

# COAST COMMUNITY COLLEGE DISTRICT

## INDEPENDENT CONTRACTOR AGREEMENT

This INDEPENDENT CONTRACTOR AGREEMENT (“AGREEMENT”) is made and entered into between COAST COMMUNITY COLLEGE DISTRICT, a public educational agency (“DISTRICT”) and \_\_\_\_\_ (“INDEPENDENT CONTRACTOR”).

This AGREEMENT shall commence on \_\_\_\_\_, 200\_ and shall be completed by no later than \_\_\_\_\_, 200\_.

WHEREAS, DISTRICT is authorized by section 53060 of California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, DISTRICT desires to obtain special services and advice as fully described in the Scope of Services, Attachment No. 1 to this AGREEMENT; and

WHEREAS, INDEPENDENT CONTRACTOR warrants and represents to DISTRICT that INDEPENDENT CONTRACTOR has the experience, expertise and resources to successfully complete the services required by DISTRICT and will provide the services timely and in conformance with the laws of the State of California.

NOW, THEREFORE, the parties agree as follows:

### **ARTICLE I INDEPENDENT CONTRACTOR’S SERVICES AND RESPONSIBILITIES**

1. INDEPENDENT CONTRACTOR shall timely and competently provide those services set forth on Attachment No. 1 to this AGREEMENT, which is incorporated herein and made a specific part hereof (“PROJECT”).

2. INDEPENDENT CONTRACTOR, by this AGREEMENT, accepts the relationship of trust and confidence established between INDEPENDENT CONTRACTOR and DISTRICT. INDEPENDENT CONTRACTOR covenants with DISTRICT to furnish the necessary professional skill and judgment in accordance with the level of care and skill exercised by members of the profession or occupation currently practicing under similar conditions and in similar locations, and under California law applicable to those specializing in providing such services for projects of the type, scope and complexity of the PROJECT in performing all services under this AGREEMENT. INDEPENDENT CONTRACTOR shall use its best professional efforts to complete the PROJECT in an expeditious and economical manner consistent with the interests and goals of DISTRICT. INDEPENDENT CONTRACTOR shall take all special precautions necessary to protect the INDEPENDENT CONTRACTOR’S

employees, DISTRICT's employees, and members of the public from risk of harm arising out the nature of the work.

3. INDEPENDENT CONTRACTOR will determine the method, details and means of performing the above-described services for the PROJECT and will at INDEPENDENT CONTRACTOR'S own expense supply all labor, tools, materials, equipment, supplies, and items necessary to perform such services in good working order and in compliance with all applicable federal, state and local laws, codes, statutes, ordinances and DISTRICT policies and procedures.

4. INDEPENDENT CONTRACTOR shall hold and maintain during the performance of this AGREEMENT any and all applicable licenses, permits and/or certificates necessary for performance of services under this AGREEMENT.

5. INDEPENDENT CONTRACTOR shall not disclose nor use except in the performance of this AGREEMENT any confidential, proprietary and/or trade secret information of DISTRICT and shall comply with all state and federal laws of confidentiality including FERPA, HIPPA and CIMA.

6. INDEPENDENT CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to INDEPENDENT CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to INDEPENDENT CONTRACTOR by DISTRICT as a basis for such services.

7. The services performed hereunder are work made for hire and DISTRICT shall own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under this AGREEMENT. INDEPENDENT CONTRACTOR assigns to DISTRICT any and all rights INDEPENDENT CONTRACTOR 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. INDEPENDENT CONTRACTOR consents to the use of INDEPENDENT CONTRACTOR's name in conjunction with the sale, use, performance and distribution of said matters, for any purpose and in any medium.

## **ARTICLE II COMPENSATION**

1. DISTRICT agrees to pay INDEPENDENT CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). DISTRICT shall pay INDEPENDENT CONTRACTOR according to the following terms and conditions: \_\_\_\_\_

\_\_\_\_\_

2. DISTRICT shall not be liable to INDEPENDENT CONTRACTOR for any costs or expenses paid or incurred by INDEPENDENT CONTRACTOR in performing services for DISTRICT.

### **ARTICLE III TERMINATION**

1. DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate INDEPENDENT CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by INDEPENDENT CONTRACTOR. Notice shall be deemed given when received by INDEPENDENT CONTRACTOR or no later than three days after the date of mailing, whichever is sooner.

