

Service Agreement
403(b)/457 Plan Administration and Compliance

This Service Agreement, (the “Agreement”), dated as of _____ is made by and among San Mateo-Foster City School District (“Employer”), Employee Benefits Services & Advisors, Inc. (“EBSA”), and Alta Montclair Corporation, (“ALTA MONTCLAIR”) and hereinafter collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, Employer sponsors a retirement plan (“Plan”) under:

- ☐ Internal Revenue Code Section 403(b), or
- ☐ Code Section 457; or
- ☐ Both to eligible employees of the Employer (“Employees”) and

WHEREAS, EBSA provides General Compliance and Plan Education services to Employer and Employees, and in the case of 457 Plan only, EBSA serves as the exclusive designator of the investment provider representative(s) who are authorized to offer investment products under the 457 Plan; and

WHEREAS, ALTA MONTCLAIR provides Third Party Administrator (TPA) services, Common Remittance services, and Hardware/Software Infrastructure and Support to all Parties of this agreement; and

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, Employer desires to retain EBSA and ALTA MONTCLAIR as Third Party Administrators and General Compliance service operators and Plan Educators, and, in the case of 457 Plan only, the exclusive designator of investment provider representative(s).

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

ARTICLE I
DUTIES OF EMPLOYER

- 1) Employer will determine the eligibility of participating Employees to make contributions to the Plans.
- 2) Employer will process Employee salary reductions as directed by EBSA. Employer will provide EBSA with timely information of any additions or changes that may be required for payroll processing as a result of an addition, change or termination of a Salary Reduction Agreement.
- 3) With investment providers that have entered into investment provider agreements with EBSA, Employer will assist in compliance activities relating to the approval of transactions by providing relevant data including, but not limited to, Employee date of hire, Employee date of termination, Employee disability status, Employee date of death, participating elective deferral contributions, and the division of elective deferrals between Pre-Tax (Traditional) Deferrals and Roth Deferrals (if Roth Deferrals are allowed), participant investment directions on salary reduction agreements (or other applicable investment direction). Employer is responsible for the accuracy, timeliness, and completeness of all of this data.

- 4) The Employer will provide information for each Employee participating in the Plan, necessary for EBSA and ALTA MONTCLAIR to establish an information database monitoring the MAC as set forth in Article 2 of this Agreement. If necessary, information not available to Employer may be provided by Employees. Employer acknowledges the importance of obtaining accurate data from Employees and agrees to facilitate the gathering of information from Employees in any manner that is reasonable and permitted within IRS and State law and that allows EBSA to perform its duties under this Agreement. Employer understands that the MACs are based solely on information provided to EBSA by Employer and Employees.
- 5) The Employer will provide, in a format acceptable to ALTA MONTCLAIR, information to ALTA MONTCLAIR as required to perform remittance of contributions and monitoring of contribution limitations.
- 6) Employer agrees to provide instructions to EBSA, as applicable, regarding any required action relating to contributions that have been rejected or otherwise returned by an investment provider.
- 7) Employer will review Plan Documents provided by EBSA and ALTA MONTCLAIR and will complete and execute the Adoption Agreement and such other supplemental documents, amendments, restatements, and supplemental schedules as may be reasonably requested by EBSA and ALTA MONTCLAIR to establish and maintain the Plan. Employer acknowledges that it is solely responsible for any changes it makes to the Plan documents without EBSA's approval. Employer acknowledges that documents are provided under a license limited to the term of this Agreement and that upon termination of this Agreement, or the transfer of the Plan to another plan compliance service provider, Employer will immediately cease using the EBSA plan documents and adopt other plan documents, as needed.

