



BAKERSFIELD COLLEGE FOUNDATION
AGREEMENT WITH INDEPENDENT CONTRACTOR (For Non-Public Works Services)

This Agreement is entered into by and between the Bakersfield College Foundation, ("Foundation"), and

_____, ("Contractor"), identified under social security number/taxpayer identification number _____, with its principal place of business / office(s) located at _____.

1. TERM OF AGREEMENT / DATE(S) of SERVICE(S): _____.

2. SERVICES TO BE PERFORMED: In consideration of the payment outlined in Paragraph 3 below, during the Term of Agreement / Date(s) of Service(s), Contractor agrees to perform services and, if applicable, provide materials and equipment to the Foundation (hereinafter "Services"), as described below:

It is understood and agreed that in the event any additional tasks or services are required from Contractor, prior to rendering any such tasks, the tasks shall be set forth in a writing duly signed by the parties, indicating the specific work to be accomplished, the approximate period of time over which performance will be completed, and the additional compensation, if any, to be paid for such additional tasks.

3. COMPENSATION: In consideration of the Services fully rendered to Foundation as described above, Foundation agrees to pay Contractor a total fee of \$ _____. The Foundation will make reasonable good faith efforts to pay all compensation due to Contractor within thirty (30) days of completion of Contractor's Services pursuant to this Agreement and the District's receipt of a properly completed invoice from Contractor for Services rendered. Contractor further agrees that the Foundation will not have any liability whatsoever as to any work or expense not specifically documented in this Agreement and properly invoiced by Contractor to Foundation within sixty (60) days of completion of Services.

Other Consideration/Notes: _____

Office Use Only. To be completed by Initiator-(Required): Foundation Fund to be used for this expense _____
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4. REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants that possesses the skill, knowledge, expertise, and, as applicable, holds current license(s), certification(s) or educational credentials, as required under the laws of the State of California and in accordance with Foundation policies and regulations, to fully perform the services required by this Agreement. Contractor represents that he/she/it has read and understands the terms and conditions of this Agreement.

5. NON-EMPLOYEE / INDEPENDENT CONTRACTOR STATUS: During the Term of this Agreement or Date(s) of Service(s), Contractor's Services for the Foundation shall be rendered as an Independent Contractor. This Agreement is not intended, nor shall it be construed so as, to create the relationship of agent, employee, partnership, joint venture or association, or representative of the other for any purpose, or to imply any other relationship whatsoever between Contractor and Foundation, except

as set forth in this Agreement. Neither party is granted any expressed or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever. Please mark whichever is applicable:

Contractor agrees that Contractor is free from control and direction of the Foundation; performs work that is outside the usual course of Foundation's business; and is customarily engaged in an independently established trade, occupation or business of the same nature as the Services Contractor will perform for Foundation under this Agreement.

OR

Contractor is performing one of the following services: marketing, human resources administration, travel agent, graphic designer, grant writer, fine artist, freelance writer, photographer, photojournalist, or cosmetologist. Contractor maintains a business location, which may include the Contractor's residence that is separate from the Foundation's business locations. Contractor has a business license, in addition to any required professional licenses or permits for the Contractor to practice in their profession. Aside from project completion dates and reasonable business hours, the Contractor has the ability to set his/her own hours. Contractor is customarily engaged in the same type of Services for other entities and is available to perform the same type of Services as those performed pursuant to this Agreement for other potential customers. Contractor customarily and regularly exercises discretion and independent judgment in the performance of the Services.

6. RESPONSIBILITY FOR PAYMENT OF WAGES: Contractor shall be solely responsible for paying all salaries, wages, benefits and other compensation which the Contractor's employees or consultants, if any, may be entitled to receive in connection with Contractor's Services pursuant to this Agreement, including, without limitation, withholding and paying all applicable payroll taxes and contributions, including federal, state and local income taxes, FICA, FUTA, and state unemployment, workers' compensation and disability insurance. Nothing contained in this Agreement will confer upon the Contractor any right to continue to render Services to the Foundation, or to become employed by the Foundation. The Foundation and Contractor acknowledge that Contractor's Services pursuant to this Agreement are non-exclusive and Contractor is free to accept other work.

