of Congress, a jurisdiction, or an official of any government, or to favor, adopt, or oppose, by vote or otherwise, any legislation.

1.8 Non-Discrimination. CONTRACTOR shall not discriminate in the provision of services, benefits, employment, facilities or otherwise because of race, color, ancestry, religion, creed, national origin, sex, age, sexual orientation, physical or mental disability, medical condition, marital status, denial of family care leave or on the basis of any other protected category as provided by federal, state and/or local laws. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a)-(f) et. seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et. seq.)

1.9 Debarment and/or Suspension. CONTRACTOR shall comply with Executive Order 12549, Debarment and Suspension. CONTRACTOR represents and warrants that CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency or any California state department or agency.

1.10 Entire Agreement. This Agreement constitutes the entire, complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous communications between FOUNDATION and CONTRACTOR regarding such subject matter. Any terms and conditions which are additional to or different from the terms and conditions of this Agreement are hereby deemed rejected by FOUNDATION and shall not be of any effect or in any way binding upon FOUNDATION.

1.11 Modification of Agreement. This Agreement may be modified only by a written agreement dated subsequent to the effective date and signed by authorized representatives of each party. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

1.12 Law to Govern; Venue. This Agreement shall be interpreted, governed and construed in accordance with the internal substantive laws of the State of California. Any dispute or claim arising from this Agreement shall be resolved in a state or federal court in Sacramento, California. The parties specifically submit to the

personal jurisdiction and subject matter jurisdiction of the state and federal courts located in Sacramento, California.

1.13 Taxpayer Identification. A Federal Form W-9, Request for Taxpayer Identification Number and Certification must be completed by CONTRACTOR immediately following execution of this Agreement and shall thereafter be promptly transmitted to FOUNDATION.

1.14 Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.

1.15 Construction of Agreement. Both parties have participated in the negotiation and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either party as the drafting party.

1.16 Confidentiality. CONTRACTOR and FOUNDATION each agrees that (i) it shall receive and use the Confidential Information it receives (in such capacity a "Recipient") in connection with this Partnership Agreement from the other Party (in such capacity a "Discloser") solely for the purposes contemplated by this Agreement, (ii) it shall not use any such Confidential Information for any other purpose, and (iii) it shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser. Notwithstanding anything to the contrary herein, the Recipient may disclose Confidential Information if required to be disclosed by a court or regulatory or other governmental agency of competent jurisdiction, provided that in connection with any such requirement the Recipient shall (A) if legally permitted, promptly notify the Discloser of such requirement in writing, (B) cooperate with the Discloser, at the Discloser's request and expense, to obtain a protective order or other confidential treatment or to contest such required disclosure, (C) shall afford the Discloser all available opportunities to obtain a protective order or other confidential treatment or challenge such required disclosure, including the opportunity to challenge it in the name and with the standing of the Recipient, (D) shall comply with any protective order or other confidential treatment obtained by the Discloser, and (E) shall disclose only the minimum amount of information that the Recipient is required to disclose. This paragraph shall survive the expiration or early termination of this Agreement.

1.17 Execution of this Agreement. The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement.

1.18 Authority to Bind. The parties each represent and warrant that the signatories below are authorized to sign this Agreement on behalf of themselves or the party on whose behalf they execute this Agreement.

1.19 Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect.

1.20 Non-waiver. The failure of either FOUNDATION or CONTRACTOR, whether purposeful or otherwise, to exercise in any instance any right, power or privilege (including but not limited to waiver) under this Agreement or under law of this Agreement shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance. Any waiver by FOUNDATION must be in writing.

1.21 Force Majeure. Neither FOUNDATION nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of Services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, terrorism, war, strikes, labor

disputes, shortages of suitable parts, materials, labor or transportation, pandemic, quarantine, public health emergency, or any similar cause beyond the reasonable control of FOUNDATION or CONTRACTOR.