

# COAST COMMUNITY COLLEGE DISTRICT

## INDEPENDENT CONTRACTOR AGREEMENT (LONG FORM)

This INDEPENDENT CONTRACTOR AGREEMENT (“AGREEMENT”) is made and entered into between COAST COMMUNITY COLLEGE DISTRICT, a public educational agency (“DISTRICT”) and \_\_\_\_\_ (“INDEPENDENT CONTRACTOR”). DISTRICT and INDEPENDENT CONTRACTOR are referred to collectively as the “PARTIES.”

This AGREEMENT shall commence on \_\_\_\_\_, 20\_\_ and shall be completed by no later than \_\_\_\_\_, 20\_\_.

WHEREAS, DISTRICT is authorized by section 53060 of California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, DISTRICT desires to obtain special services and advice as fully described in the Scope of Services, Attachment No. 1 to this AGREEMENT; and

WHEREAS, INDEPENDENT CONTRACTOR warrants and represents to DISTRICT that INDEPENDENT CONTRACTOR has the experience, expertise and resources to successfully complete the services required by DISTRICT and will provide the services timely and in conformance with the laws of the State of California.

NOW, THEREFORE, the PARTIES agree as follows:

### **ARTICLE I INDEPENDENT CONTRACTOR’S SERVICES AND RESPONSIBILITIES**

1. INDEPENDENT CONTRACTOR shall timely and competently provide those services set forth on Attachment No. 1 to this AGREEMENT, which is incorporated herein and made a specific part hereof (“PROJECT”).

2. INDEPENDENT CONTRACTOR, by this AGREEMENT, accepts the relationship of trust and confidence established between INDEPENDENT CONTRACTOR and DISTRICT. INDEPENDENT CONTRACTOR covenants with DISTRICT to furnish the necessary professional skill and judgment in accordance with the level of care and skill exercised by members of the profession or occupation currently practicing under similar conditions and in similar locations, and under California law applicable to those specializing in providing such services for projects of the type, scope and complexity of the PROJECT in performing all services under this AGREEMENT. INDEPENDENT CONTRACTOR shall use its best professional efforts to complete the PROJECT in an expeditious and economical manner consistent with the interests and goals of DISTRICT. INDEPENDENT CONTRACTOR shall take all special precautions necessary to protect the INDEPENDENT CONTRACTOR’s employees, DISTRICT’s employees, and members of the public from risk of harm arising out the nature of the work.

3. INDEPENDENT CONTRACTOR will determine the method, details, and means of performing the services for the PROJECT, and will, at INDEPENDENT CONTRACTOR'S own expense, supply all labor, tools, materials, equipment, supplies, and items necessary to perform such services in good working order and in compliance with all applicable federal, state, and local laws, codes, statutes, ordinances, and DISTRICT policies and procedures.

4. INDEPENDENT CONTRACTOR shall hold and maintain during the performance of this AGREEMENT all applicable licenses, permits, and/or certificates necessary for performance of services under this AGREEMENT.

5. INDEPENDENT CONTRACTOR shall not disclose, nor use except in the performance of this AGREEMENT, any confidential, proprietary and/or trade secret information of DISTRICT, and shall comply with all state and federal laws of confidentiality including FERPA, HIPPA, and CIMA.

6. INDEPENDENT CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, 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 INDEPENDENT CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to INDEPENDENT CONTRACTOR by DISTRICT as a basis for such services.

7. The services performed hereunder are work made for hire and DISTRICT shall own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under this AGREEMENT. INDEPENDENT CONTRACTOR assigns to DISTRICT any and all rights INDEPENDENT CONTRACTOR could have, may have, or does have in the work and/or the work product performed under this AGREEMENT, and DISTRICT shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matters in the name of the DISTRICT. INDEPENDENT CONTRACTOR consents to the use of INDEPENDENT CONTRACTOR'S name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

## **ARTICLE II COMPENSATION**

1. DISTRICT agrees to pay INDEPENDENT CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). DISTRICT shall pay INDEPENDENT CONTRACTOR according to the following terms and conditions: \_\_\_\_\_

2. Except as set forth in this Article II, paragraph 9, DISTRICT shall not be liable to INDEPENDENT CONTRACTOR for any costs or expenses paid or incurred by INDEPENDENT CONTRACTOR in performing services for DISTRICT.

