

INDEPENDENT CONTRACTOR AGREEMENT (ICA)

(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.)

THIS AGREEMENT is hereby entered into by the NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, hereinafter referred to as DISTRICT, and;

CONTRACTOR TAXPAYER I.D. NO./SSN

Mailing Address City State Zip Telephone
hereinafter referred to as CONTRACTOR.

1. Services.

Contractor hereby agrees to perform the professional services set forth in Exhibit "A", attached hereto and incorporated herein by reference, to the satisfaction of the District. Scope of Work details/Exhibit "A" must be provided.

CONTRACTOR will determine the method, details, and means of performing the above-described services. The DISTRICT shall not control the manner or determining the method of accomplishing CONTRACTOR'S services.

CONTRACTOR shall, at CONTRACTOR'S own expense, employ such individuals as CONTRACTOR deems necessary to perform the services required by the DISTRICT. The DISTRICT may not control, direct, or supervise CONTRACTOR'S employees in the performance of those services. CONTRACTOR shall supply all materials, equipment, supplies, tools and instrumentalities required to perform and complete the services required by the DISTRICT.

2. Term. CONTRACTOR shall commence providing services under this agreement on _____ and will diligently perform as required and complete performance by _____.

3. Payment. The DISTRICT shall pay the CONTRACTOR a fee not to exceed \$ _____, for services rendered pursuant to this Agreement. **Payment shall be made upon submission of an invoice in a form acceptable to the DISTRICT.** Such fee shall include any costs and expenses paid or incurred by CONTRACTOR in performing services for the DISTRICT.

4. Relationship of the Parties. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR'S employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT'S employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of CONTRACTOR'S employees or agents as they relate to the services to be provided under this agreement. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR'S employees.

CONTRACTOR, if an employee of another public agency, certifies that CONTRACTOR 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 actually being performed pursuant to this Agreement.

5. **Funding.** This agreement is contingent upon the approval of, receipt of funds from, and obligation of funds by the applicable funding agency to the North Orange County Community College District.
6. **Originals.** CONTRACTOR agrees that all materials including, but not limited to, technologies, procedures, processes, methods, works, writings, ideas, dialogues, compositions, artwork, recordings, teleplays, and video productions prepared for, written for, submitted to the DISTRICT, and/or used in connection with this Agreement shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such materials.
7. **Ownership.** CONTRACTOR understands and agrees that all materials produced under this Agreement shall become the property of the DISTRICT and cannot be used without DISTRICT'S expressed written permission. DISTRICT shall have all right, title and interest to said materials including the right to secure and maintain a copyright and/or trademark of said materials in the name of the DISTRICT. CONTRACTOR consents to use of CONTRACTOR'S name in conjunction with the sale, use, performance, and distribution of the materials for any purpose and in any medium
8. **Termination.** DISTRICT may, at any time, for any reason terminate this Agreement and compensate CONTRACTOR only for services rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.
9. **Indemnification.** CONTRACTOR agrees to and does hereby indemnify and hold harmless the DISTRICT and its Board of Trustees, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:
 - a. Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense rising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract upon or in connection with the services called for in this Agreement, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.
 - b. Any injury to or death of any person(s), including the DISTRICT'S officers, employees and agents, or damage to or loss of any property, caused by any act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this Agreement, whether said injury or damage occurs either on or off DISTRICT'S property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.
 - c. Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this Agreement.

The CONTRACTOR, at CONTRACTOR'S expense, cost, and risk, shall defend any and all actions, suits or other proceedings that may be brought or instituted against the DISTRICT, its Board of Trustees, officers, agents, or employees on any such claim, demand, or liability arising out of or in any way connected with any services covered by this Agreement, and shall pay or satisfy any judgment that may be rendered against the DISTRICT or its Board of Trustees, officers, agents, or employees in any such action, suit, or other proceeding as a result thereof.

