

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 (hereinafter “Agreement”) between **San Jose-Evergreen Community College District**, a public educational agency (“District”) and _____ (“Contractor”) is effective this day _____ (Date) between the Contractor and District.

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

1. General Conditions

- A. Independent Contractor shall perform the agreed upon services as defined by the scope of the work, deliverables, and standard of performance identified in Attachment A and in accordance with the terms and conditions in this Agreement. The services listed in this Agreement and in Attachment A are referred to as “Services”. Independent Contractor’s Services will be timely and performed or provided consistent with the professional skill and care of Independent Contractor’s profession and in compliance with all applicable laws and regulations.
- B. Relationship to the Parties:
It is understood that this is an agreement by and between Contractor and District and is not intended to, and shall not be construed to, create the relationship of agent, employee, partnership, joint venture or association, or any relationship aside from that of independent contractor. Contractor warrants that neither it nor its own employees, agents, subcontractors or helpers are employees or agents of the District, and further agrees that the District shall not be vicariously liable for the negligence or other tortuous conduct of Contractor, its employees, agents, subcontractors or helpers.
- C. Indemnity:
Contractor shall indemnify, hold harmless and at its sole cost defend the District, its Governing Board and Members, its Officers, employees and agents from and against any suit, claim, cause of action, liability, economic loss, damage, death, bodily injury or personal injury (hereinafter, “claim”) arising from the Contractor’s performance, or failure to perform, any of its obligations hereunder, including such claims caused in part by active negligence or other breach of the District or its agents, where Contractor’s performance or failure to perform was negligent or otherwise wrongful. Contractor’s duty to defend shall be triggered by Contractor’s receipt of written notice, from the District, that the District has been served with such claim, demand for arbitration, or lawsuit.

D. Insurance:

Acceptance of this Agreement constitutes that Contractor understands and agrees it is not covered under District's general liability insurance and that Contractor agrees, during the full term of this Agreement, to maintain in force, at Contractor's sole expense, all necessary insurance for its officers, agents, and employees, including but not limited to general liability, errors and omissions, worker's compensation, disability, unemployment insurance, and any other legally required insurance.

Unless otherwise set forth in Attachment A, prior to commencing its work hereunder, Contractor shall provide District with proofs of such insurance and shall also supply District with a Certificates of Insurance naming the District as an Additional Insured along with an Additional Insured Endorsement. Contractor shall supply District with proof that Contractor is covered by the following insurance during term hereof:

- i. Commercial General Liability Insurance (including Bodily Injury or Death and Property Damage) with a minimum limit of one million dollars per occurrence (\$1,000,000), and an aggregate amount of two million dollars (\$2,000,000);
- ii. Commercial Automobile Liability Insurance (including owned, non-owned, and hired vehicles) with minimum limit of one million dollars per occurrence (\$1,000,000).
- iii. Workers' Compensation and Employers' Liability; statutory limits required by law;
- iv. All insurance must be issued by an admitted insurance carrier (licensed to do business in the State of California), carrying a rating of not less than A-VII in the most current A.M. Best's Insurance Rating Guide – or otherwise acceptable to District.

E. Assignment:

Contractor shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the District, which shall have sole discretion to approve or deny that request. Any attempted assignment without such prior written consent of District, shall constitute a material breach of this Agreement and, at District's sole discretion, constitute cause to terminate this Agreement. However, unless otherwise stated in Section 3 (Employment of Additional Workers by Contractor) or Attachment A (Description of Services to be Rendered), Contractor may use the services of subcontractors under its supervision and control to perform parts of its work hereunder. Contractor's use of a subcontractor shall not release Contractor from any of its obligations hereunder.

F. Ownership of Intellectual Property:

Contractor agrees that any and all intellectual property it creates in the course of performing its work hereunder is solely owned by the District, which pursuant to this Agreement is paying for such property; and that unless otherwise specified in Attachment A (Description of Services to be Rendered) these are works for hire and all rights, title and interest shall belong to the District and the District is and shall be the sole registered owner of any resulting copyright, patent, trademark, trade name, or service mark. Contractor shall refrain from disclosing any versions of the work product, plans, and specifications to any third party without first obtaining written permission of District. Contractor performing copyrighted musical or literary works is

responsible for securing the necessary permission or pay any royalties or fees required to perform such works, and shall indemnify, hold harmless and defend the District, its Board of Trustees and employees from any infringement claim resulting from its activities hereunder.

