

INDEPENDENT CONTRACT AGREEMENT

Contract for IT Services of Independent Contractors

A contract between the Board of Regents of the Nevada System of Higher Education on behalf of Truckee Meadows Community College hereinafter referred to as TMCC, and _____, hereinafter referred to as "Contractor."

1. Does Nevada System of Higher Education (NSHE) pay others, as employees, who perform the same duties that are to be performed by this independent contractor? Yes No
2. Is the recommended Independent Contractor a current or former (during the past 24 months) employee of the State of Nevada or NSHE (which includes College of Southern Nevada, Desert Research Institute, Great Basin College, Nevada State College, Truckee Meadows Community College, UNLV, UNR, Western Nevada College, or any NSHE System Administration Offices)? Yes No

If the answer to question 2 is "Yes", do NOT proceed with this form. Process the payment on an employment document. For current or former state employees, contact Controllers for instructions.

3. Is the recommended Independent Contractor related to an NSHE employee? Yes No
4. Is the recommended Independent Contractor a U.S. citizen or lawful permanent resident (green card holder)? Yes No

If the answer to question 3 is "Yes", do NOT proceed with this form. Under the Board of Regents Conflict of Interest Policy (BOR Title 4 Chapter 10) payment is not allowed unless authorized by the institution's President under B/R Handbook, Title 4, Chapter 10, Section 1(7)(b).

If "No", contact the Nonresident Alien Tax Specialist at nra@unr.edu or (775) 784-1404 for additional documentation requirements and approval of Section VII.

PREAMBLE

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage the services of persons as independent contractors; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of TMCC; and

WHEREAS, Contractor represents that it is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereto mutually agree as follows:

1. This contract shall be effective from _____ to _____ unless sooner terminated by either party as set forth in Paragraph (2).
2. This contract may be terminated without cause by either party prior to the end of the term set forth in Paragraph (1) provided that a termination shall not be effective until _____ days after a party has served written notice of termination upon the other party.

3. The parties agree that the services to be performed are as follows:

[Specifically describe in this space the services to be performed; or, when appropriate, describe in this space the finished product or result to be provided; or attach an exhibit or exhibits containing this information, label the exhibit or exhibits as Exhibit A, Exhibit B, etc., and then place the following statement in this space]:

See Exhibit A (or B, etc.) attached hereto and which is made a part of this contract by reference thereto.

[Alternate Paragraphs No. 4 - Choose Only One]

4. Contractor agrees to: *[Choose Only One]*

Provide the services set forth in Paragraph (3) for a total cost not to exceed _____, which cost includes travel and all other expenses incurred by Contractor in performance of this contract.

TMCC agrees to pay Contractor in installments as follows: _____

OR

Provide the services set forth in Paragraph (3) at a cost of _____ per _____ (here set forth the hourly, daily, etc. rate at which the contractor agrees to perform the services exclusive of travel expenses) with the total cost not to exceed _____.

TMCC agrees does not agree to reimburse Contractor for travel expenses reasonably incurred in the performance of this contract plus a per diem allowance of _____ per day while on travel status in performance hereof.

TMCC agrees to pay Contractor in installments as follows: _____

5. The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this contract. Any and all disputes arising out of or in connection with the contract shall be litigated only in the Second Judicial District Court in and for the County of Washoe, State of Nevada, and Contractor hereby expressly consents to the jurisdiction of said court.

6. The Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this agreement without the prior written consent of TMCC.

7. The books, records, documents, and accounting procedures and practices of the Contractor relevant to this agreement shall be subject to inspection, examination, and audit TMCC.

8. Any reports, studies, photographs, negatives, computer discs, or other documents or drawings prepared by Contractor in the performance of its obligations under this agreement shall be the exclusive property of TMCC and all such materials, if any, shall be remitted to TMCC by Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials, if any, used for any purpose other than the performance of Contractor's obligations under this agreement without the prior written consent of TMCC.
9. Contractor agrees to indemnify and save and hold harmless the Board of Regents of the Nevada System of Higher Education, the Nevada System of Higher Education on behalf of Truckee Meadows Community College, their agents, officers, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this agreement by Contractor or Contractor's agents, officers, or employees.
10. Insurance Coverage: Contractor shall, at Contractor's sole expense, procure, maintain, and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by TMCC, the required insurance shall be in effect on or prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:
 - a. Final acceptance by TMCC of the completion of this contract; or
 - b. Such time as the insurance is no longer required TMCC under the terms of this contract.

Any insurance or self-insurance available to TMCC shall be in excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by TMCC, Contractor shall provide TMCC with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify TMCC and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

Workers' Compensation and Employer's Liability Insurance

Contractor shall provide proof of workers' compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada, by employees who do not live and work in Nevada, proof of applicable statutory state's workers' compensation insurance must be provided

Employer's Liability

- a. Minimum limits required:
\$100,000 Per accident or disease

Commercial General Liability Insurance

- a. Minimum limits required:
\$2,000,000 General Aggregate
\$1,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Each Occurrence to include bodily injury and property damage
- b. Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.

