

**AGREEMENT BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND
SAN MATEO-FOSTER CITY SCHOOL DISTRICT
CONCERNING CONSULTING SERVICES
(Dr. Howard Taras)**

THIS AGREEMENT is made by and between The Regents of the University of California on behalf of the University of California, San Diego, DISTRICT of Medicine, Department of Pediatrics ("UNIVERSITY") and San Mateo-Foster City School District, a political subdivision ("DISTRICT") with reference to the following facts:

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

WHEREAS, UNIVERSITY employs physicians with specialized training and expertise in Pediatrics and healthcare special education, and in particular, Howard Taras, M.D., ("PHYSICIAN");

WHEREAS, it would benefit both parties to enter into an agreement where DISTRICT desires to secure, and UNIVERSITY desires to provide, the non-exclusive services of PHYSICIAN to provide special education services to DISTRICT;

NOW, THEREFORE, it is agreed:

1. RESPONSIBILITIES OF UNIVERSITY

- 1.1 UNIVERSITY shall appoint PHYSICIAN to provide review of occupational therapy, physical therapy, speech services for DISTRICT's students.
- 1.2 If PHYSICIAN shall become permanently unavailable, for any reason, UNIVERSITY may, in its sole discretion, appoint another PHYSICIAN or terminate this Agreement. If UNIVERSITY elects to appoint another PHYSICIAN, such an appointment shall be made with the prior written consent of DISTRICT and such services shall be provided pursuant to the terms of this Agreement.
- 1.3 Space and Equipment. UNIVERSITY shall ensure that adequate and appropriate space and facilities are provided as necessary for the proper performance of services pursuant to this Agreement.

2. RESPONSIBILITIES OF PHYSICIAN

- 2.1 PHYSICIAN shall supervise and assign staff, as necessary to perform the services as described in subsection 1.1, attached hereto and incorporated by reference.

- 2.2 PHYSICIAN shall maintain in good standing an unrestricted license to practice medicine in the State of California, certifications and qualifications required hereunder or contemplated hereby.
- 2.3 Other Duties: PHYSICIAN shall
- 2.3.1 shall work with DISTRICT to establish a mutually agreed upon schedule for the producing the program.
- 2.3.2 as applicable, shall advise DISTRICT of needed repairs or replacement of DISTRICT provided equipment necessary for the proper performance of services under this Agreement either recognized by or brought to the attention of PHYSICIAN.

3. RESPONSIBILITIES OF DISTRICT

- 3.1 Equipment. DISTRICT, at its expense, shall supply for PHYSICIAN'S use such equipment as mutually agreed upon by the parties as necessary for the proper performance of services under this Agreement, within DISTRICT'S budgetary limitations and subject to required governmental licenses and approvals.
- 3.2 Use of UNIVERSITY'S Name
California Education Code section 92000 prohibits use of UNIVERSITY'S name to suggest that UNIVERSITY endorses a product or service DISTRICT will not use the Regents' or UNIVERSITY'S name, or any acronym thereof, including "UCSD," in any way that implies or suggests endorsement by UNIVERSITY, or the Regents, of the product(s) utilized or in association with the program produced under this agreement without prior written approval, except to identify UNIVERSITY as the copyright holder, or as the work site when required to do so by law.
- 3.3 DISTRICT acknowledges that UNIVERSITY employees shall follow the ethical and legal standards established by the UNIVERSITY'S Compliance Program, as well as those of DISTRICT'S compliance program, if such program exists, and a copy has been provided to the UNIVERSITY'S employee.

4. COMPENSATION AND BILLING

- 4.1 As compensation for the services rendered by PHYSICIAN to DISTRICT pursuant to sections 1.1 and 2.1 of this Agreement, DISTRICT shall pay UNIVERSITY a sum of Two Hundred Eighty dollars (\$280.00) per hour of PHYSICIAN'S services. Payment is due within thirty (30) days of receipt of UNIVERSITY'S invoice and upon termination of this Agreement or earlier upon UNIVERSITY'S completion of the services.

Invoices will be sent to: San Mateo-Foster City School District
Attention: Elizabeth Antone
11170 Chess Drive
Foster City, CA 94404

Checks will be made payable to: The Regents of the University of California

And sent to: UCSD Department of Pediatrics
9500 Gilman Drive, MC 0831
La Jolla, CA 92093-0831
Attention: Shirley Orpilla
UCSD #2019-0468
Federal Tax ID# 95-6006144

5. **INSURANCE**

DISTRICT and UNIVERSITY will maintain liability insurance or self insurance sufficient to cover the indemnification obligations under this Agreement.

6. **INDEMNIFICATION**

6.1 **DISTRICT'S Indemnification.** DISTRICT shall defend, indemnify and hold UNIVERSITY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, employees, or agents.

6.2 **UNIVERSITY'S Indemnification.** UNIVERSITY shall defend, indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UNIVERSITY, its officers, employees, or agents.

7. **COOPERATION IN DISPOSITION OF CLAIMS**

DISTRICT and UNIVERSITY agree to cooperate with each other in the investigation and disposition of third-party liability claims arising out of any services provided under this Agreement. It is the intention of the parties to fully cooperate in the disposition of all such claims. Such cooperation may include joint investigation, defense and disposition of claims of third parties arising from services performed under this Agreement. DISTRICT and UNIVERSITY agree to promptly inform one another whenever an incident report, claim or complaint is filed or when an investigation is initiated concerning any professional service performed under this Agreement. To the extent allowed by law, DISTRICT and UNIVERSITY shall have reasonable access to the medical records and charts of the other relating to any such claim or investigation; provided, however, that nothing in this section shall require either DISTRICT or UNIVERSITY to disclose any peer review documents, incident reports, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege or under the Attorney Work-Product Privilege.