2. DISTRICT may terminate this AGREEMENT upon giving written notice of intention to terminate for cause. Cause shall include:

(a) material violation of this AGREEMENT by INDEPENDENT CONTRACTOR; or

(b) any act by INDEPENDENT CONTRACTOR exposing DISTRICT to liability to others for personal injury or property damage; or

(c) INDEPENDENT CONTRACTOR is adjudged a bankrupt, INDEPENDENT CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of INDEPENDENT CONTRACTOR's insolvency.

3. Upon termination of this AGREEMENT for any reason (other than full and satisfactory completion of INDEPENDENT CONTRACTOR's services hereunder), subject to the respective rights and remedies of the parties under this AGREEMENT and pursuant to applicable law, DISTRICT shall have no continuing obligation to make any payments to INDEPENDENT CONTRACTOR under this AGREEMENT.

4. In the event of such termination, DISTRICT may secure the required services from another independent contractor. If the cost to DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the INDEPENDENT CONTRACTOR. This provision is in addition to and not a limitation of any other rights or remedies available to DISTRICT.

5. In the event of termination due to the fault of INDEPENDENT CONTRACTOR, INDEPENDENT CONTRACTOR shall not be entitled to any unearned fees or costs and shall be liable for damages suffered by DISTRICT due to INDEPENDENT CONTRACTOR's failure to perform as provided in this AGREEMENT.

## **ARTICLE IV INDEMNITY**

1. INDEPENDENT CONTRACTOR agrees, to the fullest extent permitted by the law, to indemnify and hold harmless DISTRICT, its trustees, officers, directors and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by INDEPENDENT CONTRACTOR's performance of services under this AGREEMENT or any acts in connection with or related to the PROJECT, or any actions of INDEPENDENT CONTRACTOR or anyone for whom INDEPENDENT CONTRACTOR is legally liable.

2. INDEPENDENT CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT, its trustees, officers, directors and employees from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorneys' fees, court costs, and other litigation expenses that may at any time arise for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use by DISTRICT of method, process, product, concept specified, or depicted supplied by INDEPENDENT CONTRACTOR in the performance of this AGREEMENT.

3. The coverage of indemnification shall include, without limitation, reasonable attorneys' fees and court costs incurred by DISTRICT with regard thereto. Said indemnity is intended to apply during the period of this AGREEMENT of INDEPENDENT CONTRACTOR's performance and shall survive the expiration or termination of this AGREEMENT.

4. The obligation to defend shall arise regardless of any claim or assertion that DISTRICT caused or contributed to the losses. INDEPENDENT CONTRACTOR's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for DISTRICT shall be reimbursed by DISTRICT except to the extent such defense costs arise, under principles of comparative fault, from INDEPENDENT CONTRACTOR's (a) negligent acts or omissions; (b) breach of any of the provisions of this AGREEMENT; or (c) willful misconduct.

5. Nothing in this AGREEMENT, including the provisions of this Article, shall constitute a waiver or limitation of any rights which DISTRICT may have under applicable law, including without limitation, the right to implied indemnity.

6. DISTRICT's exercise of any of its rights or remedies prescribed in this AGREEMENT shall not relieve INDEPENDENT CONTRACTOR from responsibility for damages or other losses incurred or to be incurred by DISTRICT as a result of INDEPENDENT CONTRACTOR's breach of its obligations under this AGREEMENT.

## **ARTICLE V INSURANCE**

1. INDEPENDENT CONTRACTOR shall, at its sole cost and expense, purchase and maintain during the term of this AGREEMENT insurance. Said insurance shall be as defined in paragraph 2(a)-(g) unless otherwise agreed in writing and attached hereto as

Attachment 3. If alternative insurance provisions are made a part hereof as Attachment 3, this paragraph must be initialed.

