

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is hereby entered into between the Carlsbad Unified School District, hereinafter referred to as "District," and \_\_\_\_\_

Contractor Taxpayer ID Number

Mailing Address City State Zip\_

hereinafter referred to as "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. \_\_\_\_\_

(If additional explanation or listing of services is required, attach Exhibit A which is incorporated here in full by this reference.)

- 2. Term. Contractor shall commence providing services under this Agreement on \_\_\_\_\_, and will diligently perform as required and complete performance by \_\_\_\_\_.

- 3. Compensation. District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_). District shall pay Contractor according to the following terms and conditions:

Terms – Net 30 \_\_\_\_\_

(If additional explanation of payment terms is required, attach Exhibit B which is incorporated here in full by this reference.)

- 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:

\_\_\_\_\_

(If additional explanation of expense reimbursement terms is required, attach Exhibit C which is incorporated here in full by this reference.)

5. Precedence of Agreement Over Exhibits. Should there be any ambiguity or inconsistency between any exhibits to this Agreement and the terms of this Agreement, the terms of this Agreement take precedence.
6. Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities and all other means whatsoever, except as herein otherwise expressly specified to be furnished by District, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
7. Independent Contractor. Contractor, in the performance of this Agreement, shall be and shall act as an independent contractor. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by District except as to the results of the work. 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 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 or agents as they relate to the service to be provided under this Agreement. Nothing in this Agreement shall give the Contractor 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.
8. Taxes. Contractor acknowledges and agrees that it is the sole responsibility of Contractor to make the requisite tax filings and payment to the appropriate federal, state or local tax authorities. No part of 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.
9. 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, except as follows:  
  

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10. Originality of Services. 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 Contractor and shall not be copied in whole or in part from any other sources, except that submitted to Contractor by District as a basis for such services.
11. 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 Contractor 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.

12. 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 primary administrative offices, 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.
13. 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's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
14. Termination. District may at any time, with or without reason, terminate the 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 not later than five (5) 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; (c) or if Contractor is adjudged a bankrupt, and 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 fifteen (15) 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 fifteen (15) 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.

15. "DEFENSE AND INDEMNITY." (a) District shall not be liable for, and Contractor shall defend and indemnify District and its officers, agents, employees and volunteers (collectively "District Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of Contractor or its officers, employees, agents, contractors, licensees or servants, including, without limitation, claims caused by the concurrent negligent act, error or omission, whether active or passive, of District Parties. Contractor shall have no obligation, however, to defend or indemnify District Parties from a claim if it is determined by a court of

competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of District Parties.

(b) Contractor shall defend and indemnify 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 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.

16. Insurance. Contractor agrees to carry a comprehensive general and automobile liability insurance policy with limits of one million dollars (\$1,000,000.00) 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 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 copies of the policy or policies of insurance evidencing all coverages and endorsements required hereunder including a provision for 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. [Please check with the District's JPA Risk Management advisor regarding any and all insurance provisions.]
17. 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 copies of the policy or policies of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage.
18. Workers' Compensation Insurance. Contractor agrees to procure and maintain in full force and effect Workers' 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.
19. Inspection By District. The services completed herein must meet the approval of the District and shall be subject to the District's right of inspection to secure the satisfactory completion thereof. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, District may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and District may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor cannot correct its performance, the District shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the contract price to reflect the reduced value of the services received by District. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that the future performance of the service conforms to the specifications and requirements of this Agreement, the District shall have the right to either (1) without terminating this Agreement, have the services performed by contract or otherwise, in conformance with the specifications of this Agreement and charge Contractor, and/or withhold from payment due to Contractor, any costs incurred by District that are directly related to the performance of such services, or (2) terminate this Agreement for default.
20. Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices,

and training. Contractor agrees that it will not store any Hazardous Materials at any District Facility without prior approval of District Administrator of Agreement or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all action necessary to protect third parties, including, without limitation, employees, students, and agents of the District from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the District of it. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the District with respect to any third person under any Environmental Laws.

21. Contact with Students. Contractor will not permit any of its employees who perform services under this Agreement to come in contact with pupils or communicate with pupils. In the event Contractor fails to prevent its employees from having contact with pupils or communicating with pupils and injury results from failure to prohibit pupil contact or communication, Contractor shall defend, indemnify, protect, and hold the District, its agents, officers and employees harmless from and against any and all claims, demands, liability, judgments, awards, losses, injury, damages, expenses, charges or costs of any kind or character whether to the District or 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 prohibit its employees, subcontractors or agents from having pupil contact or communication. Any subcontractors hired by Contractor shall be subject to and shall comply with this section, and it shall be the Contractor's responsibility to require compliance with this section. Contractor and subcontractor shall be jointly and severally liable for any injury that results from subcontractor's failure to comply with this provision. Based on the determination that neither Contractor nor any subcontractor of Contractor will have contact with pupils, no fingerprinting of Contractor or its agents, subcontractors or employees is required by this Agreement.
22. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
23. Compliance With Applicable Laws. 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 operations covered by this Agreement, or occurring out of the performance of such operations.
24. 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.
25. 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.

26. 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.
27. 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 disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or a perception that a person has or is associated with a person who has, or is perceived to have, any of these characteristics.
28. 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.
29. 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: Michelle Johnson, Director of Nutrition and Purchasing Services  
6225 El Camino Real  
Carlsbad, Ca 92009
- For Contractor:
30. 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 service 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 fifth 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 set forth above.
31. 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.
32. Successors. All terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
33. Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Contract. In construing this Contract in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
34. Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Contractor shall not employ any person having any such interest in the performance of this Agreement.
35. Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 1)(commencing with

Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the Contractor for sale to the District under this Agreement.

- 36. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in San Diego County, California.
- 37. Warranty of Authority. Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

Approved by Board of Trustees on \_\_\_\_\_

DISTRICT

CONTRACTOR

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Walter Freeman  
Typed Name

Typed Name

Assistant Superintendent  
Title

Title

\_\_\_\_\_  
Social Security or  
Taxpayer Identification Number

**CERTIFICATION OF COMPLIANCE-CONTACT WITH PUPILS**

\_\_\_\_\_ (Contractor) certifies that pursuant to Education Code Section 45125.1, it has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Carlsbad Unified School District, pursuant to the contract, and that non have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7( c ) and 667.5( c ), respectively.

As further required by Education Code 45125.1, attached hereto is a list of the names of the employees of the undersigned who may come in contact with pupils.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date