ARTICLE II DUTIES OF EBSA and ALTA MONTCLAIR

PLAN ADMINISTRATION

- 1) EBSA and ALTA MONTCLAIR shall provide the services described herein in a professional manner. EBSA and ALTA MONTCLAIR will be obligated to perform only those services as a Third Party Administrator specifically enumerated in this Agreement and the attached Service Proposal (Appendix A). EBSA and ALTA MONTCLAIR reserve the right to perform other services which in its sole discretion it believes are necessary to the efficient, professional performance of its duties hereunder; however, performance of such services not enumerated herein shall not create an ongoing obligation to perform such duties. In no event will EBSA and ALTA MONTCLAIR be deemed to have breached its duties to the Employer because of a failure to perform some function not enumerated herein, and agreed-upon by the Parties.
- 2) EBSA and ALTA MONTCLAIR shall perform the duties of the general administrator of the Plan. EBSA shall:
 - a) Assist Employer in establishing and maintaining a non-specific provider retirement plan, meeting operational, compliance and administrative guidelines under Internal Revenue Code Section 403(b) and Code Section 457. All rights, privileges and responsibilities for establishing the terms and conditions of the Plans, implementation of the Plans and managing the Plans will be at the sole discretion and direction of Employer as Plan Sponsor. EBSA and ALTA MONTCLAIR will review and make recommendations to Employer or such other person designated by Employer

with regard to any Plan changes that may be required to assist Employer with continuing administration;

- b) Maintain all necessary records for the administration of the Plan;
- c) Create and maintain a database of information provided by Employer and Employees to monitor applicable contribution limits under IRC Sections 401(a), 402(g), 403(b), 415(c) and 457(b) as applicable. The database will establish and monitor the maximum allowable contribution (“MAC”) limit for each participant in the Plans. EBSA and ALTA MONTCLAIR shall provide quarterly notice to Employer regarding participants who may be approaching or who may have exceeded their annual MAC. EBSA and ALTA MONTCLAIR will rely exclusively on information provided by Employer in establishing allowable limits and performing required calculations;
- d) Advise regarding procedures to properly correct contributions made in excess of MAC limits, if any;
- e) Serve as a technical resource for Employer and provide ongoing services to resolve operational, administrative and compliance issues during the term and renewal term(s) of this Agreement;
- f) Provide Plan document services or subsequent restatements or amendments as necessary to comply with Federal and State law and as requested by Employer. All plan documents and forms completed by EBSA and ALTA MONTCLAIR should be reviewed by Employer’s legal counsel. EBSA and ALTA MONTCLAIR shall provide forms, information and documents in a timely manner;
- g) Prepare annual summary reports for Employer on Plan operations and benefits;
- h) Facilitate the collection of investment provider agreements. EBSA will notify Employer and make recommendations regarding any provider or potential provider who does not agree to cooperate with all administrative and compliance procedures as established by EBSA, and/or with the terms of the provider agreement;
- i) Perform compliance activities relating to the approval of transactions with investment providers and gathering of pertinent information from investment providers that have entered into a provider agreement with EBSA; specifically:
 - i) EBSA and ALTA MONTCLAIR will collect and store in a database information concerning:
 - (1) Defaulted Loans and
 - (2) Date of hardship withdrawal application;
 - ii) EBSA and ALTA MONTCLAIR will perform maximum available loan amount calculations based on information provided by Employer, Employee, and investment providers;
 - iii) EBSA and ALTA MONTCLAIR will coordinate the approval or denial of transactions with investment providers and or Employees, as applicable. Transactions subject to approval are:

- (1) Rollovers and distributions;
 - (2) Hardship withdrawals;
 - (3) Loans; and
 - (4) Transfers or exchanges;
- j) Perform actions requested by Employer regarding Employee contributions that have been, for whatever reason, returned or rejected by an investment provider and are in the possession of EBSA; and
- 3) At the discretion of Employer, EBSA and ALTA MONTCLAIR will invoice investment providers of the Plan for all or a portion of the negotiated fees associated with this Agreement.
- 4) EBSA and ALTA MONTCLAIR will provide an electronic or paper-based means whereby Employees may initiate salary reduction, change salary reduction amount, change investment provider allocation, and cancel salary reduction.
- 5) EBSA will provide Plan education services to Employer and Employees and, in the case of 457 Plan only, EBSA shall serve as the exclusive designator of the investment provider representative(s) who are authorized to offer investment products under the 457 Plan.