\_\_\_\_\_  
**District Initial**

\_\_\_\_\_  
**IC Initial**

2. INDEPENDENT CONTRACTOR shall, at its sole cost and expense, purchase and maintain during the term of this AGREEMENT, with insurance companies duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect INDEPENDENT CONTRACTOR and DISTRICT from claims which may arise out of or result from INDEPENDENT CONTRACTOR's performance of this AGREEMENT or the PROJECT, whether by INDEPENDENT CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Commercial General Liability Insurance (Occurrence Form) with limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence; Two Million Dollars (\$2,000,000.00) aggregate and Two Million Dollars (\$2,000,000.00) products/completed operations aggregate; and Two Hundred Fifty Thousand Dollars (\$250,000.00) as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability and completed operations coverage, covering the activities of INDEPENDENT CONTRACTOR under this AGREEMENT. This policy shall be endorsed to name DISTRICT and DISTRICT's Board of Trustees, officers, agents and employees as additional insureds. Such endorsement shall be made on ISO Endorsement CG20 10 11 85 "Additional Insured – Owner, Lessees or Contractors" or its equivalent.

(b) Workers' Compensation Insurance with an insurance company duly licensed and admitted by the State of California in the amounts required by California law covering all personnel employed on the premises during the term of this AGREEMENT whether said personnel are employed or contracted by INDEPENDENT CONTRACTOR. Employers Liability with a minimum limit of Two Million Dollars (\$2,000,000.00) per accident covering all personnel employed on the premises during the term of this AGREEMENT with a minimum combined single limit of liability for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) per occurrence.

(c) Business Auto Liability Insurance covering the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in connection with the performance of this AGREEMENT with an insurance company duly licensed and admitted by the State of California. Said insurance shall have limits of not less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and property damage liability per occurrence with no annual aggregate limits.

(d) Professional Liability Insurance, including Contractual Liability, with limits of One Million Dollars (\$1,000,000.00) per occurrence; Two Million Dollars (\$2,000,000.00) aggregate. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter. In the event INDEPENDENT CONTRACTOR subcontracts or assigns any portion of its duties, it shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph.

(e) Each policy of insurance required in (a), (c), and (d) above shall name DISTRICT and its trustees, officers, agents, and employees as additional insureds; shall state that, with respect to the operations of INDEPENDENT CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, officers, agents, and employees. Commercial General Liability and Business Automobile Liability policies shall contain a cross liability or severability of interest clause.

(f) INDEPENDENT CONTRACTOR is responsible for payment of any and all premiums, deductibles or self-insured retentions, and adjustment for losses on policies pursuant to this AGREEMENT.

(g) INDEPENDENT CONTRACTOR shall notify DISTRICT in the event of material change in, cancellation of, or failure to renew each policy. Prior to commencing work, INDEPENDENT CONTRACTOR shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein to be attached hereto as Attachment No. 3, or this AGREEMENT will automatically be canceled. Not less than five (5) days prior to the expiration date of each insurance policy, INDEPENDENT CONTRACTOR shall deliver to DISTRICT a new certificate and endorsement.

## **ARTICLE VI INDEPENDENT CONTRACTOR**

1. INDEPENDENT CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. INDEPENDENT CONTRACTOR understands and agrees that INDEPENDENT CONTRACTOR and all of INDEPENDENT CONTRACTOR'S employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including but not limited to, State Unemployment Compensation or Worker's Compensation. INDEPENDENT CONTRACTOR assumes the full responsibility for the acts and/or omissions of INDEPENDENT CONTRACTOR's employees or agents as they relate to the services to be provided under this AGREEMENT. INDEPENDENT CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to INDEPENDENT CONTRACTOR and INDEPENDENT CONTRACTOR's employees.

2. INDEPENDENT CONTRACTOR agrees and understands that by performing services under this AGREEMENT, INDEPENDENT CONTRACTOR and its employees are not entitled to employment with DISTRICT, nor is any express or implied employment relationship created between DISTRICT and INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR further understands and agrees that INDEPENDENT CONTRACTOR is not entitled to any rights or benefits afforded to DISTRICT employees by virtue of performance under this AGREEMENT.

3. INDEPENDENT CONTRACTOR has no authority to bind DISTRICT.

## **ARTICLE VII ALTERNATIVE DISPUTE RESOLUTION**

Disputes arising from this AGREEMENT or related in any manner to the same shall be resolved as follows:

1. In the event of any dispute, claim, question, or disagreement arising out of or relating to this AGREEMENT, prior to initiating arbitration or any other legal action and as a condition precedent to being entitled to file such legal action or demand for arbitration, the parties hereto shall use their best good faith efforts to settle such disputes, claims, questions, or disagreements, consulting and negotiating with each other in good faith and recognizing their mutual interests in attempting to reach a just and equitable solution satisfactory to both parties.