2. Equipment and Facilities

Contractor shall provide all necessary equipment and facilities to render Contractor services pursuant to this Agreement unless the parties to this Agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.

3. Employment of Additional Workers by Contractor

Contractor will not be prohibited from employing additional workers or subcontractors necessary for the completion of this Agreement. However, these individuals must be fully qualified to complete their assigned tasks and shall not be employees of District. The provisions of this Agreement are applicable to such Contractor's employees and/or subcontractors as they are to Contractor. Furthermore, District will be promptly notified in writing of any and all subcontractors under this Agreement and reserves the right to disapprove any subcontractor. Contractor's failure to obtain such prior written consent shall constitute a material breach of this Agreement, giving District the right, at its sole discretion, to terminate this Agreement.

4. Dispute Resolution and Attorney Fees

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, as well as costs of suit. 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 to submit the pending dispute or controversy to final and binding arbitration to be held in Santa Clara County, California, and to be governed by the Federal Arbitration Act ("FAA"). 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 formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, unless the laws related to the claim that the party prevailed on preclude a court from awarding attorneys' fees and costs to the prevailing party. The provisions of this section will apply during the term of this Agreement and survives after the termination or expiration of this Agreement.

5. Governing Law

The rights and obligations of the parties hereunder shall be governed by the laws of the State of California. Venue in any action to enforce or declare rights hereunder shall be in the Superior Court of the County of Santa Clara.

6. Force Majeure

The Contractor and District are excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is due to the fault or neglect of the party not performing.

7. Withholding

Except where Contractor is not a California resident within the meaning of State Franchise Tax Board rules, District shall not withhold, set aside or pay on Contractor's behalf any money for federal income tax, state income tax, social security tax, unemployment insurance, disability insurance or any other federal or state fund whatsoever. It shall be the sole responsibility of Contractor to account for, withhold and pay for all of the above. Contractor shall defend and indemnify the District against any claim or suit by IRS, State Franchise Tax Board or other taxing agency which asserts that Contractor or the District failed to withhold or make necessary tax payments arising from Contractor's work hereunder. Provided, however, where Contractor is not a California resident, the District may withhold from its payments to Contractor such sums as are required by State laws and regulations, and remit that money to the State Franchise Tax Board, which sums shall thereafter not be owed by District to Contractor.

8. Changes or Alterations

This Agreement shall constitute the entire agreement between the parties respecting the matters covered herein, and supersede any prior or contemporaneous written or oral promises or representations regarding these matters. This Agreement may not be modified or amended except by writing signed by the parties. No changes, alterations, change orders or increases in Contractor compensation, or other variations of any kind, shall occur without the written consent of appropriate District personnel acting within their signatory authority as defined by Board Policy 6150. Contractor acknowledges that other District personnel are without authorization to either order extra and/or changed work, increase compensation, or waive contract requirements, and that Contractor proceeds with any extra work ordered by such unauthorized persons at its own risk, and shall not receive payment therefore.

9. Notice

All notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows

For the District:

Name:	
Title:	
Address:	
City, State, Zip:	
Phone:	
Email:	

For Contractor:

Contractor information in section 12.

10. Termination

The District may terminate this Agreement for cause upon Contractor's breach of any material provision herein, and, in that event may proceed with completion of the work in any commercially reasonable manner including hiring another contractor and obtaining reimbursement from Contractor of any costs to the District resulting from such cover. The District may at its discretion deduct such extra costs and damages from any amounts owing to Contractor. If District's cost of completing Contractor's work exceeds the amount available for District to deduct, Contractor shall remit to District the balance owed to District. The District may terminate this Agreement for convenience in its sole discretion upon ten (10) Days written notice to Contractor. The Contractor shall be entitled only to compensation earned up to the point of written notice of termination, in addition to reasonable demobilization costs and expenses, but shall not be compensated for any lost business opportunities or anticipated profit on the balance of work not performed.

