

District E#: \_\_\_\_\_

Agreement No. \_\_\_\_\_



3401 CSM Drive, San Mateo, California 94402

## Independent Contractor Agreement

District Office ☐Cañada College ☐College of San Mateo ☐Skyline College ☐If ASB Check: ☐If ASB check: ☐If ASB check: ☐

Division: \_\_\_\_\_

This Independent Contractor Agreement ("Agreement") between San Mateo County Community College District, a public educational agency ("District") and \_\_\_\_\_ ("Independent Contractor" or "IC") is effective upon the execution date of this Agreement by both Independent Contractor and District, whichever shall later occur. District and Independent Contractor are referred to in this Agreement individually as "Party" and collectively as "Parties."

Independent Contractor's Legal Name (as it appears in SSN Card): \_\_\_\_\_

G#: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_ ☐ Check if out-of-state. (Refer to section 11 for tax information)Is IC a Retired Annuitant or Former District Employee? (Refer to section 24) ☐ No ☐ YesIf YES Check ONE: PERS ☐ STRS ☐ (District Verification Completed: \_\_\_\_\_)  
(Initials/Date)

**WHEREAS**, District may contract with independent contractors for the furnishing of services to or for District or any of its Colleges or Departments; and

**WHEREAS**, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described; and

**WHEREAS**, Independent Contractor warrants and represents to District that Independent Contractor has the experience, expertise, 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.

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

**1. Exhibits and Attachments.** The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A — Scope of Services

Appendix 1 — Additional Terms and Conditions for Videographers and Photographers (if applicable)

Appendix 2 — Insurance Requirements for Use of Unmanned Aerial Systems (if applicable)

**2. 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 all labor, tools, materials, and equipment to complete the project described above in a skillful manner.

**3. Fees and Reimbursements.** IC will receive compensation in an amount not to exceed the hourly or project rates shown in Exhibit A for Services performed. Subject to IC's performance of its obligation to provide the District with the properly completed Internal Revenue Service (IRS) Form W-9 or other required reporting form, which is an express condition of District's obligations in this Section 3, District will pay IC all undisputed amounts owed within thirty (30) days of receipt of Independent Contractor's undisputed billing invoice. The District retains the right to increase or decrease the Services or amount of work as it deems appropriate and at its sole discretion.

**4. Term.** This Agreement will begin and will be completed by the dates specified in Exhibit A. Completion of the Services must be made to the satisfaction of the District.

**5. Expenses and Equipment.** IC is solely and fully responsible for all costs and expenses incident to the performance of the Services by IC, including any and all instrumentalities, supplies, tools, equipment, or materials

necessary to perform the Services. If the District furnishes any goods, materials, or equipment to IC, IC assumes complete liability for those goods, materials, or equipment. IC agrees to pay for such tools or materials spoiled by it or not otherwise accounted for to the District's satisfaction.

**6. Independent Contractor.** In the performance of this Agreement, IC shall act as an independent contractor. IC shall perform the Services and obligations under this Agreement according to the IC's own means and methods of work which shall be in the exclusive charge and under the control of IC, and which shall not be subject to control or supervision by the District except as to the results of the work. IC understands and agrees that he or she shall not be considered an officer, employee or agent of the District, and is not entitled to benefits of any kind or nature normally provided to employees of the District or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. IC is not authorized to make any representation, contract or commitment on behalf of the District.

**7. Hold Harmless and Indemnification.** To the fullest extent provided by law, IC shall indemnify, defend, and hold the District, its Board of Trustees, officers, agents, employees, and volunteers harmless against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses, including reasonable attorneys' fees, whether actual or alleged, arising from all acts or omissions arising from the actions or omissions of IC, including any claim that IC infringed a third party patent or copyright or other intellectual property right, unless the liability or claims arise from the District's gross negligence or willful misconduct. The provisions of this section shall survive the termination or expiration of this Agreement.

**8. Insurance.** The IC shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence. **IC's provision of insurance coverage shall in no way act as a limitation of IC's potential liability.**

**9. Assignment.** Independent Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of district, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.

**10. Modification.** This Agreement, including the attached attachments if any attachments are attached hereto and incorporated by reference, constitutes the entire Agreement by the parties and may be modified only by subsequent written agreement executed by both parties.

