

## Consultant Agreement

SDCOE Agreement No. 20210431

This Consultant Agreement, for the provision of services is entered into this 13<sup>th</sup> day of August 2020, by and between the SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS (hereinafter referred to as "SDCOE") and Nicole Anderson & Associates Consulting, LLC (hereinafter referred to as "Consultant") who agrees to provide the following services to the SDCOE:

### 1. Scope of Services.

Consultant shall provide services as described in Exhibit "A" entitled "Special Provisions" attached hereto and made a part hereof.

### 2. Term of Agreement.

This Agreement shall be effective from the period commencing September 15, 2020, and ending June 30, 2021 unless sooner terminated by SDCOE as provided in the section of this Agreement entitled "Termination." Upon expiration or termination of this Agreement, Consultant shall return to SDCOE any and all equipment, documents or materials and all copies made thereof which Consultant received from SDCOE or produced for SDCOE for the purposes of this Agreement.

### 3. Termination.

This Agreement may be terminated with or without cause by SDCOE. Termination without cause shall be effective only upon 60-day written notice to Consultant. During said 60-day period Consultant shall perform all consulting services in accordance with this Agreement.

This Agreement may also be terminated by SDCOE for cause in the event of a material breach of this Agreement, misrepresentation by Consultant in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by SDCOE. Termination for cause shall be effected by delivery of written notice of termination to Consultant. It is understood and agreed the termination may be delivered via email and shall be effective on the date sent.

### 4. Compensation and Reimbursement.

The SDCOE will compensate Consultant at a rate of \$36,000, not to exceed a total of Thirty-six thousand dollars. Consultant understands and agrees that there shall be no payment in instances where services are not provided. All payments are made based upon a net 30 basis from receipt and approval of submitted invoice. The SDCOE reserves the right to prorate any compensation based upon the services actually performed.

Invoices must include the SDCOE assigned agreement number stipulated on the first page of this Agreement. Consultant will invoice SDCOE monthly for services that have been completed in the previous month.

Consultant may be reimbursed for reasonable and necessary expenses in accordance with SDCOE reimbursement policies provided such expenses are pre-approved by the SDCOE contact designee. Expense reimbursement requests require receipts, without accompanying receipts will not be reimbursed.

## **5. Confidential Relationship.**

SDCOE may from time to time communicate to Consultant certain information to enable Consultant to effectively perform the services. Consultant shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of the SDCOE. Consultant shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Paragraph 5, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of Consultant, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of Consultant without any obligation of confidentiality; (iv) is required to be disclosed by operation of law; or (v) has been or is hereafter rightfully disclosed to Consultant by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

Consultant shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the SDCOE. In its performance hereunder, Consultant shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

## **6. Public Records Act.**

Consultant acknowledges that the SDCOE is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. The SDCOE acknowledges that Consultant may submit information that Consultant considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Consultant acknowledges that the SDCOE may submit to Consultant information that the SDCOE considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

## **7. Ownership of Documents.**

All memoranda, reports, plans, specifications, maps and other documents prepared or obtained under the terms of this Agreement by or for SDCOE shall be the property of SDCOE and shall be delivered to SDCOE by Consultant upon demand.

Services provided to the SDCOE, and all participating schools therein, and all related materials including, but not limited to; audio; video; images; Consultant's name, slogans, quotes, writings; posters; and any other related materials which are exclusively owned by the Consultant will remain the exclusive property of the Consultant.

## **8. Fund Availability**

Funding of this Agreement, if funded by the SDCOE, is contingent upon appropriation and availability of funds. Work performed in advance of Agreement approval shall be done at the sole

risk of Consultant. In the event the funds are not available by operation of law or budget determination, SDCOE shall have the exclusive right to withhold funding.

### **9. Data Privacy and Protection**

All SDCOE content/data (to include but not limited to: students, teachers, interns, aides, Principals, and other administrative personnel) information involved in this agreement shall continue to be the property of and under the control of the SDCOE.

All content/data created by the SDCOE or by its students or personnel using the service provided will cease to be retained by the Consultant at the conclusion of this Agreement and will, in fact, be removed from the Consultant's records.

The Consultant will not use any information in a student or personnel record for any purposes other than those required or specifically permitted by this Agreement. Any other use of the SDCOE's student and personnel information will not be undertaken without the express, written consent of the SDCOE.