2. In the event of any controversy or claim whether based on contract, tort, statute, or other legal or equitable theory, and if the dispute cannot be resolved by negotiation, the parties agree that as a condition precedent to and before filing any legal action, including demands for arbitration, the parties shall submit the dispute to non-binding mediation by a mediator mutually selected by the parties. If the parties are unable to agree upon a mediator then the mediation will be held at the Orange County office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), Judicate West or the American Arbitration Association ("AAA"). The complaining party must contact JAMS, Judicate West or AAA to schedule the conference. The parties may agree on a mediator from the JAMS, Judicate West or AAA panels. If they are unable to agree JAMS, Judicate West or AAA will provide a list of three available mediators and each party may strike one. The remaining mediator will serve as the mediator at the mediation conference. Neither party may initiate legal action until mediation is completed. Each party shall pay one-half of the costs of such mediation. This requirement for mediation is a condition precedent to filing legal action and shall not in any way toll any applicable statute of limitations or other time barred defenses to such legal action.

3. In the event the parties are unable to resolve their dispute through the meet and confer procedure provided for in paragraph 1 by and through mediation as provided in paragraph 2, any dispute arising under or relating to this AGREEMENT, whether based on contract, tort, statute, or other legal or equitable theory, will be submitted to arbitration in the County of Orange, State of California before a retired California Superior Court Judge or retired California Appellate Court or Supreme Court Justice or before a retired Federal Court Judge or Justice. If the parties are unable to agree as to an arbitrator, the arbitration shall be submitted before the Judicial Arbitration and Mediation Services, Inc. ("JAMS") or Judicate West or the

American Arbitration Association (“AAA”). The parties may agree on an arbitrator from the selected entity’s panel. If they are unable to agree, the selected entity will provide a list of three available arbitrators and each party may strike one. The arbitration tribunal shall select the arbitrator from the remaining names. The parties waive their rights to a jury trial. The arbitration shall be held in accordance with the rules of the selected entity and California substantive law shall apply. The arbitrator shall award costs and attorneys’ fees to the prevailing party. The parties shall be entitled to only the following limited discovery:

- (a) Each party shall exchange all documents relevant to the subject matter of the dispute.
- (b) Each party shall be entitled to one deposition limited to four hours.
- (c) Each party may serve one set of interrogatories limited to 15 interrogatories, including subparts.
- (d) Each party may make application to the arbitrator to order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or as such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses at the hearing to allow the deposition to be taken.
- (e) Each party shall advance one-half of the cost of the arbitration proceedings, including any administrative costs and arbitrator expenses subject to being reimbursed by an award of the arbitrator of costs.

## **ARTICLE VIII MISCELLANEOUS PROVISIONS**

1. This AGREEMENT shall be interpreted and governed by the laws of the State of California. If any action is brought arising out or related to this AGREEMENT, including but not limited to any claims for breach, interpretation, cancellation or specific performance of the same or any tort claims relating thereto, said action shall be brought in the appropriate tribunal in Orange County, California.

2. An inducement to DISTRICT for entering into this AGREEMENT is the professional reputation and competence of INDEPENDENT CONTRACTOR and its employees. Neither this AGREEMENT, nor any interest therein may be assigned by INDEPENDENT CONTRACTOR without the prior written consent of DISTRICT, which consent may be withheld by DISTRICT in its sole and absolute discretion. Any attempt by INDEPENDENT CONTRACTOR to assign this AGREEMENT shall be void and a material breach of this AGREEMENT and DISTRICT may immediately terminate this AGREEMENT.

3. INDEPENDENT CONTRACTOR warrants to DISTRICT that it is not now, nor has it or any of its officers been for five years preceding involved in arbitration or litigation concerning INDEPENDENT CONTRACTOR’s professional performance or the furnishing of materials or services relating thereto.

4. DISTRICT and INDEPENDENT CONTRACTOR, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this AGREEMENT.

5. This AGREEMENT represents the entire and integrated agreement between DISTRICT and INDEPENDENT CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both DISTRICT and INDEPENDENT CONTRACTOR and approved by DISTRICT's Board of Trustees.

6. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either DISTRICT or INDEPENDENT CONTRACTOR.

7. Time is of the essence for this AGREEMENT. INDEPENDENT CONTRACTOR acknowledges that all time limits stated in this AGREEMENT and in the Project Schedule are of the utmost importance to DISTRICT.

