

INDEPENDENT CONTRACTOR AGREEMENT (ICA)

INSTRUCTIONS

1. WHEN TO USE THE ICA:

This ICA is designed to be used for individuals and/or sole proprietorship type entities.

2. USER RESPONSIBILITIES:

It is the end-user's responsibility to do the following **prior** to the Contractor providing services:

2.1. Complete all sections of the ICA and obtain the appropriate signatures.

2.2. All blank spaces must be completed. Pay particular attention to sections:

- 2.1 – Agreement Term
- 2.2 – Services and Deliverables
- 2.3 – Fees for Services

2.3. Obtain a current W-9 and submit to Accounts Payable for Contractor Vendor # setup, even if one was previously provided to ensure no discrepancies with 1099.

2.4. Obtain proof of insurance prior to the commencement of work for on-site services.

2.5. Contact Risk Management at risk@fhda.edu for questions related to insurance coverage and/or exception authorization.

3. CONTRACT THRESHOLDS AND PROCESSING:

3.1. For ICA's ≤ \$5,000, with one invoice payment (**No PO is required**):

- And services are **not funded** by Measure C (bond measure),
- Submit the completed ICA, W-9, [Payment Authorization form](#) (formerly Invoice for Services Rendered Form) and the Contractor's invoice directly to Accounts Payable for processing.

3.2. For ICA's ≤ \$5,000, with multiple invoice payments (**PO is required**), or

For ICA's >\$5,000 (**PO required**)

- Submit a purchase requisition, and upload the completed ICA, W-9, and proof of insurance for on-site services.
- After Purchasing issues the PO, submit all Contractor invoices to Accounts Payable and indicate the PO number on each invoice.

END

Foothill - De Anza Community College District
12345 EL Monte Rd., Los Altos Hills, CA 94022

INDEPENDENT CONTRACTOR AGREEMENT

(Do not use this form for public works, repairs or maintenance to a building)

This Agreement entered into this _____ day of _____, 2____ is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT," and the following named independent contractor; hereinafter referred to as the "CONTRACTOR." Each of DISTRICT and CONTRACTOR are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

Whereas, Government Code Section 53060¹ authorizes the engagement of persons to perform special services as independent contractors; and

Whereas, Public Contract Code 20651² requires competitive solicitations for services valued above the bid thresholds for professional services or construction services as updated annually³; and

Whereas, Government Code Section 8546.7⁴ provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

Whereas, the public interest, convenience, necessity and general welfare will be served by this Agreement.

This Agreement is not valid and services shall not commence until signed by authorized District officials in accordance with the delegated authority levels as approved by the Board of Trustees⁵, and/or until the Board of Trustees approves the Agreement.

1. CONTRACTOR INFORMATION:

1.1. General Information:

Company Name: _____	Contact Name: _____
Street Address: _____	Phone: _____
City, State, Zip: _____	Email: _____ <i>(Required)</i>
Social Security #: _____ <i>(last four digits)</i>	Fed. Tax ID #: _____ <i>(provide W-9 for initial setup only)</i>
Business License: _____	

¹ Gov Code 53060 Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53060&lawCode=GOV

² PCC 20651 Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=20651&lawCode=PCC

³ Bid Threshold: <http://purchasing.fnda.edu/bid-threshold/index.html>

⁴ Gov Code 8546.7: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=8546.7&lawCode=GOV

⁵ Authorization Link: <http://purchasing.fnda.edu/downloads/Delegation%20of%20Authority%20-%20Resolution%202018-15-20.pdf>

1.2. Is Contractor a Current or Former Employee of the DISTRICT or STRS/PERS Retiree?

1.2.1. Are you a current employee of the DISTRICT?

Yes* No

**stop, current employees cannot work as a contractor.*

Note: Per IRS standards, it is unlikely that an individual would qualify as both an employee and contractor of an organization. The IRS highly scrutinizes situations where a W-2 and a 1099 are issued for the same individual, especially in the same calendar year.

1.2.2. Are you a former employee of the DISTRICT or STRS/PERS retiree?⁶

Yes* No

**a yes response will trigger Accounts Payable to report payment to Payroll Services.*

Note: CalSTRS⁷ publishes the post-retirement earning limit which is adjusted annually. Any money received above the specified amount will be deducted from the employee's/retiree's annual CalSTRS retirement benefit.

If yes, date last worked: _____

If yes, specify last work location: _____

Work Assignment: _____

1.3. Is Contractor Related to DISTRICT Employee?

1.3.1. Are you related to any employee(s) in the DISTRICT?

Yes No

If yes, please identify the individual(s). _____

If yes, have you confirmed there is no actual or perceived conflict of interest pursuant to Board Policy 4115 Nepotism? _____

2. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

2.1. Agreement Term:

Starting Date: _____ Ending Date: _____

Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval or bid limits.

2.2. Services and Deliverables:

Description of services and deliverables to be provided by CONTRACTOR (if available, refer to and attach CONTRACTOR'S signed proposal or quotation)

2.3 Fee for Services:

CONTRACTOR Fee for Services

(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s). If travel or other expenses will be reimbursed they should conform to Administrative Procedure 3152.)