### **ARTICLE III TERMINATION**

1. DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate INDEPENDENT CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by INDEPENDENT CONTRACTOR. Notice shall be deemed given when received by INDEPENDENT CONTRACTOR or no later than three days after the date of mailing, whichever is sooner.

2. Upon termination of this AGREEMENT for any reason, subject to the respective rights and remedies of the PARTIES under this AGREEMENT and pursuant to applicable law, DISTRICT shall have no continuing obligation to make any payments to INDEPENDENT CONTRACTOR under this AGREEMENT.

3. In the event of such termination, DISTRICT may secure the required services from another independent contractor. If the cost to DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the INDEPENDENT CONTRACTOR. This provision is in addition to and not a limitation of any other rights or remedies available to DISTRICT.

4. In the event of termination due to the fault of INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR shall not be entitled to any unearned fees or costs and shall be liable for damages suffered by DISTRICT due to INDEPENDENT CONTRACTOR's failure to perform as provided in this AGREEMENT.

### **ARTICLE IV INDEMNITY**

1. INDEPENDENT CONTRACTOR agrees, to the fullest extent permitted by the law, to indemnify and hold harmless DISTRICT, its trustees, agents, and employees against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, to the extent caused by INDEPENDENT CONTRACTOR's performance of services under this AGREEMENT, or any acts in connection with or related to the PROJECT, or any actions of INDEPENDENT CONTRACTOR or anyone for whom INDEPENDENT CONTRACTOR is legally liable.

2. INDEPENDENT CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT, its trustees, agents, and employees from and against all loss, cost, expense, royalties, claims for damages, or liability, in law or in equity, including, without limitation, attorneys' fees, court costs, and other litigation expenses that may at any time arise for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use by DISTRICT of method, process, product, concept specified, or depicted supplied by INDEPENDENT CONTRACTOR in the performance of this AGREEMENT.

3. The coverage of indemnification shall include, without limitation, reasonable attorneys' fees and court costs incurred by DISTRICT with regard thereto. Said indemnity is intended to apply during the period of this AGREEMENT of INDEPENDENT CONTRACTOR's performance and shall survive the expiration or termination of this AGREEMENT.

4. The obligation to defend shall arise regardless of any claim or assertion that DISTRICT caused or contributed to the losses. INDEPENDENT CONTRACTOR's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for DISTRICT shall be reimbursed by DISTRICT except to the extent such defense costs arise, under principles of comparative fault, from INDEPENDENT CONTRACTOR's (a) negligent acts or omissions; (b) breach of any of the provisions of this AGREEMENT; or (c) willful misconduct.

5. Nothing in this AGREEMENT, including the provisions of this Article, shall constitute a waiver or limitation of any rights which DISTRICT may have under applicable law, including without limitation, the right to implied indemnity.

6. DISTRICT's exercise of any of its rights or remedies prescribed in this AGREEMENT shall not relieve INDEPENDENT CONTRACTOR from responsibility for damages or other losses incurred or to be incurred by DISTRICT as a result of INDEPENDENT CONTRACTOR's breach of its obligations under this AGREEMENT.

#### ARTICLE V INSURANCE

1. INDEPENDENT CONTRACTOR shall, at its sole cost and expense, purchase and maintain during the term of this AGREEMENT insurance. Said insurance shall be as defined in Article V, paragraph 2(a)-(g) unless otherwise agreed in writing and attached hereto as Attachment 3. *If alternative insurance provisions* are made a part hereof as Attachment 3, this paragraph must be initialed, and this alternate insurance must be approved by DISTRICT.