11. **DISPUTE RESOLUTION**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If they are unable to do so, then the following procedures shall apply.

11.1 **Mediation.** Any dispute between the parties which cannot be resolved in accordance with Article 14 of this Agreement may be submitted to mediation. If the parties mutually agree that mediation is appropriate, within ten (10) business days of the delivery of a request for mediation, the parties shall agree upon a mediator. If the parties are unable to agree on a mediator, a mediator shall be appointed by JAMS/Endispute. In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation. At the mediation, each party shall be represented by persons with authority to negotiate a resolution of the dispute, and may be represented by counsel. The mediator shall determine the format for the meetings. The mediation session shall be private. The fees and expenses of the mediator shall be borne equally by the parties, each of whom shall be responsible for their own costs. The entire mediation process shall be confidential and the privileges and protection of Evidence Code Section 1152.5 shall apply. Prior to commencement of mediation, the parties and the mediator shall execute a written confidentiality agreement in accordance with the provisions of Evidence Code Section 1152.5. At any time, either party may withdraw from the mediation process and submit the matter to binding arbitration.

12. **GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of California.

13. **ASSIGNMENT**

Neither DISTRICT nor UNIVERSITY shall assign their rights, duties, or obligations under this Agreement, either in whole or in part, without the prior written consent of the other.

14. **SEVERABILITY**

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect unaffected by such severance, provided that the invalid provisions are not material to the overall purpose and operation of this Agreement.

15. **WAIVER**

Waiver by either party of any breach of any provision of this Agreement or warranty of representation herein set forth shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.

16. **ENTIRE AGREEMENT**

8. TERM AND TERMINATION

- 8.1 Term of Agreement. The term of this Agreement shall be for the period from June 1, 2019 through June 30, 2020. This Agreement may be renewed upon the mutual written agreement of both parties.
- 8.2 Termination Without Cause. Notwithstanding any other provision to the contrary, this Agreement may be terminated without cause, for any reason, at any time by DISTRICT or UNIVERSITY upon thirty (30) days prior written notice to the other party. Termination without cause shall not include termination based upon the volume of revenue or referrals generated under this Agreement.
- 8.3 Termination For Material Breach. In the event of a material breach of this Agreement, the aggrieved party may terminate this Agreement by giving written notice of termination to the breaching party, which termination shall be effective immediately upon delivery or as otherwise specified in such notice; provided, however, that if the nature of the breach is such that it can be reasonably cured, said notice shall specify the nature of such breach, and shall further state that the breaching party shall have thirty (30) days from the effective date of such notice to cure such breach, at which time, if the breach is not cured, this Agreement shall be terminated.
- 8.4 Cause for Automatic Termination. This Agreement shall automatically terminate in the event of: (1) the loss of DISTRICT'S State of California professional or business license; (2) the loss of DISTRICT'S insurance coverage as described in Section 6 of this Agreement; (3) the insolvency or bankruptcy of DISTRICT.
- 8.5 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, as herein above provided, and except as specifically provided herein, no party shall have any further obligation hereunder except for obligations, debts or liabilities arising hereunder prior to the date of expiration or earlier termination.

9. INDEPENDENT CONTRACTOR

None of the provisions of this Agreement shall be construed to or shall create a relationship of agency, representation, joint venture, ownership, control or employment between the parties, and it is understood and agreed that UNIVERSITY is at all times acting and performing the services pursuant to this Agreement as an independent contractor and not as an employee or agent of DISTRICT. DISTRICT shall not control or direct the manner or methods by which UNIVERSITY performs the contemplated medical services. However, UNIVERSITY shall be responsible for performing the services in a manner and at times so as to ensure that the contemplated services are performed and rendered in a competent, efficient and satisfactory manner.

10. MODIFICATIONS AND AMENDMENTS

This Agreement may be amended or modified at any time by mutual written consent of the authorized representatives of both parties. DISTRICT and UNIVERSITY agree to amend this Agreement if such amendment is required by applicable regulatory authority and does not materially affect the relative economic benefits of the parties.

This Agreement, including attached exhibits, contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of the Agreement and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter.

17. ATTORNEYS' FEES

In the event of any action, suit or proceeding, between the parties hereto, the cost of such action, suit or proceeding, including reasonable attorneys' fees, shall be borne by the losing party or, in the case of an arbitration, as determined by the arbitrator.

18. INTERRUPTION OF SERVICES

Any of the parties shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, labor disputes, riots, earthquakes, or other acts of nature. The obligations and rights of the parties so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. In the event the interruption of the excused party's obligations continues for a period in excess of thirty (30) days, the other party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the excused party.

19. SUBJECT HEADINGS

The subject headings used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement.

20. METHOD OF NOTIFICATION

All notices required or permitted to be given hereunder which may be given by any party to the other, shall be deemed to have been fully given when made in writing and sent by facsimile to the number set forth below or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

TO UNIVERSITY: Gene Hasegawa
 Chief Operating Officer
 UC San Diego Health Sciences
 9500 Gilman Drive, MC 0602
 La Jolla, CA 92093-0602
 Facsimile number: 858.534.6573

TO DISTRICT: Superintendent
 San Mateo-Foster City School District
 1170 Chess Drive
 Foster City, CA 94404

21. COUNTERPARTS

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. Telecopied signatures will be deemed to have the same effect as an original.

The parties have executed this Agreement as set forth below.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
on behalf its San Diego DISTRICT of Medicine, Department of Pediatrics**

By: Gene Hasegawa
Chief Operating Officer
UC San Diego Health Sciences

6/13/19
Date

SAN MATEO-FOSTER CITY SCHOOL DISTRICT

By: _____

Date _____

Name: _____

Title: _____