\$ _____

CONTRACTOR Reimbursable Expenses, if any

(state maximum reimbursement amount to be paid in addition to contract fee shown above)

\$ _____

Not-to-Exceed Amount

TOTAL COST OF THIS INDEPENDENT CONTRACT NOT-TO-EXCEED AMOUNT (including CONTRACTOR travel or other expense reimbursements)

NOTE: Board approval is required prior to commencement of work if total cost exceeds the bidding threshold for goods and services as reflected on following Purchasing website link:

<http://purchasing.fhda.edu/bid-threshold/index.html>

\$ _____

⁶ Ed Code: 22461: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22461&lawCode=EDC

⁷ CalSTRS: <https://www.calstrs.com/general-information/postretirement-earnings-limit-and-separation-service-effect-retirement-benefit>

3. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

4. PAYMENT TERMS:

Unless other payment terms are specified in this section, payment terms are Net 30 days computed from the date a correct and proper invoice is received by the District and prepared in accordance with the terms of the Agreement.

5. STANDARD TERMS AND CONDITIONS:

- 5.1. CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.
- 5.2. Confidentiality: In performing its duties hereunder the CONTRACTOR may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The Parties agree that such incidental access is not a provision or conveyance or disclosure to CONTRACTOR of student record information in violation of section 1232g or of any similar state law. CONTRACTOR agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.
- 5.3. CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S general liability insurance, employee benefits or workers' compensation. It further establishes that the CONTRACTOR shall be fully responsible for such coverage. CONTRACTOR shall maintain in force, throughout the term of this Agreement, insurance as follows:
 - 5.3.1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that CONTRACTOR has employees as defined by the California Labor Code;
 - 5.3.2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
 - 5.3.3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
 - 5.3.4. Professional Liability insurance (check when applicable), with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim.
 - 5.3.5. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement.

- 5.3.6. General and Automobile liability policies **shall include as Additional Insureds, the DISTRICT, its officers, agents, employees and servants**, and shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
- 5.3.7. CONTRACTOR shall not commence work under this Agreement until required insurance has been obtained.
- 5.4. The CONTRACTOR shall assume all expenses incurred in connection with the performance of this Agreement and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Section 4 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.
- 5.5. Any system or documents developed, produced or provided under this Agreement, including any intellectual property discovered or developed by CONTRACTOR in the course of performing or otherwise as a result of its work, shall become the sole property of the DISTRICT unless explicitly stated otherwise in this Agreement.
- 5.6. The Contractor agrees to provide the District with properly completed Internal Revenue Service (IRS) Form W-9 before the District will process payment.
- 5.6.1. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.
- 5.6.2. CONTRACTOR is independently responsible for the payment of all applicable taxes. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR, except as provided below for Out-of-State Contractors.
- 5.6.3. **Out-of-State Contractors** (check when applicable). If the Contractor has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Contractor acknowledges and agrees that the Contractor is required to provide the District with properly completed California Franchise Tax Board forms related to nonresident withholding of California source income. Also see link:
<https://www.ftb.ca.gov/individuals/wsc/summary-nonresident-withholding-process.shtml>
- Payments of \$1,500 or more, in a calendar year, made to California non-residents, including corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, are subject to seven percent (7%) state income tax withholding pursuant to the California Revenue and Taxation Code, Section 18662⁸. The District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements, unless the District receives authorization for a waiver or a reduced withholding rate from the Franchise Tax Board.
- 5.7. This Agreement constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this Agreement requires mutual agreement by both Parties.
- 5.8. The DISTRICT may terminate this Agreement at any time for any reason by providing 30 days notice to CONTRACTOR. Termination to be effective on the date specified in the notice. In the event of termination, CONTRACTOR shall be paid for all work provided to the date of termination.

⁸ RTC Link: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18662&lawCode=RTC
Independent Contractor Agreement (Rev 12/04/19)

5.9. The Parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

In Witness Whereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below:

CONTRACTOR

AGREEMENT OF CONTRACTOR: By signing below, I agree to perform the services described above for the payment indicated. I understand that while performing Agreement services I am not an employee of the Foothill-De Anza Community College District because:

1. *I follow an independent trade or profession,*
2. *I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service, and*
3. *I customarily perform work that is outside the usual course of the DISTRICT'S business, and operate my business offering the same type of services to other clients as being offered to the District.*

By: _____
Authorized Signature

Print Name: _____

Title: _____

E-Mail: _____

**Foothill – De Anza Community College District
 “DISTRICT”**

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, have analyzed their application to the services being provided, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status as summarized below:

1. *Contractor follows an independent trade or profession,*
2. *Contractor is free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of such and in fact,*
3. *Contractor performs work that is outside the usual course of the DISTRICT'S business.*

By: _____
Authorized Signature

Print Name: _____

Title: _____

Date: _____

Vice President, Finance/Admin Services
 Signature: (Required for agreements > \$5,000)

Date* _____

Approved by Board of Trustees if applicable

**Board approval is required prior to commencement of work if total cost exceeds the bidding threshold for goods and services as reflected on following Purchasing website link:*

<http://purchasing.fhda.edu/bid-threshold/index.html>

FOR CAMPUS USE ONLY:		
Originator: _____	Date: _____	Extension: _____
FOAP: I _____	F _____	O _____
A _____	P _____	
Campus Finance/Fiscal Services Authorization:		
Name: _____	Signature: _____	
Title: _____	Date: _____	