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District Initial

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2. INDEPENDENT CONTRACTOR shall, at its sole cost and expense, purchase and maintain during the term of this AGREEMENT, with insurance companies duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect INDEPENDENT CONTRACTOR and DISTRICT from claims which may arise out of or resulting from INDEPENDENT CONTRACTOR's performance of this AGREEMENT or the PROJECT, whether by INDEPENDENT CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Commercial General Liability Insurance (Occurrence Form) with limits of not less than One Million Dollars for each occurrence; Two Million Dollars aggregate and Two Million Dollars products/completed operations aggregate; and Two Hundred Fifty Thousand Dollars as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability and completed operations coverage, covering the activities of INDEPENDENT CONTRACTOR under this AGREEMENT. This policy shall be endorsed to name DISTRICT and DISTRICT's Board of Trustees, agents, and employees as additional

insureds. Such endorsement shall be made on ISO Endorsement CG20 10 11 85 “Additional Insured – Owner, Lessees or Contractors” or its equivalent.

(b) Workers’ Compensation Insurance with an insurance company duly licensed and admitted by the State of California in the amounts required by California law covering all personnel employed on the premises during the term of this AGREEMENT whether said personnel are employed or contracted by INDEPENDENT CONTRACTOR. Employers Liability with a minimum limit of Two Million Dollars per accident covering all personnel employed on the premises during the term of this AGREEMENT with a minimum combined single limit of liability for bodily injury and property damage of not less than One Million Dollars per occurrence.

(c) Business Auto Liability Insurance covering the ownership, maintenance, or use of all owned, non-owned, and hired vehicles used in connection with the performance of this AGREEMENT with an insurance company duly licensed and admitted by the State of California. Said insurance shall have limits of not less than One Million Dollars combined single limit, bodily injury, and property damage liability per occurrence with no annual aggregate limits.

(d) Professional Liability Insurance, including Contractual Liability, with limits of One Million Dollars per occurrence; Two Million Dollars aggregate. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five years thereafter. In the event INDEPENDENT CONTRACTOR subcontracts or assigns any portion of its duties, it shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph.

(e) Each policy of insurance required in Article V, paragraphs 2(a), (c), and (d) above shall name DISTRICT and its trustees, officers, agents, and employees as additional insureds; shall state that, with respect to the operations of INDEPENDENT CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty days’ written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, officers, agents, and employees. Commercial General Liability and Business Automobile Liability policies shall contain a cross-liability or severability-of-interest clause.

(f) INDEPENDENT CONTRACTOR is responsible for payment of all premiums, deductibles, self-insured retentions, and adjustment for losses on policies pursuant to this AGREEMENT.

(g) INDEPENDENT CONTRACTOR shall notify DISTRICT in the event of material change in, cancellation of, or failure to renew each policy. Prior to commencing work, INDEPENDENT CONTRACTOR shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein to be attached hereto as Attachment No. 3, or this AGREEMENT will automatically be canceled. Not less than five days prior to the expiration date of each insurance policy, INDEPENDENT CONTRACTOR shall deliver to DISTRICT a new certificate and endorsement.

## ARTICLE VI INDEPENDENT CONTRACTOR

3. INDEPENDENT CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. INDEPENDENT CONTRACTOR understands and agrees that INDEPENDENT CONTRACTOR and all of INDEPENDENT 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. INDEPENDENT CONTRACTOR assumes the full responsibility for the acts and/or omissions of INDEPENDENT CONTRACTOR'S employees or agents as they relate to the services to be provided under this AGREEMENT. INDEPENDENT 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 INDEPENDENT CONTRACTOR and INDEPENDENT CONTRACTOR'S employees.

4. INDEPENDENT CONTRACTOR agrees and understands that by performing services under this AGREEMENT, INDEPENDENT CONTRACTOR and its employees are not entitled to employment with DISTRICT, nor is any express or implied employment relationship created between DISTRICT and INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR further understands and agrees that INDEPENDENT CONTRACTOR is not entitled to any rights or benefits afforded to DISTRICT employees by virtue of performance under this AGREEMENT.

