

Services Agreement

This **Services Agreement** is entered into by and between the Conscious Leadership Academy (“CLA”) at the University of San Diego, a California non-profit corporation (“USD”), and City of San Diego, a California municipal corporation (“City”).

WHEREAS, USD is a non-profit educational institution whose faculty and staff conduct research and perform other services in support of USD’s non-profit research and educational objectives, and City would like USD to conduct the services for its Department of Engineering and Capital Projects as described in this Agreement; and

WHEREAS, the services contemplated by this Agreement are of mutual interest and benefit to USD and to City, will further the instructional, scholarship and research objectives of USD in a manner consistent with its status as a non-profit educational institution, and may result in benefits for both USD and City through improvements, inventions and/or discoveries;

NOW, THEREFORE, in consideration of the agreements and covenants set forth in this Agreement, the parties agree as follows:

1. **Services.** The CLA at USD agrees to perform the services described in the Statement of Work, attached to this Agreement as Attachment A and incorporated herein by reference (the “Project”). In the event of a dispute between this Agreement and the Statement of Work, the terms of this Agreement will apply.
2. **Fees and Expenses.** City shall pay USD the agreed upon fee for the services performed, as set forth in Attachment A.
3. **Term.** The term of this Agreement shall commence as of the date signed by both parties and shall terminate upon completion of services, unless terminated earlier as provided for in this Agreement. The parties may agree in writing to renew or extend this Agreement, however, this Agreement may not be extended beyond five (5) years unless such extension is approved by ordinance by the Council of the city of San Diego.
4. **Termination.** Either party may terminate this Agreement for any reason upon thirty (30) days’ prior written notice to the other. If a party materially breaches this Agreement, the other party may terminate this Agreement effectively immediately upon written notice. If the City terminates this Agreement for any reason other than a breach of the Agreement by USD, City will reimburse USD for all expenses incurred with the City’s knowledge through the date of termination and all non-cancellable commitments entered into by USD prior to the date of termination in order to carry out the Project contemplated under this Agreement, provided that USD cannot use the non-cancellable commitments for other purposes or otherwise mitigate any damages that might result from the early termination. If USD terminates this Agreement for any reason other than City’s breach of the Agreement, USD shall refund all amounts previously paid by City for services that were not provided on a pro-rated basis.
5. **Independent Contractor.** In the performance of activities contemplated by this Agreement, USD will at all times act as an independent contractor of City. This Agreement does not constitute and shall not be construed as constituting a partnership, joint venture association, or other affiliation or like relationship between parties. Neither party shall have the right to obligate or bind the other in any manner whatsoever with respect to any third party, and nothing herein contained shall give or is intended to give any right to a third party.

6. **Publicity.** Neither Party will use the other Party's name or trademarks or the name of any member of a Party's staff in any publicity, advertising or news release without the prior written approval of an authorized representative of that Party.
7. **Indemnification.** City shall defend, indemnify and hold USD and its employees and agents harmless from any and all liability, claims, demands, suits, costs, charges and expenses, including without limitation attorneys' fees ("Claims"), arising out of City's use of the results of the Project, the negligence or willful misconduct of City or City's employees or agents, the breach by City of its responsibilities under this Agreement, or the exercise of any right or license granted to City under this Agreement. The City's obligation to defend, indemnify or hold harmless USD shall not extend to any Claims arising out of USD's negligence or willful misconduct.
8. **Disclaimer/Limitation of Liability.**
 - a. USD MAKES NO WARRANTIES OR GUARANTEES WITH RESPECT TO THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, NOR DOES USD WARRANT OR GUARANTEE THAT THE SERVICES WILL BE ERROR-FREE. THE SERVICES ARE DELIVERED AS-IS. THERE ARE NO WARRANTIES OR CONDITIONS, WRITTEN OR ORAL, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES PROVIDED BY USD, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AGAINST INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.
 - b. USD shall not be liable to City or any reason arising out of or relating to this Agreement for lost profits, lost business opportunity, lost data, interruption of business, costs of procurement of substitute services, or for any direct, indirect, consequential, exemplary or incidental damages arising out of or relating to the services provided by USD under this Agreement, however caused and whether arising under contract, negligence or other tort, or any other theory of liability. To the maximum extent permitted by applicable law, USD's entire liability for direct damages arising out of or relating to any of the services it provides pursuant to this Agreement shall be limited to the Project Costs paid by City under this Agreement.
9. **Insurance.** USD maintains liability insurance that provides coverage for USD employees acting within the scope of their employment with USD while performing activities in connection with this Agreement. Upon written request from City, USD will provide City with a certificate evidencing insurance coverage. USD shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by USD, their agents, representatives, employees, or subcontractors.
 - a. **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - b. **Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

