



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") is entered into this _____ day of _____ 20____ by and between **NAPA VALLEY COMMUNITY COLLEGE DISTRICT** (hereinafter "District") and _____ (hereinafter "Contractor").

Contract documents under this Agreement consist of the seven-page description of conditions and the nature of services to be provided, accompanied by authorized signatures of the parties and any other attached specifications, drawings, specific or general conditions, or attachments intended to be included in this Agreement.

1. General Conditions

A) Relationship of 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.

B) 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.

C) 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 Section 18, 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. 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) for high risk activities;
- ii. Comprehensive Automobile Liability Insurance (including owned, non-owned, and hired vehicles) with minimum limit of one million dollars per occurrence (\$1,000,000), and an aggregate amount of two million dollars (\$2,000,000) for high risk activities;
- iii. Workers' Compensation and Employers' Liability; statutory limits required by law;
- iv. Professional Liability Insurance with minimum of two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) per annual aggregate. Deductible not to exceed twenty five thousand dollars (\$25,000) each claim; and
- v. 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.

D) 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 Section 18 (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.

E) 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 Section 18 (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.

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 Napa.

6. Prohibition on Employing Any Convicted Felon

Contractor certifies that no employee or agent who has a record of conviction for a felony, or for any crime involving controlled substances, will be assigned to perform services under this Agreement unless District first receives notice from Contractor and District grants written permission under defined conditions.

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.** 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. **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.

10. **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.

11. Contractor Information

Contractor Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Business Phone: (_____) _____ - _____

Fax: (_____) _____ - _____

Home Phone: (_____) _____ - _____

E-mail: _____

Contractor Sole Proprietor: Yes (Y) or No (N) _____

Social Security Number (SSN) or Employer Identification Number (EIN) _____

Contractor must provide a W9

Are you a former employee of the District? Yes (Y) or No (N) _____

If yes, date last worked _____

Are you related to any employee(s) of the District? Yes (Y) or No (N) _____

If yes, please identify the individual(s) _____

Are you a California resident? Yes (Y) or No (N) _____

12. Payment for Services

In return for Contractor's satisfactory performance of the work per Section 18, District shall compensate Contractor the total sum **not to exceed** \$ _____, at a rate of \$ _____ per _____ (hour, day, month, 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.

13. District Obligations Other Than Payment (if any)

14. 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 shall be sent to District Contract Originator for approval. After approval, invoice will be sent to Accounting for processing.

Revised Payment Terms: _____

15. Other Conditions

- A) Payments to Contractor pursuant to this Agreement shall be reported to Federal and State taxing authorities as required by law.
- B) Except for projects of \$1,000 or less, if Contractor provides public project services (such as carpet laying, building alteration, demolition, or repair), Contractor shall pay all workers under this Agreement the applicable prevailing wages required under California Labor Code Sections 1770 through 1777.7.

16. 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.

17. Liquidated Damages for Delay

Time is of the essence of this Contract. If Contractor shall neglect, fail or refuse to complete its work by the date specified, then Contractor does hereby agree, as part of the consideration for the award of this Contract, to pay to District, as liquidated damages and not as penalty, the sum of \$_____ per day for each calendar day beyond the specified completion date the Contractor fails to complete the work. The parties agree to this arrangement due to the impracticability and difficulty in ascertaining the true value of the damages the District will incur as a result of such delay, and said sum per day is agreed to be a reasonable estimate of the amount of such damages which District will sustain. The parties further agree that such liquidated damages shall be deducted from any amounts owing to Contractor, and if such amounts owing are insufficient, the Contractor shall pay to District the amount of the difference.

18. Description of Services to be Rendered (attach additional detail as necessary)

Unless otherwise noted hereunder, Contractor, rather than the District, shall provide all necessary tools, equipment, parts and facilities to perform its work hereunder.

Contractor shall perform the following services:

19. Term of Agreement

The Term of the Agreement shall be from _____ day of _____ 20____ through _____ day of _____ 20____, subject to the provisions of Sections 8 and 9 of this Agreement. Contractor shall complete its work by _____ day of _____ 20____. Failure to complete the work by the aforementioned date shall potentially render Contractor liable for delay damages, or liquidated damages if provided for in this Agreement.

20. Signatures

CONTRACTOR

By: _____ Date: _____
Contractor Signature

Contractor Name (*please print*)

NAPA VALLEY COMMUNITY COLLEGE DISTRICT

By: _____ Date: _____
Vice President, Business and Finance

College/District Official Name (*please print*)

Purchase Requisition # _____