7. INDEMNIFICATION: Contractor agrees to indemnify, defend, and hold harmless, the Foundation (and its officers, employees, trustees, agents, successors and assigns) from and against all claims, suits, expenses (including reasonable attorney's fees), losses, penalties, fines, costs and liability whether in contract, tort or strict liability (including, but not limited to, personal injury, death at any time, and property damage), arising out of or made necessary by Contractor's performance of this Agreement, breach of its terms, negligent acts or omissions, including as may arise resulting from Contractor's failure to make payments to Contractor's employees or consultants, if any, or self-employment taxes.

8. INSURANCE REQUIREMENTS: Unless otherwise specifically agreed to in writing in advance of execution of this Agreement, Contractor agrees to obtain, pay for and maintain in effect during the Term of this Agreement or Date(s) of Service(s), the following policies of insurance issued by an insurance company rated not less than "A-VI" in A.M. Best's Insurance Rating Guide:

(i) Commercial General Liability insurance (including contractual, products and completed operations coverage, bodily injury and property damage liability insurance) with single combined limits of not less than \$1,000,000 per occurrence;

(ii) Commercial Automobile Liability insurance for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence;

(iii) Professional Liability insurance (also known as "Errors and Omissions" insurance) with a limit of liability of not less than \$1,000,000 per occurrence; and

(iv) Worker's Compensation and State Disability insurance as required under law.

Each policy shall contain an endorsement naming the Kern Community College Foundation as an additional

named insured insofar as this Agreement is concerned, and provide that written notice shall be given to the Foundation at least thirty (30) days prior to cancellation or material change in the form of the policy or reduction in coverage. Prior to rendering Services pursuant to this Agreement, and at Contractor's expense, Contractor shall furnish the Foundation with a Certificate of Insurance evidencing the endorsements required above, and the Foundation shall have the right to inspect the Contractor's original insurance policies upon request. Upon notification of a notice of cancellation, change or reduction in coverage, Contractor shall immediately file with the Foundation a certified copy of the required new or renewal policy and certificates for such policy. Nothing in this agreement concerning minimum insurance requirements shall reduce the Contractor's liabilities or obligations under the indemnification provisions of this Agreement.

9. CONFIDENTIALITY: Contractor acknowledges:

- a. Foundation may disclose to Contractor certain confidential information relating to, without limitation, the Foundation's past, present, and future research, marketing, development, or business activities ("Confidential Information"). Except as required by the duties under this Agreement, Contractor agrees that, until such time as the Confidential Information enters the public domain through no fault of Contractor, Contractor will never, directly or indirectly, use, disseminate, disclose, lecture upon, or publish articles concerning any of the Confidential Information disclosed to Contractor by or on behalf of Foundation without the prior written consent of Foundation. Such confidentiality shall survive the termination of this Agreement and will only be relieved by written consent of Foundation.
- b. Upon expiration or termination of the Agreement or Contractor's performance pursuant to this Agreement, Contractor agrees to return to Foundation all copies of Confidential information, all drawings, documents, records, notebooks, disks, tapes, data residing or recorded in electronic media, and all other representations of confidential information, whether prepared by Foundation, Contractor or others.

10. PROPRIETARY RIGHTS/OWNERSHIP:

- a. All work accomplished pursuant to this Agreement, tangible and intangible, will be the sole and exclusive property of Foundation; and in addition to the obligations imposed above, Contractor will deliver all such work to Foundation prior to expiration or termination of this Agreement or Contractor's performance pursuant to this Agreement.
- b. Contractor agrees that all copyrightable material, inventions, improvements, developments and discoveries conceived, made, discovered or reduced to practice by Contractor solely, or in collaboration with others, during the period of this Agreement (i) relating in any manner to the business, research or development of Foundation that Contractor may be directed to undertake, or
(ii) which Contractor may become associated within work or in performing the services pursuant to this Agreement, or (iii) which are developed by Contractor using any supplies, facilities or Confidential Information of Foundation are the sole property of Foundation, and Contractor further agrees to grant to Foundation any and all right, title and interest, of any kind or of all such copyrightable material, inventions, improvements, developments, and discoveries.
- c. Contractor assigns to the Foundation any and all rights Contractor could have, may have, or does have, in the work or work product performed under this Agreement, and the Foundation shall have all right, title, and interest in the name of the Foundation and pursuant to Education Code section 72207. Contractor consents to the use of Contractor's name in conjunction with the sale, use, performance, and distribution of the works for any purpose and in any medium. If Contractor desires to make use of any such Foundation work for any purpose not related to this agreement, Contractor must first secure prior written consent of Foundation for work for such use. All copies of such Information in written, graphic or other tangible form shall be returned to the Foundation upon termination of the Agreement. Information shall be kept confidential by Contractor, shall be used only in performing pursuant to this Agreement, and may be used for other purposes only

upon prior written approval of the Chancellor or Designee.