5. INDEPENDENT CONTRACTOR has no authority to bind DISTRICT.

## ARTICLE VII ALTERNATIVE DISPUTE RESOLUTION

Disputes arising from this AGREEMENT or related in any manner to the same shall be resolved as follows:

1. In the event of any dispute, claim, question, or disagreement arising out of or relating to this AGREEMENT, prior to initiating arbitration or any other legal action and as a condition precedent to being entitled to file such legal action or demand for arbitration, the PARTIES hereto shall use their best good faith efforts to settle such disputes, claims, questions, or disagreements, consulting and negotiating with each other in good faith and recognizing their mutual interests in attempting to reach a just and equitable solution satisfactory to both PARTIES.

2. In the event of any controversy or claim, whether based on contract, tort, statute, or other legal or equitable theory, and if the dispute cannot be resolved by negotiation, the PARTIES agree that as a condition precedent to and before filing any legal action, including demands for arbitration, the PARTIES shall submit the dispute to non-binding mediation by a mediator mutually selected by the PARTIES. If the PARTIES are unable to agree upon a mediator then the mediation will be held at the Orange County office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), Judicate West, or the American Arbitration Association ("AAA"). The complaining party must contact JAMS, Judicate West, or AAA to schedule the conference. The PARTIES may agree on a mediator from the JAMS, Judicate West, or AAA panels. If they are unable to agree JAMS, Judicate West or AAA will provide a list of three available mediators and each party may strike one. The remaining mediator will serve as the

mediator at the mediation conference. Neither party may initiate legal action until mediation is completed. Each party shall pay one-half of the costs of such mediation. This requirement for mediation is a condition precedent to filing legal action and shall not in any way toll any applicable statute of limitations or other time barred defenses to such legal action.

3. In the event the PARTIES are unable to resolve their dispute through the meet and confer procedure provided for in Article VII, paragraph 1, or by and through mediation as provided in Article VII, paragraph 2, any dispute arising under or relating to this AGREEMENT, whether based on contract, tort, statute, or other legal or equitable theory, will be submitted to binding arbitration in the County of Orange, State of California, before a retired California Superior Court Judge or retired California Appellate Court or Supreme Court Justice or before a retired Federal Court Judge or Justice. If the PARTIES are unable to agree as to an arbitrator, the arbitration shall be submitted before the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or Judicate West or the American Arbitration Association ("AAA"). The PARTIES may agree on an arbitrator from the selected entity's panel. If they are unable to agree, the selected entity will provide a list of three available arbitrators and each party may strike one. The arbitration tribunal shall select the arbitrator from the remaining names. The PARTIES waive their rights to a jury trial. The arbitration shall be held in accordance with the rules of the selected entity and California substantive law shall apply. The arbitrator shall award costs and attorneys' fees to the prevailing party. The PARTIES shall be entitled to only the following limited discovery:

(a) Each party shall exchange all documents relevant to the subject matter of the dispute.

(b) Each party shall be entitled to one deposition limited to four hours.

(c) Each party may serve one set of interrogatories limited to 15 interrogatories, including subparts.

(d) Each party may make application to the arbitrator to order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or as such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses at the hearing to allow the deposition to be taken.

(e) Each party shall advance one-half of the cost of the arbitration proceedings, including any administrative costs and arbitrator expenses subject to being reimbursed by an award of the arbitrator of costs.

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## ARTICLE VIII MISCELLANEOUS PROVISIONS

1. This AGREEMENT shall be interpreted and governed by the laws of the State of California.

2. An inducement to DISTRICT for entering into this AGREEMENT is the professional reputation and competence of INDEPENDENT CONTRACTOR and its employees. Neither this AGREEMENT, nor any interest therein may be assigned by INDEPENDENT CONTRACTOR without the prior written consent of DISTRICT, which consent may be withheld by DISTRICT in its sole and absolute discretion. Any attempt by INDEPENDENT CONTRACTOR to assign this AGREEMENT shall be void and a material breach of this AGREEMENT and DISTRICT may immediately terminate this AGREEMENT.