Business Automobile Liability Insurance

- a. Minimum limit required: \$1,000,000 Each Occurrence.
- b. \$5,000,000 Each occurrence for charter services.
- c. Coverage shall include owned, non-owned, and hired vehicles.

Professional Liability/Errors & Omissions Insurance

Professional liability insurance is required only if the Contractor is performing work of a professional nature.

- a. Minimum limit required: \$1,000,000 per Claim
- b. Minimum limit required: \$3,000,000 Annual Aggregate
- c. Retroactive date: Prior to commencement of the performance of this contract.
- d. Discovery period: Three (3) years after termination date of contract.

Umbrella or Excess Liability Insurance

- a. May be used to achieve the above minimum liability limits.
- b. Shall be endorsed to state it is "As Broad as Primary Policies."

Network Security (Cyber) and Privacy Liability

- a. \$5,000,000 Each Claim
\$5,000,000 Annual Aggregate
- b. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information., direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.
- c. The retroactive coverage date shall be no later than the effective date of the contract.
- d. Contractor shall maintain an extended reporting period for not less than three (3) years after termination of this contract.

Fidelity Bond or Crime Insurance

- a. \$1,000,000 Bond of Policy Limit
- b. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The bond or policy shall include coverage for third party fidelity and name the Nevada System of Higher Education as loss payee.
- d. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- e. The bond or policy shall not contain a condition requiring an arrest and conviction.
- f. Policies shall be endorsed to provide coverage for computer crime/fraud.

Performance Security

- a. Security may be in the form of surety bond; Certificate of Deposit or Treasury Note (payable to the NSHE only).
- b. Vendors submitting performance security to the NSHE in the form a surety bond must utilize a company that meets the below listed requirements:
 - i. A.M. Best A- rated insurance company
 - ii. Certified by the Department of Treasury, Financial Management Services for Nevada
 - iii. Licensed by the Nevada Department of Business and Industry, Insurance Division
- c. The security shall be deposited with the contracting Department no later than ten (10) working days following award of the Contract to Contractor.
- d. Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

Additional Insurance Requirements

The insurance policies required pursuant to this contract shall include, or be endorsed to include, the following provisions:

- a. On insurance policies where the NSHE is named as an additional insured, the NSHE shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- b. The Contractor's insurance coverage shall be primary insurance and noncontributory with respect to all other available sources.

Technology Errors and Omissions/Cyber Liability

Required when services include software/financial programs.

- a. Minimum limits required:
\$5,000,000 Per claim
\$5,000,000 Per aggregate
- b. The retroactive coverage date shall be no later than the effective date of the contract.
- c. Contractor shall maintain and extend reporting period for not less than three (3) years after termination of this contract.

General Requirements

- a. Additional Insured: The Accord form certificate of insurance (or equivalent) to evidence insurance policies and coverage required by this Contract. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Contract is a material breach of contract.
- b. Waiver of Subrogation: Each liability insurance policy, including workers' compensation, shall provide for waiver of subrogation against Truckee Meadows Community College.
- c. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to TMCC. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by NSHE or institution's Risk Manager.
- d. Approved Insurer: Each insurance policy shall be:
 - i) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
 - ii) Currently rated by A.M. Best not less than A-.

Evidence of Insurance

Prior to the start of any work, Contractor must provide the following documents to TMCC:

- a. Certificate of Insurance: The Accord form certificate of insurance (or equivalent) to evidence insurance policies and coverage required by this Contract. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Contract is a material breach of contract.
- b. Additional Insured Endorsement: An original Additional Insured Endorsement using the applicable ISO endorsement CG form, signed by an authorized insurance company representative, must be submitted TMCC, by attachment to the Certificate of Insurance, to evidence the endorsement of TMCC as additional insured.
- c. Notice of Cancellation: Should any of the insurance policies required by the insurance provisions of this Contract be suspended, voided, or cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

11. Access: Contractor agrees to provide TMCC and its insurer access and authority to investigate on site and to obtain such information from Contractor as may be required to defend TMCC and its officers or employees from claims or litigation arising from activities under this contract.
12. The parties agree that Contractor is an independent contractor and that this contract is entered into in accordance with NRS 333.700, which statute in pertinent part provides that the contractor is not an employee of TMCC, and:

There shall be no:

- (1) Withholding of income taxes by TMCC;
- (2) Workers' compensation insurance provided by TMCC;
- (3) Participation in group insurance plans which may be available to employees of TMCC;
- (4) Participation or contributions by either the Contractor or TMCC to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave;
- (6) Unemployment compensation coverage provided by TMCC if the requirements of NRS 612.085 for independent contractors are met.

It is further agreed that Contractor is not an employee of TMCC and is not entitled to any of the compensation, benefits, rights, or privileges of employees of TMCC.

13. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.
14. Written notices required under this contract shall be sent certified mail, return receipt requested, to:

Contractor:

TMCC: Truckee Meadows Community College
7000 Dandini Blvd.
Reno, NV 89512

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this contract

DATED this ____ day of _____ 20____

BOARD OF REGENTS OF THE NEVADA SYSTEM OF
HIGHER EDUCATION

on behalf of Truckee Meadows Community College

By: _____
(Signature)

By: _____
(Signature)