**11. Taxes.** IC agrees to provide the District with the properly completed Internal Revenue Service (IRS) Form W-9, or other required reporting form. IC acknowledges and agrees that it is the IC's sole responsibility to make the requisite tax filings and payment to the appropriate federal, state or local tax authorities. Unless otherwise required for non-residents, the District will not withhold any part of the IC's compensation for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation. IC agrees to indemnify, defend, and hold the District harmless from any tax consequences.

California Revenue and Tax Code Section 18662 and the related regulations (collectively "the code") may require withholding of income or franchise tax on payments of California source income made to nonresidents of this state. If IC is a nonresident, income from this Agreement is subject to seven percent (7.0%) withholding as mandated by the code and must provide the District with **California Form 587 Nonresident Income Allocation Worksheet** prior to beginning work on the Agreement. If IC is exempt from withholding, IC must provide District with **California Form 590 Withholding Exemption Certificate** prior to beginning work on the contract.

**12. Termination of Agreement.** The District may terminate this Agreement, in whole or in part, for its convenience at any time by written notice to IC not less than ten (10) days prior to the effective date of termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by IC under this Agreement shall become the property of the District and shall be promptly delivered to the District. In the event of termination, IC shall be paid for all work satisfactorily performed through the date of termination. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

**13. Protection of Confidential Information.** IC understands and acknowledges that during his or her performance of the Services, he or she 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, parents, guardians, faculty, employees, staff, alumni, or other personnel data or information and other District related trade secrets, business plans, and other proprietary information ("Confidential Information"). IC will not disclose, copy, or modify any Confidential Information without the prior written consent of the District or unless otherwise required by law. IC

will promptly notify the District if it becomes aware of any possible unauthorized disclosure or use of the Confidential Information. The provisions of this section shall survive the termination or expiration of this Agreement.

**14. Payment of Permits/Licenses.** It shall be the IC's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed at his/her own expense, prior to commencement of said work/services.

**15. Conflict of Interest and Prohibited Interests.** No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District. Additionally, no officer, employee, or any other agent of the District similarly authorized, shall be allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof. The District reserves the right, before any Agreement is made, to require an affidavit from the IC to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject any IC if any such conflict is discovered.

**16. Advertising:** IC 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's General Services Director (or designee) in each instance.

**17. Ownership of Intellectual Property.** The Services hereunder are work made for hire and District shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under this Agreement. IC assigns to District any and all rights IC 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. IC consents to the use of IC's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium. All copies of such Information in written, graphic or other tangible form shall be returned to the District upon termination of the Agreement. Information shall be kept confidential by Contractor, shall be used only in performing hereunder, and may be used for other purposes only upon prior written approval of District Executive Vice Chancellor or Designee.

**(check here if applicable)** \_\_\_\_\_ Notwithstanding the provisions of section 17 it is understood that IC is not producing works for hire as described in section 17. Therefore, section 17 does not apply to IC's copyrighted works, intellectual property or products provided by and used by IC in the course of providing the Services.

**17.a Photography, Videography. (check here if applicable)** \_\_\_\_\_ If products and services to be performed under this Agreement include photography and/or videography, Appendix 1, Additional Terms and Conditions, shall apply in place of Section 17.

**17.b Use of Unmanned Aerial Systems. (check here if applicable)** \_\_\_\_\_ If Contractor and its subcontractors will use Unmanned Aerial Systems (Drones) in the performance of this Agreement, Contractor and its subcontractors shall be subject to Appendix 2, Insurance Requirements for use of Unmanned Aerial Systems (Drones).

**18. Non-Discrimination/Compliance with District Rules.** IC agrees that he/she will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any person, on the basis of 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 and Housing Act, beginning with Government Code Section 12940. IC also agrees to comply with the District's Board Policies and Administrative Procedures.

**19. Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the District or IC. Any legal proceedings brought to interpret or enforce the terms of this Agreement, shall be brought in San Mateo County, California.

**20. Disputes.** Except in the event of the District's failure to make earned and undisputed payments to IC, if the District and IC have a dispute, each will continue to perform its respective obligations, including IC's duty to provide and perform the Services, during all attempts to resolve the dispute.

**21. Limitation of Liability.** The District's financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement and Exhibit A. 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 in connection with this Agreement.

**22. Authorized to Work.** IC agrees and represents that he or she is legally authorized to work in the United States, as required under federal immigration laws.