The Consultant uses the following methods to ensure the privacy and security of all electronically stored information:

- transmission of student and personnel information is always via secure protocols (SFTP, SSL and/or encryption)
- no data transmission occurs via email
- student and personnel data are stored in an encrypted form and programmatic access to that data is done using secure coding standards without visible account or password information
- all server systems including data storage are maintained in a locked, secure, environmentally controlled facility
- all server systems have been hardened with industry standard recommended measures for security protection

The Consultant will notify the SDCOE within 24 hours of the Consultant discovering an unauthorized access or disclosure of SDCOE data.

The Consultant and the SDCOE will work together to ensure compliance with FERPA regulations as applicable.

### **10. No Assignments.**

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which SDCOE, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

### **11. Audit.**

Consultant agrees to maintain and preserve, until three (3) years after termination of the Agreement with the SDCOE and to permit the State of California or any of its duly authorized representatives, to have access to and to examine and audit any pertinent books, documents, papers, and records related to this Agreement.

### **12. Independent Contractor.**

It is expressly understood that at all times, while rendering the services described herein, and in complying with any terms and conditions of this Agreement, Consultant is acting as an independent contractor and not as an officer, agent, or employee of the SDCOE.

**13. Licenses, Permits, Etc.**

Consultant represents and declares to SDCOE that it has all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Consultant represents and warrants to SDCOE that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for Consultant to practice its profession.

**14. Consultant's Insurance.**

The Consultant shall maintain and shall cause each Subcontractor to maintain Public Liability and Property Damage Insurance to protect them and the SDCOE from all claims for personal injury, including accidental death, as well as from all claims for property damage arising from the operations under this Agreement. The minimum amounts of such insurance shall be as hereinafter set forth.

Required Amounts of Insurance:

General Liability Comprehensive form - Products/Completed Operations	Bodily Injury and Property Damage	\$1,000,000 Amount
Auto Liability Comprehensive form - Owned, Non-owned Hired	Bodily Injury and Property Damage Combined	\$100,000/\$300,000 Amount

The Consultant shall file, with the SDCOE, Certificates of Insurance indicating a thirty-day (30) cancellation notice and naming the **SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS** as an additional insured.

**15. Workers' Compensation.**

The Consultant shall provide workers' compensation insurance or shall self-insure their services in compliance with provisions of Section 3700 of the Labor Code of the State of California. A Certificate of Insurance may be provided, providing for such, or Consultant shall sign and file on company letterhead stationery with the SDCOE the following certificate:

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

**16. Tuberculosis Clearance.**

Consultant shall certify in writing that Consultant's employees, volunteers, and subcontractors receive clearance for TB.

**17. Pupil Safety/School Safety Act.**

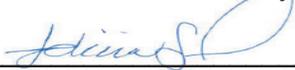
Consultant shall comply with all provisions of Education Code section 45125.1 et seq., as applicable to the determination below. The SDCOE has completed the "Pupil Safety Provisions" below certifying the level of contact that Consultant is expected to have with SDCOE'S pupils.

\_\_\_\_\_ The SDCOE has determined that greater than limited contact with pupils may occur under the terms of this Agreement. Fingerprinting and certification will be required of the Consultant. No work may take place until the requirements of Education Code section 45125.1 have been met.

\_\_\_\_\_ The SDCOE has determined that limited contact with pupils may occur under the terms of this Agreement. In lieu of fingerprinting, a SDCOE employee will provide supervision at all times when the Consultant has contact with pupils.

XX The SDCOE has determined that there will be no contact with pupils under the terms of this Agreement.

The above determination is made by Felicia Singleton

Signature  Date 9/15/2020  
(SDCOE Program Manager/Director)

**18. Indemnification.**

Consultant agrees to hold harmless, defend, and to indemnify the SDCOE, accept any and all responsibility for loss or damage to any person or entity, including SDCOE, and to indemnify, hold harmless, and release SDCOE, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SDCOE based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on SDCOE's part, but to the extent required by law, excluding liability due to SDCOE's conduct. SDCOE shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

**19. Tobacco-Free Facility.**

The SDCOE is a tobacco-free facility. Tobacco use (smoked or smokeless) is prohibited at all times on all areas of or within SDCOE property.