3. INDEPENDENT CONTRACTOR warrants to DISTRICT that it is not now, nor has it or any of its officers been for five years preceding, involved in arbitration or litigation concerning INDEPENDENT CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

4. DISTRICT and INDEPENDENT CONTRACTOR, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this AGREEMENT.

5. This AGREEMENT represents the entire and integrated agreement between DISTRICT and INDEPENDENT CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both DISTRICT and INDEPENDENT CONTRACTOR and approved by DISTRICT's Board of Trustees.

6. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either DISTRICT or INDEPENDENT CONTRACTOR.

7. Time is of the essence for this AGREEMENT. INDEPENDENT CONTRACTOR acknowledges that all time limits stated in this AGREEMENT and in the Project Schedule are of the utmost importance to DISTRICT.

8. DISTRICT shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues, or profits relating to the same arising from any claim relating directly or indirectly to this AGREEMENT whether a claim for such damages is based on warranty, contract or tort (including, without limitation, negligence or strict liability) even if the PARTIES are advised of the likelihood or possibility of the same.

9. INDEPENDENT CONTRACTOR's sole and exclusive remedy in the event INDEPENDENT CONTRACTOR makes any claim for breach of this AGREEMENT or seeks damages under any theory of law whether based on warranty, contract or tort, including without limitation, negligence or strict liability, shall be against DISTRICT and not its trustees, agent, or employees. No trustee, agent, or employee shall be sued or named as a party in any such suit or action, and no judgment shall be taken against any trustee, agent, or employee. No writ of

execution will be levied against the assets of any trustee, agents, or employee of DISTRICT pursuant to the terms of this AGREEMENT. The covenant and agreement contained in this section are enforceable by DISTRICT's trustees, agent, and employees.

10. The PARTIES to this AGREEMENT shall be excused from performance hereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by acts of God, fire, strike, lock-out, terrorism, commandeering of materials, products, plants, or facilities by the government. Satisfactory evidence shall be presented to DISTRICT or INDEPENDENT CONTRACTOR to establish that the non-performance is not due to the fault or neglect of the party not performing.

11. This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the PARTIES hereto.

12. If any provision of this AGREEMENT is held by an arbitrator to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force.

13. INDEPENDENT CONTRACTOR, if an employee of another public agency, agrees that INDEPENDENT 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.

14. INDEPENDENT CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, gender, sexual preference, or age of such persons.

15. The failure of DISTRICT or INDEPENDENT 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. In the event of any dispute, arbitration or litigation between the PARTIES hereto arising out of or relating in any manner to this AGREEMENT, including the necessity of either party to defend any action which has been covered hereby or to prosecute any action to enforce this AGREEMENT, the losing party shall pay all reasonable costs and expenses including reasonable attorneys' fees of the prevailing party and any judgment, decision, or award rendered against either of the PARTIES may specifically include such reasonable costs, expenses, and attorneys' fees of the prevailing party.

#### ARTICLE IX NOTICES

Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

**TO DISTRICT:**

\_\_\_\_\_ (College)  
Attn: Vice President Administrative Services  
\_\_\_\_\_  
\_\_\_\_\_ CA \_\_\_\_\_

Copy to: Coast Community College District  
Attn: Vice Chancellor Administrative Services  
1370 Adams Avenue  
Costa Mesa, CA 92626

**TO INDEPENDENT CONTRACTOR:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notices personally served or delivered by courier shall be effective when received. All notices sent by certified mail shall be effective forty-eight (48) hours after being deposited in the U.S. mail.

Each party shall make a reasonable, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph. A party may change its address for purposes of this paragraph by giving the other party written notice of a new address in the manner set forth above.

IN WITNESS WHEREOF, DISTRICT and INDEPENDENT CONTRACTOR have executed this AGREEMENT as of the date first written above.

**DISTRICT**

**INDEPENDENT CONTRACTOR**

\_\_\_\_\_  
President, Board of Trustees  
Coast Community College District

\_\_\_\_\_  
Company]\_\_\_\_\_  
Social Security No. \_\_\_\_\_  
License No.: \_\_\_\_\_  
Issued By State of:\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_