

SEQUOIA UNION HIGH SCHOOL DISTRICT INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This INDEPENDENT CONTRACTOR SERVICES AGREEMENT ("Agreement") is made and entered into effective _____, (the "Effective Date"), by and between the Sequoia Union High School District ("District") and _____ ("Contractor").

1. Contractor Services. In consideration of the payments set forth herein and in Exhibit B, Contractor shall perform services for the District in accordance with the terms, conditions, and specifications set forth herein and in Exhibit A.
2. Contractor Qualifications. Contractor represents and warrants to District that Contractor and all of Contractor's employees, agents or volunteers (the "Contractor Parties") have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other legal qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement.
3. Term. This Agreement shall begin on _____, and shall terminate upon completion of the Services, but no later than _____, ("Term"), unless the Agreement is terminated sooner as set forth in Paragraph 4 below. There shall be no extension of the Term of this Agreement unless the extension is pursuant to a duly executed written amendment to this Agreement.
4. Termination. Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party; however, the parties may agree in writing to a shorter time period for the effectiveness of such termination. The District's Superintendent or the Superintendent's designee shall have the authority to terminate this Agreement on behalf of the District. Notwithstanding the foregoing, District may terminate this Agreement effective immediately and at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, Contractor or the Contractor Parties commits any act or omission that exposes District to potential liability or may cause an increase in District's insurance premiums, 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. Such termination shall be effective immediately upon Contractor's receipt of said notice.
5. Availability of funds. The District may terminate this Agreement, or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of federal, state, or district funds, by providing written notice to Contractor as soon as is reasonably possible after the District learns of said unavailability of outside funding.
6. Payment. In consideration of the Services described in this Agreement, District agrees to pay Contractor at the rate as described in Exhibit B to this Agreement. The rate shall not be increased by Contractor over the course of this Agreement unless set forth in a duly executed written amendment to this Agreement. Total payment by District to Contractor shall not exceed \$ _____. District agrees to pay Contractor within forty five (45) days of receipt of an invoice from Contractor in a form reasonably acceptable to the District, including any additional supporting documentation reasonably requested by District. Any work performed by Contractor in excess of said amount shall not be compensated.
7. Indemnity. Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, and members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.
The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Equipment and Materials. Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor of the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, any Equipment or workmanship that does not conform to the regulations of this Agreement may be rejected by District and in such case must be promptly remedied or replaced by Contractor at no additional cost to District and subject to District's reasonable satisfaction.
9. Insurance. Without in any way limiting Contractor's liability or indemnification obligations set forth in Paragraph 7 above, Contractor shall secure and maintain throughout the term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000.00 each occurrence and \$2,000,000.00 in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable; and neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If any of the required insurance is not reinstated, District may, at its sole option, terminate this Agreement. All of the policies shall also include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.
10. Independent Contractor Status and Disclosure Regarding STRS/PERS Retirees. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that s/he and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint ventures of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled. The parties acknowledge that the District periodically reports to the California State Teachers' Retirement System (STRS) and the California Public Employees' Retirement System (PERS) earnings paid to individuals receiving retirement benefits under STRS and PERS and that the District may be obligated to report earnings of independent contractors and their employees who are receiving STRS or PERS retirement benefits. Therefore, prior to providing any services under this Agreement, Contractor shall provide written notice to the District of all employees and subcontractors of the Contractor who are receiving STRS or PERS retirement benefits and who will provide services to the District under this Agreement. Thereafter, during the term of this Agreement, Contractor shall provide written notice to the District within five (5) business days of becoming aware of any additional employees or subcontractors of Contractor providing services under this Agreement who are receiving STRS or PERS retirement benefits. Contractor shall take reasonable measures to determine whether its employees providing services under this Agreement are receiving STRS or PERS retirement benefits.
11. Taxes. All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from compensation payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. 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 Contractor and the Contractor Parties and otherwise in connection with this Agreement.
12. Labor Code. Contractor shall comply with all applicable provisions of the Labor Code, Section §1720-1861, AB 1506 and the District's Labor Compliance Program, State of California (prevailing wages). Approved wage scales are on the internet at www.dir.ca.gov
13. Confidential Information. Contractor shall maintain the confidentiality of and protect from unauthorized disclosure any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than providing Services under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the Services provided to any District student pursuant to this Agreement.

14. Fingerprinting/Criminal Background Investigation Certification. Contractor and the Contractor Parties shall at all times cooperate with the District in ensuring compliance with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:
- A. Contractor and/or the Contractor Parties shall **have no contact** with District students at any time during the Term of this Agreement **OR** the Contractor and/or Contractor Parties will have contact with District students only when under the observation of a District employee.
 - B. The following Contractor/Contractor Parties **will have contact** with District students during the term of this Agreement while not under the observation of a District employee:

(Required if Box 14.B is checked.)

Prior to performing any services under this Agreement, all of the Contractor Parties noted above under Section 14. B (above). shall have completed background checks by the District's Human Resources Department (or such other office as may be identified by the District) and have been fingerprinted by the District's Human Resources Department (or such other office as may be identified by the District) under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these Contractor Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code. The District shall promptly notify Contractor upon determining that Contractor employees are cleared to perform services under the Agreement.