COMMON REMITTANCE

- 6) EBSA & ALTA MONTCLAIR will be obligated to perform only those services as a Common Remitter specifically enumerated in this Agreement and in the attached Service Proposal (Appendix A). EBSA & ALTA MONTCLAIR reserves the right to perform other services which in its sole discretion it believes are necessary to the efficient, professional performance of its duties hereunder; however, performance of such services not enumerated herein shall not create an ongoing obligation to perform such duties. In no event will EBSA & ALTA MONTCLAIR be deemed to have breached its duties to the Employer because of a failure to perform some function not enumerated herein, and agreed-upon by the Parties.
- 7) Assist Employer to share encrypted Employee data and to receive retirement plan contributions for the Plan through payroll deductions. Each pay period, Employer will remit retirement plan contributions for Employees to EBSA/ALTA MONTCLAIR via ACH/EFT, check, or Fed Wire; and Employer will provide EBSA/ALTA MONTCLAIR a file of Employee data in a format reasonably acceptable to EBSA/ALTA MONTCLAIR from Employer's payroll system via encrypted Internet transmission. EBSA & ALTA MONTCLAIR agrees that contributions and repayments remitted shall be promptly transmitted to the investment option providers according to the instructions provided in the corresponding file within three (3) business days, provided funds and data are received in good order.
- 8) Remit Plan contributions to the investment providers via the U.S. Postal Service unless the provider can accommodate an ACH/EFT transmission of funds by EBSA/ALTA MONTCLAIR in a reasonable manner.
- 9) EBSA/ALTA MONTCLAIR will only remit contributions to investment providers if funds and payroll data sent by Employer to EBSA/ALTA MONTCLAIR include no discrepancies. EBSA & ALTA MONTCLAIR will contact Employer in a timely manner in the event discrepancies are

discovered. EBSA/ALTA MONTCLAIR will not forward contributions to investment providers until all discrepancies have been resolved.

INFRASTRUCTURE AND IT SUPPORT

- 10) ALTA MONTCLAIR will provide appropriate access to Alta Montclair TPA Portal, Customer Portal (altamontclair.org) and related software infrastructure to EBSA and Employer.
- 11) ALTA MONTCLAIR will provide on-going IT support related to TPA Portal infrastructure.

ARTICLE III TERM

- 1) In consideration for the performance of the services delineated herein, Employer promises and agrees that EBSA and ALTA MONTCLAIR shall be the exclusive Third Party Administrators of the Plan and, in the case of 457 Plan only, EBSA shall be the exclusive designator of the investment provider representative(s) who are authorized to offer investment products under the 457 Plan, and ALTA MONTCLAIR shall be the exclusive Common Remitter, for a period of two (2) years, beginning on the effective date of this Agreement. This Agreement shall automatically renew for continual one (1) year terms following the completion of the prior term.
- 2) Employer or EBSA and ALTA MONTCLAIR may terminate this Agreement with or without cause upon ninety days written notice, but such termination shall in no manner affect any liability of ALTA MONTCLAIR, EBSA, or Employer incurred prior to such termination. However, any party may terminate this Agreement immediately in the event of material and/or recurring breaches by the other party of its obligations hereunder.

ARTICLE IV INDEMNIFICATION

EBSA and ALTA MONTCLAIR agree to defend, hold harmless, and indemnify Employer and its officers, Employees, and agents from any and all claims, damages, and liability brought by a third party which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of EBSA and/or ALTA MONTCLAIR and/or its employees/officers/agents in the performance of this Agreement, including any sanctions, penalties, or claims of damages resulting from EBSA and/or ALTA MONTCLAIR's failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement. The indemnification includes the expenses of defending or settling any court proceeding brought by Employer against EBSA or ALTA MONTCLAIR including judgments that might be rendered for actions directly related to EBSA or ALTA MONTCLAIR'S negligence or failure to meet the terms of this agreement.