11. **GOVERNING LAW:** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules, and in accordance to Foundation's policies and regulations, including, but not limited to, Section 3A15 of the Foundation's Board Policy, as follows:

"3A15 Claims against the Bakersfield College Foundation:

3A15A *Any claims against the Foundation for money or damages, which are not governed by any other statutes or regulations expressly relating thereto, shall be presented and acted upon in accordance with Title 1, Division 3.6, Part 3, Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of the California Government Code.*

3A15B *Claims must be presented according to this policy as a prerequisite for filing suit against the Foundation. Claims that are subject to the requirements of this policy include, but are not limited to, the following:*

3A15B1 *Claims by public entities, claims by the state department or agency, or by another public entity.*

3A15B2 *Claims for fees, salaries or wages, mileage or other expenses and allowances*

3A15C *The designated place for service of claims, lawsuits or other types of legal process upon the Foundation is:*

*The Office of the General
Counsel 2100 Chester Avenue
Bakersfield, California 93301
(661) 336-5040*

12. **TERMINATION / NOTICES:** This Agreement may be terminated by either party with or without cause and for any or no reason upon (30) days' written notice to the other party addressed as follows:

If to Contractor, notice will be addressed to:
Name: _____
Address: _____
City/State/Zip: _____

If to Foundation, notice will be addressed to:
Bakersfield College Foundation
c/o: Cheryl M. Scott, Executive Director
1801 Panorama Dr, Bakersfield, CA 93305

or to such other address as may be designated by the parties from time to time. Any written notice sent by registered U.S. mail and addressed in accordance with this section will be deemed to have been made and delivered seven (7) days following deposit into the U.S. mail. Contractor's obligations pursuant to this Agreement shall survive the termination of this Agreement.

13. DISCLAIMER FOR RETIREES FROM STRS or PERS: If a Contractor is a retired annuitant through STRS or PERS, Contractor's pension or retirement allowance may be impacted based upon service to the Foundation as an independent contractor. Contractor understands it is his or her responsibility to contact his or her retirement system to determine the impact of providing Services to the Foundation as an independent contractor. Contractor agrees that the Foundation can in no way be responsible for the loss or diminution of the Contractor's retirement benefits based on the receipt of payment pursuant to this Agreement.

14. NON-DISCRIMINATION/COMPLIANCE WITH FOUNDATION RULES: Contractor agrees that he/she/it 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. Contractor also agrees to comply with the Board Policies and Administrative Procedures of the Foundation.

15. SEVERABILITY: If any section, condition, provision, or covenant of this Agreement is held to be invalid or unenforceable, either in itself or as to any particular party, the remainder of this Agreement will continue to be in force unless it would be inequitable and inconsistent with the purpose of the Agreement to continue to do so.

16. ASSIGNMENT: Neither party may assign any rights, or transfer any obligations, under this Agreement, without the prior written agreement of the parties.

17. ENTIRE AGREEMENT: This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended, modified, revised or supplemented in any way, except in a writing signed by Contractor and Foundation.

18. FORCE MAJURE: 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, epidemics, fire, electrical power outages, earthquakes or other natural disasters.

19. FEMA CLAUSES: Foundation has received or may seek funding for this Agreement from the Emergency Management Agency (FEMA). **FEMA Provisions Attachment A is only required if using FEMA funding.** If required, complete the FEMA Provisions Attachment A, in order to comply with federal requirements for such funding clauses in Attachment A to this Agreement are incorporated into this Agreement as if fully set forth herein.

AGREED TO AND ACCEPTED:

CONTRACTOR:

Signature: _____ **Date:** _____

Print Name: _____

The following signatures provide authorization for the use of this hiring category.