**23. Force Majeure.** Neither party shall be responsible for performance of their respective obligations under this contract in the event of delays or failure in performance resulting from acts beyond the control of such parties. Such acts shall include, but not be limited to, Acts of God, labor disputes, civil disruptions, acts of war, pandemics, epidemics, fire, electrical power outages, earthquakes or other natural disasters.

**24. Disclaimer for Retirees from STRS or PERS.** If IC is a retired annuitant through STRS or PERS, ICs pension or retirement allowance may be impacted based upon service to the District as an independent contractor. IC understands and agrees that it is IC's responsibility to contact IC's retirement system to determine this impact of providing services to the District as an independent contractor. IC warrants and agrees that District is not responsible for the loss or diminution of the IC's retirement benefits based on IC's receipt of money pursuant to this Agreement.

**25. Counterparts and Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all which together shall constitute one and the same instrument. Both District and IC wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California Law. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing written notice pursuant to this Agreement.

**26. Entire Agreement.** This Agreement, including all exhibits and attachments, constitute the sole entire Agreement and understanding between the District and IC concerning their subject matter. It replaces and supersedes all prior agreements or negotiations, whether written or verbal. It may not be modified except in a writing signed by both Parties.

**IC Legal Name:**

*AGREEMENT OF INDEPENDENT CONTRACTOR: By signing below, I agree to perform the services described in this Agreement for the payment indicated. I understand that while performing Agreement services I am not an employee of the San Mateo County Community College District because:*

- 1. I follow an independent trade or profession,*
- 2. I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service, and*
- 3. I customarily perform work that is outside the usual course of the DISTRICT'S business, and operate my business offering the same type of services to other clients as being offered to the District.*

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT**

Signature

District Authorized Signature

(Print) Name

Yanely Pulido, Director of General Services

Date

Date

DEPARTMENT USE ONLY					
<b>ORIGINATOR:</b> _____				<b>Date:</b> _____ <b>Extension:</b> _____	
<b>FOAP:</b>	<b>F</b>	<b>O</b>	<b>A</b>	<b>P</b>	<b>Amount:</b> _____
<b>FOAP:</b>	<b>F</b>	<b>O</b>	<b>A</b>	<b>P</b>	<b>Amount:</b> _____
<b>FOAP:</b>	<b>F</b>	<b>O</b>	<b>A</b>	<b>P</b>	<b>Amount:</b> _____
<b>FOAP:</b>	<b>F</b>	<b>O</b>	<b>A</b>	<b>P</b>	<b>Amount:</b> _____
<b><u>OTHER APPROVALS:</u></b>					
<b>Department Administrator Signature</b>			<b>VP, Admin Services Signature</b>		
<b>Date</b>			<b>Date</b>		
<b>Print Name:</b> _____			<b>Print Name:</b> _____		
<b>Exec. Director/Bus. Officer Signature</b>			<b>Date</b>		
<b>Print Name:</b> _____					

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. **Project Description:**

2. **Scope of Work/Description of Services Provided:**

3. **Contract Term:** Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

4. **District Point of Contact:**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

5. **Rate of Payment:**

Hourly rate (if applicable): \$ \_\_\_\_\_ per hour

Estimated hours required for completion: x \_\_\_\_\_ hours = \$ \_\_\_\_\_

**OR**

Lump sum upon completion of all Services: \$ \_\_\_\_\_

Other cost factors:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**Total Cost of Services Not to Exceed:** \$ \_\_\_\_\_

6. **Method of Payment:** IC requests for payment to be sent:

- ☐ Single payment, upon successful completion of project and District's receipt of deliverables.
- ☐ Multiple payments. Payments will be made as follows:

IC may bill for reimbursable expenses incurred only in connection with the Scope of Services. Authorized reimbursables shall be billed by IC to the District at cost. Expenses must be supported with documentation that includes but is not limited to receipts, invoices, etc., which clearly associate the expense with this scope of services.

Services shall be billed to "San Mateo County Community College District" and become payable after: (1) IC's performance of its obligation to provide the District with the properly completed Internal Revenue Service (IRS) Form W-9 or other required reporting form; and (2) IC's satisfactory completion of services and upon presentation of detailed invoice(s) specifying services being provided. All invoices must be reviewed and approved by assigned District Point of Contact(s) prior to payment being made to Contractor. Contractor will submit invoices with original receipts (if applicable) to: SMCCCD, Accounts Payable Office, 3401 CSM Drive, San Mateo, CA 94402.