10. Insurance. CONTRACTOR agrees to procure, pay for, and keep in full force and effect, the following types of insurance as appropriate for the type of service rendered under this contract:

11.

- a. Comprehensive general liability: The policy shall contain a combined single limit of liability of no less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate.
- b. Automobile liability insurance (vendors entering the District premises) per accident for bodily injury and property damage shall be for no less than \$1,000,000 per occurrence with no annual aggregate limit.
- c. Workers' Compensation Insurance (except for sole proprietor): In accordance with California Labor Code Section 3700, Contractor shall secure Workers' Compensation coverage in a form and amount covering Contractor's full liability under the California Workers' Compensation Insurance & Safety Act and in accordance with the applicable state and federal laws.
- d. Professional liability insurance (Errors and Omissions for professional service), shall be for no less than One Million Dollars (\$1,000,000) per occurrence.
- e. Cyber Liability (Technology E&O) - Contracts for services provided by: technology or IT consultants, systems analysts, website designers, online services and content providers, cloud based providers, computer programmers and software consultants, system installation or software personnel. Minimum coverage shall be \$1,000,000 per occurrence/\$3,000,000 Aggregate.
- f. Cyber Liability - Contracts for services provided by: Payroll personnel/companies and Vendors or Contractors having access to Personally Identifiable Information of employees and students. Minimum coverage shall be \$1,000,000 per occurrence/\$3,000,000 Aggregate.

Such insurance must be in a form mutually acceptable to both parties to protect CONTRACTOR and DISTRICT against liability which may arise out of this Agreement. In addition, CONTRACTOR agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than fourteen (14) days from execution of this Agreement by the DISTRICT and CONTRACTOR, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverages and the endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONTRACTOR agrees to name DISTRICT and its Board of Trustees, officers, agents and employees as additional insureds under said policy.

12. Assignment. CONTRACTOR shall not assign or delegate the performance of any services required under this Agreement or any part of this Agreement. Any such assignment or delegation shall be null and void.

13. Compliance with Applicable Laws. CONTRACTOR and all CONTRACTOR'S employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement. The services required herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT'S general right of inspection and supervision to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all DISTRICT policies and procedures and all federal, state and local laws, rules and regulations that are now, or may in the future become applicable to CONTRACTOR, CONTRACTOR'S business, equipment, and personnel engaged in services covered by this Agreement or accruing out of the performance of such services.

14. Non - Discrimination. CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, or age of such persons.

15. Non-Waiver. The failure of DISTRICT or CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

- 16. Notice.** All notices or demands to be given under this Agreement by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served, or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.

- 17. Debarment.** Contractor agrees to comply with 45 CFR Part 76, Appendix B – Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions. Contractor certifies by signing this agreement, to the best of his or her knowledge and belief, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- 18. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

- 19. Changes.** This agreement constitutes the entire agreement between the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the transactions contemplated. It may be amended only by a written instrument executed by all of the parties to the Agreement.

- 20. Warranty.** Contractor warrants that it shall provide all services required hereunder in a reasonable and competent fashion which meets or exceeds any and all applicable industry standards for such work. Contractor agrees that District’s payment obligation hereunder is conditioned on Contractor’s completion of all of its work unless otherwise specified hereunder. District’s remedies for breach of warranty shall include any and all remedies under law including without limitation, covering and suing for damages, and equitable relief.

- 21. Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Orange County, California. This Agreement is made in and shall be performed in Orange County, California.

- 22. Entire Agreement.** This agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

THIS AGREEMENT IS ENTERED INTO THIS _____, 20_____.

CONTRACTOR:

NORTH ORANGE COUNTY COMMUNITY
 COLLEGE DISTRICT

By: _____
 SIGNATURE
 PRINTED NAME: _____
 PRINTED TITLE: _____
 DATE: _____

By: _____
 SIGNATURE
 PRINTED NAME: _____
 PRINTED TITLE: _____
 DATE: _____