11. Severability

In the event any portion of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

12. Contractor Information

Contractor Name:	
Mailing Address:	
City, State, Zip:	
Business Phone:	
Fax:	
Email:	
Contractor Sole Proprietor:	Yes <input type="checkbox"/> No <input type="checkbox"/>
Social Security Number (SSN) or Employer Identification Number (EIN):	

Former employee(s) of the District?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Related to any employee(s) of the District?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, please identify individuals:	
California Resident?	Yes <input type="checkbox"/> No <input type="checkbox"/>

13. Payment for Services

In return for Contractor’s satisfactory performance of the work per Attachment A, District shall compensate Contractor the total sum **not to exceed** \$ _____.
 At a rate of \$ _____ per _____ (hour, date, month, or fixed)

Contractor shall be solely responsible for payment of its own taxes, its own subcontractor costs, out of pocket expenses and overhead associated with the performance of its work. Payment shall be due upon satisfactory completion of all services. Contractor shall not be allowed additional sums for the satisfactory completion of its work unless otherwise approved in writing pursuant to paragraph 8 above.

The District’s financial obligations under this Agreement are limited to the payment of the compensation provided in Attachment A of this agreement. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed.

14. District Obligations Other Than Payment (if any)

15. Payment Terms

Unless specified otherwise in this section, payment terms are Net 30 days, computed either from date of delivery and acceptance of contracted services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of this Agreement whichever date is later. Invoices must be sent via email to the email address checked below:

accounts.payable@sjeccd.edu
 bond.invoices@sjeccd.edu

16. Other Conditions

Payments to Contractor pursuant to this Agreement shall be reported to Federal and State taxing authorities as required by law.

17. Protection of Confidential Information

Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaints applicable to California Government Code 11135. Contractor and any of their subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility guidelines 2.0, Level AA (CWCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

18. Non-Discrimination Endorsement

Contractor and District mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employees engaged in the work, or against any other person, on the basis or race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, or sexual orientation or any other category protected by law, including but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, contractor agrees to require like compliance by all hired subcontractors.

19. 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.

Notwithstanding any other provision herein, Contractor's warranty obligations shall survive termination of this Agreement.

20. Confidentiality

Contractor understands and acknowledges that during its performance of the Services, it or its employees may have access to private and confidential information in the District's possession, custody or control, including but not limited to private information regarding students, employees, alumni and Board of Trustees. Independent Contractor will not disclose, copy or modify any confidential information without the prior written consent of the District.

21. Registration for Public Works Applicable Not Applicable

If Contractor is performing a public work, as defined by California Labor Code section 1720, Contractor must adhere to the requirements of California Labor Code Section 1725.5 (DIR Contractor Registration) as a prerequisite to any work being performed under this Agreement. Contractor shall adhere to the requirements of California Labor Code Sections 1771 through 1776, and to California Education Code Section 81704, when the services performed by contractor require compliance with these sections. Contractor acknowledges that it shall register, if required, with the California Department of Industrial Relations (DIR) by utilizing DIR’s online application registry link located at <https://www.dir.ca.gov/Public-Works/Contractors.html>

22. Advertising

Contractor shall not use the name of the District, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.

23. Term of Agreement

The Term of this Agreement shall be from (start date) _____ through (end date) _____, subject to provisions of Sections 8 and 9 of this Agreement. Contractor shall complete its work by (date) _____. Failure to complete the work by the aforementioned date shall potentially render Contractor liable for delay damages, or liquidated damages if provided for this Agreement.

24. RESERVED

IN WITNESS WHEREOF, the District and Contractor have executed this Agreement as of the dates set forth below.

Contractor Name:	San Jose Evergreen Community College District
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Approved re: Form & Legality
By:
Date:

ATTACHMENT A – SCOPE OF WORK

Contractor/Consultant [Legal Name]:	
Address, City, State, Zip:	
Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

District/Department Primary Contact Name:	
Primary Contact Phone:	
Primary Contact Email:	

CONTRACT PERIOD:

Start Date:	End Date:
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RESPONSIBILITIES OF CONTRACTOR/CONSULTANT, CONTRACT OBJECTIVES AND DELIVERABLES:

RESPONSIBILITIES OF THE DISTRICT:

Rate of Payment:

\$ _____ per: [Hour Day Month Annually Project Other, specify _____

District Use Only:

Initiator:	
GL Account Code:	
Requisition Number:	