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information, including additional personnel, which differs in any way from the representations set forth above, Contractor shall immediately notify the District's Assistant Superintendent of Human Resources and prohibit any new personnel from having any contact with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any such contact is permissible. The Parties further understand and agree that the District's Superintendent or the Superintendent's designee may, at any time, provide written notice withdrawing consent to any of Contractor's employees performing services under this Agreement when, in the reasonable discretion of the Superintendent, it is inappropriate for Contractor's employee to continue providing services under this Agreement owing to criminal convictions or other misconduct or other factors deemed relevant by the Superintendent.

15. Tuberculosis Certification. Contractor and the Contractor Parties shall always comply with the tuberculosis ("TB") certification requirements as set forth below. Specifically, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:
- A. Contractor and/or Contractor Parties will not be present on a District school site and will not have contact with District students. **OR** Shall be present on a District school site and have contact with the same District students no more than two times in any month during the Term of this Agreement.
 - B. The following Contractor and/or Contractor Parties shall or may be on a District school site and have contact with District students three or more times per month during the term of this Agreement and, at no cost to District, have received a TB test that complies with the requirements of California Education Code section 49406:

Contractor shall maintain on file the certificates showing that the Contractor Parties was examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any such contact is permissible.

16. Assignment/Successors and Assigns. Contractor shall not assign or transfer by operation of law or otherwise any of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District, which consent shall be provided at the District's sole discretion. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.
17. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
18. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.
19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Mateo, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.
20. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified mail to the last business address known to the person who sends the notice.
21. Compliance with laws; Payment of Permits/Licenses. All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, district, and municipal laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act of 1974 (FERPA), and all federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, and the Individuals With Disabilities Education Act, as amended. Such services shall also be performed in accordance with all applicable ordinances, regulations, policies and procedures of the District and its governing board.
In the event of a conflict between the terms of this Agreement and federal, state, district, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance. Contractor shall comply with all state fingerprint laws, including Education Code 45125.1.
22. Cal/OSHA Workplace Violence Prevention Plan. Contractor shall have in effect during the entire term of this Agreement a Workplace Violence Prevention Plan (WVPP) as part of its Injury and Illness Prevention Plan (IIPP), as required by Section 6401.9 of the California Labor Code. In signing this Agreement, Contractor certifies (a) that it is aware of the provisions of Section 6401.9 of the California Labor Code, which require every employer to adopt, maintain and train all employees on the WVPP in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
23. Non-Discrimination. Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to District upon request. There shall be no discrimination against any person under this Agreement because of race, color, national origin, age, ancestry, age, disability (physical or mental), religion, sex, sexual orientation, gender identity, marital or domestic partner status, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information of such persons. Further, Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
24. Attorney Fees. If any legal action is taken to enforce the terms of this Agreement, each party shall bear its own legal expenses related to such action.

25. Liability of District. Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.
26. Time. Time is of the essence to this Agreement.
27. Retention of Records, Right to Monitor and Audit.
- (a) CONTRACTOR shall maintain all required records for three (3) years after the DISTRICT makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the District, a Federal grantor agency, and the State of California.
 - (b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the DISTRICT.
 - (c) CONTRACTOR agrees to provide to DISTRICT, to any federal or state department having monitoring or review authority, to DISTRICT's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine information reasonably required to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed. In addition, any third party that is not a government agency (or the agent of a government agency) involved in the compliance and audit process would be required to enter into a confidentiality agreement with CONTRACTOR to ensure that all information and records obtained be kept confidential. The confidentiality agreement shall also outline specific measures to safeguard any Protected Health Information that would be shared in the process.
28. Waiver. No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.
29. Entire Agreement. This Agreement, including Exhibits and Attachments attached hereto and incorporated herein by reference, is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.
30. Ambiguity. The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
31. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
32. Execution in Counterparts/Authority and Electronic Signatures. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. The parties agree that this Agreement may be negotiated, concluded and consummated by electronic means and that electronic forms of signature, including facsimiles, are acceptable and valid. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.
33. Warranty of Authority. The persons indicated below are legally authorized to execute this Agreement on behalf of the respective parties, and to bind the respective parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

DISTRICT:

CONTRACTOR:

SEQUOIA UNION HIGH SCHOOL DISTRICT

By: _____

By: _____

Name:

Name:

Title:

Title:

Date: _____

Date:

Address and Contact for District Notices:

Address and Contact for Contractor Notices:

Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

Attention:

Attention:

Site/Dept:

Phone:

E-Mail:

Budget Code:

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* * * Below for School Site ASB Contracts Only * * *

By: _____

By: _____

Title:

Title:

EXHIBIT "A"

In consideration of the payments set forth in Exhibit "B", (Contractor) shall provide the following services:

EXHIBIT "B"

In consideration of the services provided by (Contractor), in Exhibit "A", Sequoia Union High School District shall pay (Contractor) based on the following fee schedule: