



INDEPENDENT CONTRACTOR/CONSULTANT AGREEMENT

This AGREEMENT is hereby entered into between **Fullerton Joint Union High School District**, hereinafter referred to a “DISTRICT”, and enter name of contractor/consultant hereinafter referred to as “CONTRACTOR”.

WHEREAS, Public Contract Code §20111(a) provides that the DISTRICT may contract with any person or firm without bidding for the following as long as the contract does not exceed \$87,800:

- (1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
- (2) Services, except construction services.
- (3) Repairs, including maintenance as defined in Section 20115, that are not a public project as defined in subdivision (c) of Section 22002.

WHEREAS, DISTRICT is in need of such services; and

WHEREAS, CONTRACTOR is specially trained and experienced and competent to perform the 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 INDEPENDENT CONTRACTOR/CONSULTANT:** Contractor to provide: insert description of services.
- 2. Term:** CONTRACTOR shall commence providing services under this AGREEMENT on July 1, 20XX, and will diligently perform as required and complete performance by June 30, 20XX.
- 3. Compensation:** DISTRICT agrees to pay the CONTRACTOR for service satisfactorily rendered pursuant to this AGREEMENT on an as-need basis at an hourly rate of \$??/hour, with a not to exceed cap of \$87,800, or insert description of compensation.

4. Expenses: DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except as follows: insert description of expenses.

5. Independent Contractor: CONTRACTOR, in the performance of this AGREEMENT, shall be and act as in independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her 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 Workers' Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. 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'S employees.

6. Materials: CONTRACTOR shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT, except as follows: insert description of materials.

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.

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

8. Copyright/Trademark/Patent: CONTRACTOR understands and agrees that all matters produced under this AGREEMENT shall become the 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'S name in

conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

9. Termination: DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate 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 CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may 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) 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 shall contain the reasons for such intention to terminate and unless within ten (10) 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 (10) 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 exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charges 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 three (3) days after the day of mailing, whichever is sooner.

10. Hold Harmless: CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend the DISTRICT and its governing board, officers, employees and agents 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 negligence or

willful misconduct of the DISTRICT or its officers, employees or agents.

(b) Any injury to or death of any person(s), including the DISTRICT's officers, employees and agents, 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 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.

11. Insurance: Pursuant to Section 10, CONTRACTOR agrees to carry a comprehensive general and automobile liability insurance 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 arise out of the 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 the actual start date, 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 governing board, officers, agents and employees as additional insured under said policy.

12. Assignment: The obligations of the CONTRACTOR pursuant to this AGREEMENT shall not be assigned by the CONTRACTOR.

13. Confidentiality: CONSULTANT acknowledges that, during the term of this Agreement, CONSULTANT may have access to privileged and confidential knowledge, data, files, records, materials and information, including, but not limited to, confidential student records (collectively, the "Confidential Information"). CONSULTANT covenants and agrees to keep all Confidential Information confidential and not to disclose Confidential Information directly or indirectly during, or subsequent to, the term of this Agreement. The CONSULTANT and all CONSULTANT's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all Confidential

Information received in the course of performing the services authorized under this AGREEMENT. This requirement to maintain confidentiality shall extend beyond the termination of this AGREEMENT. Any use of the Confidential Information accessed by CONSULTANT other than for the District's benefit in connection with the business relationship between Consultant and the DISTRICT established by this AGREEMENT will constitute a wrongful usurpation of the Confidential Information by CONSULTANT. The CONSULTANT hereby agrees to forever hold the Confidential Information in strict confidence and secret.

14. Compliance with Applicable Laws: The services 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, CONTRACTOR's business, equipment and personnel engaged in services covered by the AGREEMENT or accruing out of the performance of such services.

15. 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.

16. Employment with Public Agency: CONTRACTOR, if an employee of another public agency, agrees that 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.

17. Entire Agreement/Amendment: This AGREEMENT and any exhibits attached hereto constitute the entire AGREEMENT among the parties to it and supersede 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.

18. Nondiscrimination: CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, marital status or age of such persons.

19. Non-waiver: The failure of DISTRICT or CONSULTANT 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.

20. Notice: All notices or demands to be given under this AGREEMENT by either party to the other shall be in writing and given either by: (a) personal services or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

DISTRICT:

Todd Butcher
 Director of Facilities and Construction
 Fullerton Joint Union High School District
 1051 W. Bastanchury Road Fullerton, CA 92833

CONTRACTOR:

Consultant Name
 Name Continued
 Address
 City, State, Zip Code

21. Severability: If any term, condition or 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 and effect, and shall not be affected, impaired or invalidated in any way.

22. Attorney Fees/Costs: Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys' fees.

23. Governing Law: The terms and conditions of the AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California. This AGREEMENT is made in and shall be performed in Orange County, California.

24. Exhibits: This AGREEMENT incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

A. List/describe exhibits and/or proposal

THIS AGREEMENT IS ENTERED INTO THIS _____ DAY OF _____, _____.

District

Contractor

Todd Butcher

Type or Print Name:

Director of Facilities and Construction
Fullerton Joint Union High School District
1051 W. Bastanchury Road
Fullerton, CA 92333

Date: _____

Date: _____