- c. **Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 - d. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions: USD shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or **in connection with the performance of the work hereunder and the results of that work by USD, their agents, representatives, employees or subcontractors.**
 - e. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of USD including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to USD's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
 - f. **Primary Coverage.** For any claims related to this contract, USD's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of USD's insurance and shall not contribute with it.
 - g. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.
 - h. **Waiver of Subrogation.** USD hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. USD agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
 - i. **Verification of Coverage.** USD shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive USD's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
10. **Intellectual Property.** All intellectual property that USD creates or develops pursuant to this Agreement (collectively "Works") shall be the sole and exclusive property of USD. Upon payment of all fees and costs due under this Agreement, USD grants to City a limited, non-exclusive license to use the Works for non-commercial purposes in a manner consistent with the Scope of Work. City agrees not to sell or assign any rights to the Works to any other third party or otherwise use the Works for any commercial purpose, without advance written authorization from USD.
11. **Non-Disclosure of Confidential Information.** In the event that either Party has access to any knowledge, know-how, practices, processes or other information disclosed or submitted in writing or other tangible form which is designated by a party as "Confidential Information" and labeled "Confidential" then such Confidential Information shall be maintained by the receiving party in a confidential manner and shall not be disclosed to any third party, without the advance written permission of the disclosing party. The parties

may disclose Confidential Information to their employees requiring access to the information for purposes relating to this Agreement. Neither party will be held financially liable for any inadvertent disclosure, but each will agree to use its reasonable efforts not to disclose designated Confidential Information. Nothing contained herein will in any way restrict or impair either party's right to use, disclose or otherwise deal with any Confidential Information which at the time of its receipt is generally available in the public domain or thereafter becomes available to the public through no act of the receiving party; was independently known prior to receipt thereof or made available to the receiving party as a matter of lawful right by a third party; is required by government regulation, by law, or by a court of competent jurisdiction to be disclosed, provided that the disclosing party is given adequate notice to allow it to object to the disclosure; or has already been developed by the receiving party independently of any acts of the disclosing party. USD acknowledges that the City is a municipality that is subject to the California Public Records Act. Nothing contained within this section is intended to prohibit the City from complying with the requirements of the California Public Records Act or responding to request for public records.

12. **Debarment, Suspension, and Other Responsibility Matters.** By signing this Agreement, each party certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any United States governmental department or agency.
13. **Compliance with Law.** The parties agree to comply with all applicable federal, state and local laws, and regulations that relate to the performance of this Agreement. Additionally, USD agrees to comply with the City Contracting Requirements that are attached in Attachment B.
14. **Entire Agreement.** The parties declare and represent that no promise, inducement or agreement not herein expressed has been made to them and that this Agreement contains the full and entire agreement between and among the parties relating to the subject matter herein, and that the terms of this Agreement are contractual and not a mere recital.
15. **Amendment/Severability/Assignment.** This Agreement may not be amended, except through a writing signed by City and an authorized representative of USD. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are severable. The rights and responsibilities under this Agreement are not assignable or transferable.
16. **Applicable Law/Dispute Resolution.** This Agreement shall be governed by the laws of the State of California. Any dispute arising out of or relating to this Agreement shall be resolved through binding arbitration under the applicable rules of JAMS. The venue for the arbitration shall be in San Diego, California. Each party shall be responsible for its own costs and attorneys' fees incurred in connection with the arbitration.
17. **Force Majeure.** Neither party shall be responsible for any delays or failure to perform its responsibilities under this Agreement due to acts of God, strikes, war, insurrection, embargoes, governmental restrictions, acts of government or governmental authorities, acts of terrorism, pandemic events, outbreaks of infectious diseases, other disturbances, or other causes of any kind beyond the control of the party.
18. **No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of and be enforceable only by the parties to this Agreement. No third party shall be a beneficiary of or have any right to enforce the terms of this Agreement.
19. **Authority/Counterparts.** By signing below, the representative from each party represents that he/she is duly authorized to sign the Agreement on behalf of either USD or City. This Agreement may be executed

in one or more counterparts, each of which shall constitute one and the same agreement. The parties may execute this Agreement via facsimile or electronic mail transmission.