8. Notwithstanding anything to the contrary, to the extent allowed by law, DISTRICT shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues or profits relating to the same arising from any claim relating directly or indirectly to this AGREEMENT whether a claim for such damages is based on warranty, contract or tort (including, without limitation, negligence or strict liability) even if the parties are advised of the likelihood or possibility of the same.

9. INDEPENDENT CONTRACTOR's sole and exclusive remedy in the event INDEPENDENT CONTRACTOR makes any claim for breach of this AGREEMENT or seeks damages under any theory of law whether based on warranty, contract or tort, including without limitation, negligence or strict liability, shall be against DISTRICT and not its trustees, officers, or employees. No trustee, officer or employee shall be sued or named as a party in any such suit or action and no judgment shall be taken against any trustee, officer, or employee. No writ of execution will be levied against the assets of any trustee, officer or employee of DISTRICT pursuant to the terms of this AGREEMENT. The covenant and agreement contained in this section are enforceable by DISTRICT's trustees, officers and employees.

10. The parties to this AGREEMENT shall be excused from performance hereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by acts of God, fire, strike, lock-out, terrorism, commandeering of materials, products, plants or facilities by the government. Satisfactory evidence shall be presented to DISTRICT or INDEPENDENT CONTRACTOR to establish that the non-performance is not due to the fault or neglect of the party not performing.

11. This AGREEMENT shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

12. If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force.

13. INDEPENDENT CONTRACTOR, if an employee of another public agency, agrees that INDEPENDENT CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

14. INDEPENDENT CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

15. The failure of DISTRICT or INDEPENDENT CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

16. In the event of any dispute, arbitration or litigation between the parties hereto arising out of or relating in any manner to this AGREEMENT, including the necessity of either party to defend any action which has been covered hereby or to prosecute any action to enforce this AGREEMENT, the losing party shall pay all reasonable costs and expenses including reasonable attorneys' fees of the prevailing party and any judgment, decision or award rendered against either of the parties may specifically include such reasonable costs, expenses and attorneys' fees of the prevailing party.

**ARTICLE IX NOTICES**

Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

**TO DISTRICT:**

\_\_\_\_\_ (College)  
Attn: Vice President Administrative Services  
\_\_\_\_\_  
\_\_\_\_\_ CA \_\_\_\_\_

Copy to: Coast Community College District  
Attn: Vice Chancellor Administrative Services  
1370 Adams Avenue  
Costa Mesa, CA 92626

**TO INDEPENDENT CONTRACTOR**

Business: \_\_\_\_\_

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

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

\_\_\_\_\_

Any such notices personally served or delivered by courier shall be effective when received. All notices sent by certified mail shall be effective forty-eight (48) hours after being deposited in the U.S. mail.

Each party shall make a reasonable, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph. A party may change its address for purposes of this paragraph by giving the other party written notice of a new address in the manner set forth above.

IN WITNESS WHEREOF, DISTRICT and INDEPENDENT CONTRACTOR have executed this AGREEMENT as of the date first written above.

**DISTRICT**

**INDEPENDENT CONTRACTOR**

\_\_\_\_\_  
C.M. Brahmhatt  
Vice Chancellor of Admin. Services

\_\_\_\_\_  
[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_  
[Company] \_\_\_\_\_  
Social Security No. or Federal ID No. \_\_\_\_\_  
License No.: \_\_\_\_\_  
Issued By State of: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## **ATTACHMENT NO. 1 - SCOPE OF SERVICES**

1. INDEPENDENT CONTRACTOR warrants and represents to DISTRICT that INDEPENDENT CONTRACTOR has the experience, expertise and resources to successfully complete the services described within this attachment.
2. DISTRICT desires to obtain such special services and advice as fully described herein. INDEPENDENT CONTRACTOR agrees to timely and competently provide these services described below within this attachment.
3. INDEPENDENT CONTRACTOR agrees to perform the following services for DISTRICT:

## Request for Taxpayer Identification Number and Certification

**Give form to the  
requester. Do not  
send to the IRS.**

<b>Print or type See Specific Instructions on page 2</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ .....	
	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

