



INDEPENDENT CONTRACTOR AGREEMENT
FOR TRANSACTIONS \$5,000 AND ABOVE

This agreement is entered into by and between the Lone Star College System ("LSCS"), and _____ ("Contractor"). The purpose of this Agreement is to: _____

_____ to be performed at: _____ for LSCS. In performing services under this Agreement, Contractor shall be deemed an independent contractor and shall not be an agent or employee of LSCS. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the services described. Contractor shall observe and abide by all applicable laws, regulations, policies, and procedures, including but not limited to, those of LSCS relative to conduct on its premises.

Contractor agrees to perform the services with that standard of professional care, skill and diligence normally provided in the performance of similar services. It is understood that during the performance of services that Contractor will not be eligible for benefits.

1. **Term.** This Agreement will commence on _____ and end _____. Either party may terminate this Agreement with 10 days written notice to the other party.

2. **Consideration:** LSCS will compensate Contractor at the rate of \$_____ per _____, not to exceed a total of \$_____ which includes all expenses. Contractor shall submit detailed invoices describing the services rendered, the person or persons rendering such services, the charges therefore, the times when such services were performed, compensable expenses and the amount due. LSCS will make payment within 45 days of receipt of such invoices.

3. **Proprietary Information:**

- a. Contractor shall maintain the confidentiality of all proprietary information provided to it by LSCS. Information in the public domain or otherwise obtained independently by Contractor shall not be considered as confidential.
- b. Any programs, data or other materials furnished by LSCS for use by Contractor in connection with the services performed under this Agreement shall remain the sole property of the College.

4. **Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless LSCS, its agents, employees, officers, trustees, administrators component institutions, successors and assigns from and against all claims, injuries, damages, losses, costs, expenses and liability, including but not limited to reasonable attorneys' fees, whether arising before, during or after completion of Contractor's work, caused by or arising out of or resulting from performance of work, or whatever nature, provided that any such claim, damage loss or expense, (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any act or omission by Contractor, and subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to that extent, proportion or degree that the claims, damages, losses and expenses are attributable to the act or omission of Contractor or its subcontractors.

5. **Insurance.** Prior to commencing performance, Contractor shall secure, and maintain in force until final acceptance of the project, the following kinds of insurance in the following amounts:

<u>TYPE OF COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers Compensation	Statutory Limit-State of Texas (if Contractor is using its employees under this contract)
Employer's Liability	\$500,000 Ea. Accident (if Contractor is using its employees under this contract)
Commercial General Liability	\$1,000,000 Ea Occurrence/ \$2,000,000 Aggregate
Commercial Auto Liability	\$1,000,000 Combined Single Limit
Professional Liability	\$1,000,000 (if applicable)
Umbrella Coverage	When contract amount exceeds \$5,000,000: Excess or Umbrella Policy of \$5,000,000.

LSCS shall, with the exception of Workers Compensation, Employers Liability and Professional Liability, be named as an Additional Insured under each of the above policies. For Workers Compensation LSCS shall be covered by an Alternate Employer Endorsement. Contractor and each of its insurers agree to provide a complete waiver of subrogation against LSCS. Certificates of Insurance evidencing the proper coverage must be provided and accepted by the College prior to the start of work and any change in coverage must be reported 30 days prior to taking effect. The insurance carrier must be an "A VIII" rated carrier or greater. Contractor's policy must also state that it is primary over any other available insurance that it may carry.

Contractor agrees that all work on the project pursuant to this Contract shall be at Contractor's exclusive risk until final and complete acceptance thereof by LSCS, and in case of any loss or damage thereto, in whole or in part, prior to such acceptance, however caused, such loss and/or damage shall be borne by Contractor.

6. Alternative Dispute Resolution:

- a. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by LSCS and Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.
 - i. A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B of the Gov. Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to [for the System, the Chancellor; for component colleges, the President or his/her designee]. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B are being invoked. A copy of the notice shall also be given to all other representatives of the College and Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
 - ii. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of Contract by the College if the parties are unable to resolve their disputes under subparagraph (a) of this paragraph.
 - iii. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by LSCS nor any other conduct of any representative of the College relating to the Contract shall be considered a waiver of sovereign immunity to suit.
- b. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Attorney General of the State of Texas pursuant to Chapter 2260 as currently effective, hereafter enacted or subsequently amended. These rules are found at 1 T.A.C. Part 3 Chapter 68.
- c. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

7. Time is of the Essence. All time limits, time periods, milestones, and completion dates in the Contract documents are of the essence of this Contract.

8. **Default.** A party will be considered in default of its obligations under this Contract if such party should fail to observe, to comply with, or to perform any term or condition, contained in this Contract and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of a default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

9. **Termination for Convenience.** LSCS may terminate this contract at any time LSCS determines that the purposes of the distribution of State moneys under the Contract would no longer be served by completion of the project. LSCS shall effect such termination by giving written notice of termination to Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of LSCS, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered. If the contract is terminated by the College as provided herein, Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of Contractor covered by this Contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this Contract have been performed upon the effective date of such termination, Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. In no event shall reimbursement under this clause exceed the Contract amount. If this Contract is terminated for cause, or due to the fault of Contractor, the Termination for Cause or Default provision shall apply.

10. **Notice.** All Notices and communications regarding this agreement must be in writing and directed to the following representative:

For LSCS

For Contractor

With a copy to:
Office of the General Counsel
5000 Research Forest Drive
The Woodlands, Texas 77381

With a copy to:

11. **Miscellaneous:**

- a. This document constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreements.
- b. This agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- c. This agreement is not assignable without the express written agreement of both parties.
- d. The provisions of this Agreement are severable.
- e. This Agreement shall be construed under the laws of the State of Texas, and venue in any action brought hereunder shall be in Montgomery County, Texas. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used as further described herein, by the College and Contractor to attempt to resolve any claim for breach of Contract made by Contractor.
- f. By executing this Agreement Contractor certifies that, upon the effective date of this Agreement, either: (1) it is not delinquent in payment of State of Texas corporate franchise taxes; or (2) it is not subject to the payment of such taxes. Contractor further certifies if he/she is a child support obligor, he/she is no more than 30 days delinquent in paying child support.

12. **Taxes.** An IRS W-9 form must be completed by Contractor and attached to this Agreement.

IN WITNESS THEREOF, Parties have executed this Agreement in multiple counterparts.

CONTRACTOR:

By: _____

Name: _____

Address: _____

LONE STAR COLLEGE SYSTEM

CERTIFICATION AND JUSTIFICATION REGARDING THE NEED FOR THESE SERVICES:

I hereby authorize the compensation funds herein certify to the following conditions: (a) are essential and cannot be provided by persons receiving salary or otherwise compensated for their services; and (b) a selection process has been employed to secure the most qualified person available; and (c) the charge is appropriate considering the qualifications of the Contractor, fee, and the nature of the services rendered.

Name: _____

Title: Originator: _____

Date: _____

Name: _____

Title: Vice Chancellor or President

Date: _____

Note: Modification of this Form requires approval of OGC

For Office Use Only

Budget Account No: _____

To be completed by Originator
