

## **Board of Trustees Agenda Item**

**Board Meeting Date:** September 10, 2012

**Title of Item:** Independent Contractor Agreement between Foothill-De Anza community College District and Richard Henning

### **Background and Analysis:**

Board approval is requested for the Independent Contractor agreement for services performed by Richard Henning, for the term of October 1, 2012 to June 30, 2013. This contract will supersede the previously approved contract with Professional Personnel Leasing for Mr. Henning's services. Due to recent changes in CAL-STRS retirement, Mr. Henning has requested to contract directly with the District rather than through a leasing agency.

All terms of the contract will remain the same, with payment to remain at \$9181.00 per month, with a \$3000 expense reimbursement for travel to a yearly conference, as well as a \$1000 entertainment fund.

**Recommendation:** Foothill College President Judy Miner recommends approval of this Independent Contractor Agreement

Submitted by:	Judy Miner, x7200
Additional contact names:	Shirley Treanor, x7364
Is backup provided?	Yes

# INDEPENDENT CONTRACTOR AGREEMENT

3. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

**A. Description of services and deliverables to be provided by contractor (refer to and attach contractor's signed proposal or quotation):**

1. Select and arrange for celebrity speakers for three (3) District speaker series.
  2. Coordinate the marketing of the District speaker series.
  3. Coordinate the sale of tickets for the District speaker series.
  4. Handle concerns and problems related to items 1, 2 & 3 above.
  5. Manage logistics for each District speaker event at the Flint Center in conjunction with the theater manager.
  6. Set up receptions whenever possible featuring celebrity speakers to develop potential valuable friendships.
  7. Assist the College Presidents and the Executive Director of the Foundation to network through the appearances of the celebrity speakers, which in addition to receptions include introductions to VIPs, photographs and autographs.
- Services specifically do not include the evaluation, firing, or supervision of any District personnel. Also, it does not include the processing of any employee grievances in the course of fulfilling the Agreement or sign any official District documents, nor perform any functions defined as "Creditable Service" by Education Code Section 22119.5.

**B. Contractor Fee for Services:** \$9,181.00 per month + Year-end Bonus + \$1,000.00 entertainment fund  
(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s) plus a maximum total dollar cost, i.e. the "not to exceed" amount, to be paid to the contractor. If travel or other expenses will be reimbursed they should conform to Board Policy AP3152.)

Will contractor also be reimbursed for expenses? YES ☒ or NO ☐ If yes, state maximum reimbursement amount to be paid in addition to contract fee shown above:  
\$3,000.00

**TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$**350,000.00  
**INCLUDING CONTRACTOR TRAVEL OR OTHER EXPENSE REIMBURSEMENTS. [Total cannot exceed \$14,999 for public projects. Board approval required prior to commencement of other services if the total cost exceeds \$20,000.]**

**C. Contract Starting Date** October 1, 2012 **Contract Ending Date** June 30, 2013  
Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval.

4. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:

The District shall designate an employee(s) to discharge those duties and exercise those powers which can only be vested in a person employed by the District, and in that capacity the designated employee(s) and subcontractor shall coordinate to ensure the orderly and consistent administration of the area of consultation. The cost of this employee will be paid from the Celebrity Forum earnings.

*Signature*

5. **PAYMENT TERMS:** Unless other payment terms are specified in this section, payment terms are Net 30 days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.

Monthly payments of \$9,181.00 each. \$1,000.00 Entertainment fee to be paid with October monthly payment unless previously paid in July by PPL. Year-end Bonus to be paid within 45 days after the District Business Office confirms Celebrity Forum II (CF II) and/or Celebrity Forum III (CF III) made a net profit for the current fiscal year and any accumulated net losses have been exhausted. The bonus for CF II shall be calculated to be the lesser of 10% of gross sales (including any sponsorships) or current year net profit reduced by any accumulated net loss; and an additional amount from CF III which shall be 10% of gross sales if net profit exceeds \$50,000 or 5% if net profit is at or below \$50,000.00.

**6. STANDARD TERMS AND CONDITIONS:**

**A. CONTRACTOR** is solely responsible for the content and sequence of the work. **DISTRICT** will not provide any training or instruction to **CONTRACTOR** or its employees.

**B. Confidentiality:** In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

**C. CONTRACTOR** shall indemnify, defend and hold the **DISTRICT**, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of **CONTRACTOR'S** performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the **CONTRACTOR** is not covered under the **DISTRICT'S** general liability insurance, employee benefits or worker's compensation. It further establishes that the **CONTRACTOR** shall be fully responsible for such coverage. Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;
2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
4. Professional Liability insurance when applicable, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance. Contractor shall not commence work under this Agreement until required insurance has been obtained.

**D. The CONTRACTOR** shall assume all expenses incurred in connection with the performance of this contract and the **DISTRICT** shall not be responsible for payment of any other expenses. The payment terms specified in Paragraph 3 above, unless otherwise indicated and agreed to in writing by the **CONTRACTOR** and the **DISTRICT**, shall be the only obligation of the **DISTRICT**. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, **CONTRACTOR** is not entitled to any right or privilege applicable to an officer or employee of the **DISTRICT** or of the State of California.

**E. Any system or documents developed, produced or provided under this contract, including any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the District unless explicitly stated otherwise in this contract.**

**F. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR. CONTRACTOR is independently responsible for the payment of all applicable taxes. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.**

G. Payment Of Prevailing Wages: Except for projects of \$1000 or less, if CONTRACTOR provides public project services such as carpet laying or building construction, alteration, demolition, or repair, CONTRACTOR shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available online at [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). The determination is issued by the California Department of Industrial Relations.

H. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this contract requires mutual agreement by both parties.

Either Party

I. The District may terminate this contract at any time for any reason by providing 30 days notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination..

Notice may be given by mail, telephone or fax.

J. The parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

H. Contractor agrees not to create a competing speakers series within a 50 mile radius of the De Anza College campus in Cupertino.

AGREEMENT OF CONTRACTOR: I agree to perform the services described above for the payment indicated. I understand that while performing contract services I am not an employee of the Foothill-De Anza Community College District because I follow an independent trade or profession, and I will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service.

Richard F. Henning  
Contractor (signature)  
Print name RICHARD HENNING

Aug. 20, 2012  
Date

APPROVED:

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, including IRS Revenue Ruling 87-41, have analyzed their application to the position described on the accompanying documents, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status.

STreanor  
Authorized College/District Requestor/Budgeter

8/13/12  
Date

Authorized College/District Requestor/Budgeter

Date

Lj McElroy  
College/District Employee with Authority to Sign Contract

8/20/12  
Date

Date Approved by Board of Trustees.

[Required prior to commencement of services if the total cost exceeds \$20,000.]