<b>Social security number</b>									
+	+	+	+	+	+	+	+	+	+

**or**

<b>Employer identification number</b>									
+	+	+	+	+	+	+	+	+	+

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or

- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

- 7. A foreign central bank of issue,
- 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
- 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
- 10. A real estate investment trust,
- 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
- 12. A common trust fund operated by a bank under section 584(a),
- 13. A financial institution,
- 14. A middleman known in the investment community as a nominee or custodian, or
- 15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt recipients 1 through 7 <sup>2</sup>

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.socialsecurity.gov/online/ss-5.pdf](http://www.socialsecurity.gov/online/ss-5.pdf). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses/](http://www.irs.gov/businesses/) and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

**ATTACHMENT NO. 3 – ALTERNATE INSURANCE COVERAGE**

(This attachment replaces insurance coverage provisions within Master Agreement)

1. INDEPENDENT CONTRACTOR shall, at its sole cost and expense, purchase and maintain during the term of this AGREEMENT, with insurance companies duly licensed and admitted by the State of California with a rating by Best's Insurance Rating Service of not less than AVII, policies of insurance which will protect INDEPENDENT CONTRACTOR and DISTRICT from claims which may arise out of or result from INDEPENDENT CONTRACTOR's performance of this AGREEMENT or the PROJECT, whether by INDEPENDENT CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Commercial General Liability Insurance (Occurrence Form) with limits of not less than (\$ \_\_\_\_\_) for each occurrence; (\$ \_\_\_\_\_) aggregate and (\$ \_\_\_\_\_) products/completed operations aggregate; (\$ \_\_\_\_\_) as to property damage including, but not limited to, personal injury liability, broad form property damage liability, blanket contractual liability and completed operations coverage, covering the activities of INDEPENDENT CONTRACTOR under this AGREEMENT. This policy shall be endorsed to name DISTRICT and DISTRICT's Board of Trustees, officers, agents and employees as additional insureds. Such endorsement shall be made on ISO Endorsement CG20 10 11 85 "Additional Insured – Owner, Lessees or Contractors" or its equivalent.

(b) Workers' Compensation Insurance with an insurance company duly licensed and admitted by the State of California in the amounts required by California law covering all personnel employed on the premises during the term of this AGREEMENT whether said personnel are employed or contracted by INDEPENDENT CONTRACTOR. Employers Liability with a minimum limit of (\$ \_\_\_\_\_) per accident covering all personnel employed on the premises during the term of this AGREEMENT with a minimum combined single limit of liability for bodily injury and property damage of not less than (\$ \_\_\_\_\_) per occurrence.

(c) Business Auto Liability Insurance covering the ownership, maintenance or use of all owned, non-owned, and hired vehicles used in connection with the performance of this AGREEMENT with an insurance company duly licensed and admitted by the State of California. Said insurance shall have limits of not less than (\$ \_\_\_\_\_) combined single limit, bodily injury and property damage liability per occurrence with no annual aggregate limits.

(d) Professional Liability Insurance, including Contractual Liability, with limits of (\$ \_\_\_\_\_) per occurrence; (\$ \_\_\_\_\_) aggregate. Such insurance shall be

maintained during the term of this AGREEMENT and renewed for a period of at least five (5) years thereafter. In the event INDEPENDENT CONTRACTOR subcontracts or assigns any portion of its duties, it shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph.

(e) Each policy of insurance required in (a), (c), and (d) above shall name DISTRICT and its trustees, officers, agents, and employees as additional insureds; shall state that, with respect to the operations of INDEPENDENT CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributing with such primary insurance, shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation, and shall waive all rights of subrogation against DISTRICT and its trustees, officers, agents, and employees. Commercial General Liability and Business Automobile Liability policies shall contain a cross liability or severability of interest clause.

(f) INDEPENDENT CONTRACTOR is responsible for payment of any and all premiums, deductibles or self-insured retentions, and adjustment for losses on policies pursuant to this AGREEMENT.

INDEPENDENT CONTRACTOR shall notify DISTRICT in the event of material change in, cancellation of, or failure to renew each policy. Prior to commencing work, INDEPENDENT CONTRACTOR shall deliver to DISTRICT certificates of insurance and additional insured endorsements as evidence of compliance with the requirements herein to be attached hereto as Attachment No. 3, or this AGREEMENT will automatically be canceled. Not less than five (5) days prior to the expiration date of each insurance policy, INDEPENDENT CONTRACTOR shall deliver to DISTRICT a new certificate and endorsement.