



12345 El Monte Rd.
Los Altos Hills, CA 94022
Foothill College
De Anza College

INDEPENDENT CONTRACTOR AGREEMENT

This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651. Do not use for Public Works, Repairs or Maintenance to a Building.

This Agreement entered into as of the District’s execution date (“Effective Date”), by and between the Foothill-De Anza Community College District, a public educational agency (hereinafter referred to as “District”) and _____, (hereinafter referred to as “Independent Contractor” or “IC”) Each of District and IC are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.” 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”).

RECITALS

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Independent Contractor warrants and represents to District that Independent Contractor has the experience, expertise, licensure, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations

WHEREAS, Government Code Section 8546.7 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.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between District and IC shall consist of the District Standard Instructions & Conditions (SIC’s) and this Agreement (pages 1-4) including:
Exhibit A – Services (page 5)
Exhibit B – Insurance Requirements (page 6)

2. INDEPENDENT CONTRACTOR INFORMATION.

Company Name: _____ Owner Name: _____
Address: _____ City, State, Zip: _____
Phone: _____ Email: _____
Social Security # (last 4 digits) _____ Federal Tax ID #: _____
Business License #: _____

a. Is IC a current employee of the District?
 Yes **STOP, Current employees cannot work as an Independent Contractor.** No

b. Is IC a former employee of the District or STRS/PERS retiree? Yes No

Note: A yes response will trigger Accounts Payable to report payment to Payroll Services. CalSTRS7 publishes the post-retirement earning limit which is adjusted annually. Any money received above the specified amount will be deducted from employee's /retiree's annual CalSTRS retirement benefit.

c. Is IC related to a District employee? Yes No

If Yes, complete the following:

Name of individual: _____

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

3. SERVICES.

Independent Contractor shall perform services for District in accordance with the terms and conditions set forth herein and in Exhibit A ("Services"), attached hereto and incorporated herein by this reference. IC's services will be timely and performed or provided consistent with the professional skill and care of IC's profession and in compliance with all applicable laws and regulations. IC will determine the method, details, and means of performing the services, and shall furnish at its own sole cost all labor, tools, materials, employees and equipment to complete the project in a skillful manner.

4. PAYMENTS.

In consideration of the payments hereinafter set forth, IC shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit A attached hereto and by this reference made a part hereof. IC shall perform all the services described in Exhibit A for the sum of Not-to-Exceed: \$ _____

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, District shall make payment to IC in the manner specified in Exhibit A.3. The District retains the right to increase or decrease the Services, deliverables, or amount of work as it deems appropriate and at its sole discretion.

5. TERM AND TERMINATION.

a. Initial Term. This Agreement shall be in effect from _____ (start date) through _____ (end date). The District may terminate this contract 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 under this section, Contractor shall be paid for all work provided to the date of termination.

b. Option to Extend. This Agreement may be renewed for additional time periods as long as the original Agreement Term plus the renewal periods does not exceed five years, provided that both Parties agree in writing and insurance coverage continues pursuant to the requirements in Exhibit B.

6. STANDARD TERMS AND CONDITIONS.

a. **Independent Contractor** is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to IC or its employees.

b. **Confidentiality.** In performing its duties hereunder, the IC 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 IC of student record information in violation of section 1232g or of any similar state law. IC agrees that if in the performance of its duties it does obtain such access it shall promptly disclose that fact to District, 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.

