

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is hereby entered into between the DEL MAR UNION SCHOOL DISTRICT, hereinafter referred to as "District," and [Contractor Name] and whose address is [Address], and whose Taxpayer ID Number is [insert #], hereinafter called "Contractor."

WHEREAS, District is authorized by Section 53060 of the 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; and

WHEREAS, District is in need of such special services and advice, and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. Services To Be Provided By Contractor; Precedence of This Agreement. Contractor shall provide the services as listed in Exhibit "A" to this agreement.

2. Term. Contractor shall commence providing services under this Agreement on July 1, 201X, and will diligently perform as required and use its best efforts to complete performance by June 30, 201X.

3. Compensation. District Agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement for \$XXX and a total fee not to exceed \$XXX. District shall pay Contractor for work performed after submission to District of monthly invoices which include a statement of work performed to date; if the District approves the invoice, payment shall be due within thirty days of receipt of invoice.

4. Expenses. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District; Contractor shall bear its own expenses which are deemed to be covered by the compensation provided herein.

5. Independent Contractor. Contractor, in the performance of this Agreement, shall be and shall act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees and subcontractors 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. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees, agents or subcontractors as they relate to the service to be provided under this Agreement. Nothing in this Agreement shall give the Contractor possession of authority with respect to any District decision beyond the rendition of information, advice, recommendation or counsel. Contractor is not authorized to make any representation, contract or commitment on behalf of District.

6. Taxes. Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of

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Contractor's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

7. Materials. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

8. Contractor's Standards. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

9. Confidentiality and Use of Information.

(a) Contractor shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Contractor shall advise District of any and all materials used, or recommended for use by consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise District and as a result of the use of any programs or materials developed by Contractor under this Agreement District should be found in violation of any copyright restrictions or requirements, or District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

10. Audit and Inspection of Records. At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business specified above, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

11. Works for Hire/Copyright/Trademark/Patent. Contractor understands and agrees that all matters produced under this Agreement shall be works for hire and shall become the sole property of District and cannot be used without District's express written permission. 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 matter in the name of the District. Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

12. Termination. Either party may, at any time, with or without reason, terminate this Agreement and District shall compensate contractor only for services satisfactorily rendered to the date of termination. Written notice by either party shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received or not later than five (5) days after the day of mailing, whichever is sooner.

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District may also terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within ten (10) business days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten business days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.

13. Hold Harmless. Contractor hereby agrees to and does hereby indemnify, hold harmless and defend the District and its officers, agents and employees from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

- (a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the Contractor or any person, firm or corporation employed by the Contractor, either directly or by independent contract, upon or in connection with the services called for in this Agreement, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District or its officers, employees or agents.
- (b) Any injury to or death of any person, including the District or its officers, agents and employees, or damage to or loss of any property caused by any act, neglect, default, or omission of the Contractor, or any person, firm or corporation employed by the Contractor, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this Agreement, whether said injury or damage occurs either on or off District's property, except for liability for damages which result from the sole negligence or willful misconduct of the District or its officers, employees or agents.
- (c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this Agreement.

This provision shall survive the term of this Agreement.

14. Insurance. Contractor agrees to carry a comprehensive general and automobile liability insurance policy with limits of One Million Dollars (\$1,000,000.) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Contractor and District against liability or claims of liability which may

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arise out of this Agreement. In addition, Contractor agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." No later than ten (10) working days after execution of this Agreement, Contractor shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. Contractor agrees to name District and its officers, agents and employees as additional insureds under said policy.

15. Workers' Compensation Insurance. Contractor agrees to procure and maintain in full force and effect Worker's Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Agreement, Contractor agrees to defend and hold harmless the District from such claim.

16. Professional Errors and Omissions Insurance. Contractor agrees to maintain in full force and effect Professional Errors and Omissions Insurance in the amount of one million dollars (\$1,000,000.) No later than ten (10) working days after execution of this Agreement by both parties, Contractor shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage.

17. Subcontracting. In the event that Contractor subcontracts any portion of Contractor's duties, Contractor shall require any such subcontractor to purchase and maintain insurance coverage as provided in Sections 14, 15 and 16 of this Agreement, including providing an endorsement, certificates of insurance, and the naming of the District and its officers, agents and employees as additional insureds.

18. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

19. Compliance With Applicable Laws. The service completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor.

20. Permits/Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

21. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

22. Nondiscrimination in Employment. 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.

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23. Fingerprinting Requirement. The Del Mar Union School District has determined under Education Code section 45125.1, subdivision (a) or Education Code section 45125.1, subdivision (d) that in performing services pursuant to this Agreement, Contractor's employees may have contact with pupils. Pursuant to Education Code section 45125.1, subdivisions (a) or (d), Contractor shall require their employees who will provide services pursuant to this Agreement to submit their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code section 45122.1.

Contractor shall not permit any employee to perform services who may come in contact with pupils under this Agreement until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Section 45122.1.

Contractor shall certify in writing to the governing board of the Del Mar Union School District to the attention of Pupil Services at 11232 El Camino Real, San Diego, CA 92130 that all of its employees who may come in contact with pupils have not been convicted of or have no criminal charges pending for a felony, as defined in Education Code section 45122.1. Those employees who have been determined by the District to have limited contact with pupils shall be prohibited by Contractor from having contact or communicating with pupils except in the presence of a school district employee. In the event Contractor fails to keep its employees who have been determined to have limited contact with pupils from contracting or communicating with pupils and injury results from failure to prohibit pupil communication, or contact, Contractor shall indemnify the District for any and all damages or loss that are a proximate result from Contractor's failure to prohibit pupil contact or communication.

Contractor shall defend, indemnify, protect, and hold Del Mar Union School District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Contractor's failure to comply with all of the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Contractor from using employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code section 45122.1.

24. Non-Waiver. The failure of District or 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.

24. Administrator of Agreement. This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

For District:

Business Services
Del Mar Union School District
11232 El Camino Real
Del Mar, California 92130

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Attachment A

Scope of Work

[Insert Description or attach scope of work] children for the 201X-201X school year.