In witness whereof, the parties have executed this Agreement as of the dates set forth below.

UNIVERSITY OF SAN DIEGO

CITY OF SAN DIEGO
A Municipal Corporation

BY: 

BY:

Truc T. Ngo, PhD
Associate Provost for Research Admin.



Name and Title (Printed)

Print Name: Claudia C. Abarca
Director, Purchasing & Contracting Department

February 12, 2024

Date Signed

February 21, 2024

Date Signed

Approved as to form this 28th day of

February, 20 24.

MARA W. ELLIOTT, City Attorney

BY: 

Deputy City Attorney

Services Agreement

Attachment A

SCOPE OF WORK:

City of San Diego Engineering and Capital Projects *ELEVATE Leadership and Management Certificate*

Overview:

The Conscious Leadership Academy at the University of San Diego is excited to offer a comprehensive and engaging leadership training program designed to improve people's capacity to create a connected culture, inspire productivity, and address pressing challenges.

With several learning modalities and frequent touch-points with program participants, this certificate program will challenge people to engage deeply and level-up their ability to lead and manage effectively.

In this program participants will learn:

1. How to create strong bonds of trust among your team
2. Effective methods for giving feedback in ways that improve performance
3. How to foster cultures of accountability
4. Skills to mentor and develop emerging leaders
5. Tools to manage and address conflict
6. How to create a connected community that fosters engagement among employees

Details:

- Eight modules. 3 hours each. In person at a City location.
- Two self-paced, virtual modules.
- An online program platform with coursework and resources:
 - Videos, articles, podcasts to enhance the learning.
- Reflective worksheets with prompts to guide learning teams in self-inquiry.
- Personal case-study and roll play activities to ensure learning is relevant.
- Two reflective "assignments" required for program completion.
- Integration of the City E&CP internal training team in program planning and implementation

Employees added to the session above the maximum number of participants specified will be charged an additional \$500.00 per employee.

PAYMENT AND PAYMENT SCHEDULE

\$46,500 Up to 65 employees with lifetime access to the course- Spring 2024
Payment in full due by March 30, 2024

\$30,000 45 employees with lifetime access to the course – Fall 2024
Payment due in full 30 days after the start of the program.

\$30,000 45 employees with lifetime access to the course –Spring 2025
Payment due in full 30 days after the start of the program.



Employees added to the Fall 2024 and Spring 2025 sessions above the maximum number of participants specified will be charged an additional \$500.00 per employee.

ATTACHMENT B

City Contracting Requirements

1. **USD Certifications of Compliance.** By signing this Agreement, USD agrees and certifies that USD is aware of, and will comply with, all the following requirements in performance of this Agreement:

1.1. USD Certification for Americans with Disabilities Act (“ADA”) and State Access Laws and Regulations. USD shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, USD shall comply with the most restrictive requirement (i.e., that which provides the most access). USD also shall comply with the City’s ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. USD warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Agreement will contain the subcontractor’s agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

1.2. Nondiscrimination. USD shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. USD shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. USD understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

1.3. Compliance with City’s Equal Opportunity Contracting Program (“EOCP”). USD shall comply with all EOCP requirements. USD shall not discriminate against any employee or applicant for employment on any basis prohibited by law. USD shall provide equal opportunity in all employment practices. USD shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold USD liable for any discriminatory practice of its subcontractors. Prior to commencing the Performance under this Agreement on the License Area, USD shall contact the EOCP staff to determine compliance with all applicable rules and regulations.

1.3.1. Upon the City’s request, USD agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that USD has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by USD for each subcontract or supply contract. USD further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Nondiscrimination in Contracting Ordinance. USD understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

1.4. Equal Benefits Ordinance Certification. Unless an exception applies, USD shall comply with the “Equal Benefits Ordinance” codified in San Diego Municipal Code (“SDMC”) section 22.4308.

1.5. Equal Pay Ordinance. Unless an exception applies, USD shall comply with the “Equal Pay Ordinance” codified in SDMC sections 22.4801 through 22.4809. USD shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any

subcontractor who performs work on behalf of USD to the same extent as it would apply to USD. USD shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.6. Product Endorsement. USD shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.7. Business Tax Certificate. Unless City's City Treasurer determines in writing that USD is exempt from the payment of business tax, USD is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing the Performance under this Agreement.