CAMPUS REPRESENTATIVES:

Initiator (College representative with authority to initiate the request for engagement for Services to be rendered pursuant to this Agreement):

Signature: _____ **Date:** _____

Print Name: _____

Authorized Signer of Foundation Fund (Directors, Deans, V.P., etc with approval authority):

Signature: _____ **Date:** _____

CAMPUS REPRESENTATIVES:

Foundation Treasurer:

Signature: _____ **Date:** _____

Campus Director of Human Resources:

Signature: _____ **Date:** _____

BAKERSFIELD COLLEGE FOUNDATION REPRESENTATIVE:

BC Foundation Executive Director:

Signature: _____ **Date:** _____
Cheryl M. Scott, Executive Director



INDEPENDENT CONTRACTOR CHECKLIST

Name of Contractor: _____

Total \$ Amount of Contract: _____ **Source of Funds:** _____

Site: District BC CC PC

The purpose of this checklist is to assist in the determination of employee or independent contractor status. Federal and State law places the burden of proof on the employer to show that an independent contractor relationship exists.

Please answer the following questions:

Step	Description	Yes	No	ICA vs EE
1.	Is the Independent Contractor a government agency, an agency registered as a LLC, LLP, Corporation (C-Corp, S-Corp)			If YES: Independent Contractor Agreement If NO: Go to step 2
2.	Is the Independent Contractor engaged in an exempt occupation including, among others, lawyer, architect, engineer, private investigator, fine artists (performing artist/musicians/vocalist and single event performers), certain licensed health-care professionals, marketing (original and creative content), travel agent services, graphic design, still photographer, photojournalist, freelance writer, editor, tutoring, event vendor, interpreting services, workers providing licensed barber, esthetician or cosmetology services and others performing work under a contract for professional services with another business entity or pursuant to a subcontract in the construction industry. "Sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.			If YES: Independent Contractor Agreement If NO: Go to step 3
3.	ABC test in which a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless all of the following conditions are satisfied: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity's business. (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.			If NO: Contact your campus Human Resources Department for further assistance

Campus Director of Human Resources (signature) (printed name)

Date: _____

BAKERSFIELD COLLEGE FOUNDATION

CONSENT FORM GENERAL RELEASE AND WAIVER OF LIABILITY

PARTICIPANT NAME: _____

EVENT DATE: _____

This is a legally binding Consent Form and General Release and Waiver of Liability made voluntarily by me, the undersigned Releasor, on my behalf, and on behalf of my heirs, executors, administrators, legal representatives and assigns (“I”, “Me”, “Undersigned”, “Releasor”) to the Bakersfield College Foundation, its Board of Trustees and its members individually, its officers, executives, directors, faculty, staff, administrators, employees, agents, and representatives of any, including with respect to each of its campuses and educational centers (hereinafter “Foundation”).

The undersigned hereby acknowledges that participation in the above named event may involve potential risk to the undersigned, and the undersigned assumes any and all such risks. The undersigned hereby agrees that for the sole consideration of Foundation allowing the undersigned to participate in this event for which or in connection with which the Foundation has made available any equipment, facilities, services, grounds or personnel for such programs or activities relating to the event, the undersigned does hereby fully release and forever discharge the Foundation, including any self-insurance funds of the Foundation, from any and all claims, demands, rights and causes of action of whatever kind or nature, arising from or by reason of any and all known and unknown, present and future, foreseen and unforeseen, anticipated or unanticipated, bodily and personal injuries, damage to property, and the consequence(s) thereof, resulting from the undersigned’s participation or involvement in or in way connected with the above named event and/or activity.

In an emergency, I acknowledge that I am solely responsible for all medical and other costs arising out of bodily injury or any loss sustained through participating in this event. I authorize program staff to secure any licensed hospital, physician and/or medical personnel and any treatment deemed necessary for the undersigned’s immediate care.

By the execution of this Consent Form and General Release and Waiver of Liability, the undersigned accepts full responsibility for any and all injuries, damages, and losses of any type, which may occur to the undersigned and I hereby fully release and forever discharge, the Foundation, its Board of Trustees and its members individually, its officers, executives, directors, faculty, staff, administrators, employees, agents, and representatives of any, including with respect to each of its campuses and educational centers.

I further understand that the acceptance of this Consent Form and General Release and Waiver of Liability by the Foundation shall not constitute a waiver in whole or in part of sovereign immunity by the Foundation.

The undersigned has read the above carefully before signing and understands and agrees that this Consent Form and General Release and Waiver of Liability shall be in effect for a period of time for the dates listed above.

Signature

Date

Signature of Parent/Guardian (if under 18): _____

(Please Print)
IN CASE OF EMERGENCY NOTIFY

NAME: _____

ADDRESS: _____

PHONE: _____

CELL PHONE: _____