**20. Notices.**

All notices, legal or otherwise, shall be provided as follows:

SDCOE: Felicia Singleton, Director, Systems of Supports  
6401 Linda Vista Rd, Room 410  
San Diego, CA 92111  
858 - 298 - 2082  
felicia.singleton@sdcoe.net

With copy to: Chief Business Officer and  
SDCOE Legal Services  
6401 Linda Vista Rd  
San Diego, CA 92111

Consultant: Nicole Anderson, Founder and CEO  
Nicole Anderson and Associates Consulting, LLC  
P.O. Box 5475, Vallejo, CA. 94591  
(707) 338-8552  
nicole@nicoleandersonconsulting.com

**21. Amendment.**

No oral or other agreements or understandings shall be effective to modify or alter the written terms of the agreement. This Agreement may be amended or modified only by a written instrument signed by the SDCOE and by a duly authorized representative of the Consultant.

**22. Governing Law/Venue.**

In the event of litigation, the Agreement and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in San Diego County.

**23. Compliance with Law.**

The Consultant shall be subject to, and shall comply with, all federal, state, and local laws and regulations applicable to its performance under this Agreement including, but not limited to: licensing, employment, purchasing practices, wages, hours, and conditions of employment, including non-discrimination.

**24. Debarment, Suspension or Ineligibility Clause.**

By signing this Agreement, the Consultant certifies that the Consultant, and any of its principles and/or subcontractors:

- i. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency, and;
- ii. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with containing, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property. Consultant certifies that no employee, officer, agent, or subcontractor who may come in contact with students in performance of this Agreement, has been convicted of a serious or violent felony.

**25. Final Approval.**

This Agreement is of no force or effect until approved by signature by the SDCOE Superintendent of Schools or his designee, the Assistant Superintendent of Business Services.

**26. Employment with Public Agency and Retirees.**

Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are being performed pursuant to this Agreement. Retirees should seek guidance from their respective retirement system to avoid a loss of retirement benefits.

**27. Counterparts.**

This Agreement (and any amendments) may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Documents delivered electronically shall be valid and binding.

**28. Entire Agreement.**

This Agreement represents the entire Agreement and understandings of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, such parties acting by their representatives being thereunto duly authorized.

**SAN DIEGO COUNTY SUPERINTENDENT  
OF SCHOOLS**



Digitally signed by Michael  
Simonson  
Date: 2020.09.24 12:35:18 -07'00'

\_\_\_\_\_  
By (Authorized Signature)

Michael Simonson  
Name (Type or Print)

Deputy Superintendent, Chief Business Officer  
Title

\_\_\_\_\_  
Date

**CONSULTANT**



\_\_\_\_\_  
By (Authorized Signature)

Nicole Anderson  
Name (Type or Print)

Founder and CEO  
Title

\_\_\_\_\_  
Date

## **EXHIBIT A SPECIAL PROVISIONS**

### **A. Scope of Services.**

5 days

This service is designed for the Systems of Support department to engage in safe space to strategically learn, collaborate, and plan for equity leadership with a systemic lens. This service will be offered in the form of multiple workshop sessions to foster opportunities for the department team to build capacity and common vision to lead for equity through awareness of the following concepts and focus areas:

Understanding the historical impact and purpose of public education

Reflecting on the role of educators at the county level in interrupting inequities in schools throughout the county

Making connections to concepts of equity and our work in the county agency

Introduction to strategic collaboration, planning, and application for systemic change

Overarching Outcomes include:

Alignment of Equity Leadership across the department

Developing a common understanding of the definition of equity

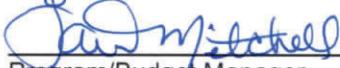
Strategic Collaboration, Planning, and Application for Systemic Change

Strategic planning on launch and communication of how equity aligns with System of Support department initiative(s)

Contractor will be paid the daily rate of \$3,000.00 per day for 12 days of service through 6/30/2021 for a total of \$36,000.00.

TO BE COMPLETED BY COUNTY STAFF PRIOR TO RENDERING SERVICE

Expenditure Approved by:

  
Program/Budget Manager

9-1-2020

Date

Assigned Supplier ID

ID Required

% Time	Program Name	Budget Organization							Amount
		Fund	Resource	Goal	Func	Object	Site	PY	
		0100	5810404	8600	2100	5800010	403	0	
						5800010			
						5800010			

If Grant funded, Grant document attached

Internal Business Services \_\_\_\_\_ Date \_\_\_\_\_

**Distribution after Execution:**

**Originals 2 Sets:** Purchasing/Contract Unit and CONTRACTOR

**File Copy:** Department Originator:

Email