- c. **Insurance.** IC agrees to have and maintain the policies set forth in Exhibit B, entitled "Insurance Requirements," which is attached hereto and incorporated herein. IC agrees to provide District with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.
- d. **Indemnification.** To the fullest extent permitted by law, the IC shall indemnify and hold harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description (hereinafter, "claims"), brought for, or on account of (A) injuries to or death of any person, including IC, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) taxes claimed owed by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement as made necessary by Section 530 of the Revenue Act of 1978, resulting from IC's acts or omissions or those of others under its control including but not limited to the concurrent active or passive negligence of the IC or the District, its officers, agents, employees or servants, where such claim results from the performance of any work required of IC or payments made pursuant to this Agreement, provided that this indemnity obligation shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of the IC to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code. IC's duty to defend shall be triggered by notice to IC that District has been served with a summons or complaint, which alleges facts falling within the scope of IC's indemnity obligations.
- e. **Mediation and Arbitration.** The parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in Mediation and agree to equally share all Mediator fees. If the Parties are unable to resolve the dispute or controversy through Mediation, the Parties agree pursuant to Code of Civil Procedure section 1280 et seq. to submit the pending dispute or controversy to final and binding Arbitration to be held in Santa Clara County, California, with the arbitrator to be supplied by JAMS. By agreeing to this binding Arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke certain rules of procedure and evidence. The non-prevailing party in such arbitration shall be responsible for the arbitrator's fee but in all other respects each side shall bear its own costs and attorneys and other fees. The provisions of this section will apply during the term of this Agreement and survive after the termination or expiration of this Agreement.
- f. **Assignment.** IC shall not assign this Agreement or any portion thereof to a third party without prior written consent of District, and any attempted assignment without such prior written consent is a violation of this section and shall automatically terminate this Agreement.
- g. **Modification.** This Agreement, including attachments if any are attached hereto and incorporated by reference, constitutes the entire Agreements between the parties and may be modified only by written agreement executed by both parties.
- h. **Taxes.** IC agrees to provide the District with the properly completed Internal Revenue Service Form W-9, or other required reporting form. IC is independently responsible for the payment of all applicable taxes. Unless otherwise required by non-residents, District will not withhold any sums from compensation payable to IC, except as provided below for Out-of-State Contractors. IC agrees to indemnify, defend, and hold harmless the District for any tax consequences.
- i. **Termination.** The DISTRICT may terminate this Agreement at any time for any reason by providing 10 days' notice to IC. Termination to be effective on the date specified in the notice. In the event of termination IC shall be paid for all work provided to the date of termination.

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

FOR INDEPENDENT CONTRACTOR:	FOR DISTRICT:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

AGREEMENT OF INDEPENDENT CONTRACTOR: By signing above, 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 the control and direction as to the details and means for accomplishing the anticipated results of my service. (3) I customarily perform work that is outside the usual course of the District’s business offering the same type of services to other clients as being offered to the District.

<p><u>FOR CAMPUS USE ONLY:</u></p> <p>Originator: _____ Date: _____</p> <p>FOAP: I _____ F _____ O _____ A _____ P _____</p> <p>Campus Finance/Fiscal Services Authorization:</p> <p>Name: _____ Signature : _____</p> <p>Title: _____ Date: _____</p>
--

EXHIBIT A - SERVICES

1. CONTACTS FOR RENDERING OF SERVICES.

For Independent Contractor:

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

For District/Department:

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

2. SCOPE OF WORK. Detailed description of services to be performed and work product to be delivered to District by Independent Contractor: (reference and attach additional pages, if necessary)

3. AMOUNT AND METHOD OF PAYMENT. Indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

___ Single payment upon successful completion of deliverables.

___ Multiples payments. Explain how payments will be made. (i.e., milestone payments, monthly payments, progress payments, etc.

4. TERM. The term of this Agreement shall commence and end on the dates specified in Section 5 of the Agreement.

EXHIBIT B – INSURANCE REQUIREMENTS

Independent Contractor shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation. The Description of Operations field must be completed indicating that Foothill-De Anza Community College District has been added as an additional insured. This section shall read: "The Foothill-De Anza Community College District, their employees, officers and agents, officers and agents are added as additional insureds." The Certificate Holder shall read: Foothill-De Anza Community College District, 12345 El Monte Rd. Los Altos Hills, CA 94022

Independent Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. **Commercial General Liability** insurance, with limits not less than \$1,000,000 each occurrence/\$2,000,000 aggregate for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations;
2. **Commercial Automobile Liability** insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; *(to be checked if motor vehicle used in performing services)*
3. **Workers' Compensation** (statutory limits) and Employers' Liability insurance with limits required by law, provided that IC has employees as defined by the California Labor Code; *(to be checked if IC has employees)*
4. **Professional Liability** insurance (required if checked) with limits not less than \$1,000,000 each claim/\$2,000,000 aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim. *(to be checked if services are expected to involve the use of professional knowledge)*
6. Other Insurance Provisions
 - a. If the IC maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the IC. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
 - b. Waiver of Subrogation. IC agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, IC shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of IC may acquire against the District by virtue of payments of any loss under this insurance
 - c. 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.
 - d. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, 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.
 - e. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of IC's further work under this Agreement.