Customer agrees to indemnify EBSA and ALTA MONTCLAIR, in an amount not to exceed \$50,000, for its failure to meet the requirements of this Agreement.

ARTICLE V GENERAL PROVISIONS

EBSA and ALTA MONTCLAIR are neither investment advisors nor Fiduciaries and have no responsibility to furnish Employer or Employees with investment material, advice, or information or to make any investment recommendations. EBSA and ALTA MONTCLAIR have no investment discretion over Plan assets. Further, EBSA and ALTA MONTCLAIR shall have no liability to any person as a result of any investments or use of Plan assets made pursuant to the direction or instructions of any Plan participant, Employer or investment advisor to the Plan. EBSA and ALTA MONTCLAIR shall have no liability for the accuracy or completeness of any of the books or records of the Plan for any period preceding the effective date of this Agreement.

ARTICLE VI MISCELLANEOUS PROVISIONS

- 1) Privacy of Employee Information. EBSA and ALTA MONTCLAIR agree that if EBSA or ALTA MONTCLAIR receives knowledge that Confidential Employee Information (as defined herein) has been acquired or reasonably believes it has been acquired by an unauthorized person by unauthorized means, EBSA or ALTA MONTCLAIR shall use its best efforts to notify Employer within two (2) hours (but in no event later than twenty-four hours of obtaining such knowledge). EBSA and ALTA MONTCLAIR further agree that EBSA and ALTA MONTCLAIR will not disclose the facts of, or any details regarding, the actual or potential breach to any party other than Employer without written permission from Employer. Employer agrees that it will provide such permission (subject to its election below) after Employer has had a reasonable opportunity to investigate the extent and/or validity of the compromise, and as is consistent with the requirements of the law. Employer, in its sole discretion, may elect either of the following options:

- (a) Employer notifies the Employee of the security breach; or
- (b) Employer approves in writing of a notification to the Employee from EBSA or ALTA MONTCLAIR.

EBSA and ALTA MONTCLAIR agree to cooperate fully with Employer and take all reasonable actions to prevent any further disclosure. EBSA and ALTA MONTCLAIR further agree to cooperate fully with and delay any notification consistent with the legitimate needs of any law enforcement authority.

EBSA and ALTA MONTCLAIR further agree that all Confidential Employee Information will be maintained in a confidential and secure manner pursuant to the standards created by law. EBSA and ALTA MONTCLAIR shall provide to Employer at reasonable times during regular business hours commercially reasonable information, documentation and access to its information security systems as pertains to Confidential Employee Information provided to it by Employer. At all times, EBSA and ALTA MONTCLAIR will handle Employer Confidential Employee Information in accordance with the instructions given it by Employer, including, without limitation, any instructions concerning disposal of the Confidential Employee Information or return of the Confidential Employee Information to Employer. Upon the request of Employer, at any time, or upon termination of this Agreement for any reason, EBSA and ALTA MONTCLAIR will promptly, but not later than five (5) days after notice from Employer, return or dispose of the Confidential Employee Information to Employer pursuant to Employer's instructions and at Employer's expense.

Nothing herein shall limit either party's obligation to comply with the privacy laws affecting it, and each party agrees that it will not take any action to cause the other to be in breach of the privacy laws affecting it. If the applicable privacy laws change, the Parties shall take such action as is necessary to comply with the law as it then exists.

For purposes of this Section, "Confidential Employee Information" means "non-public personal financial information" (personal data) as that term is defined in the Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801 et seq.) of the Employees.

This confidentiality Section shall survive termination of this Agreement.

- 2) Solicitation and Directives. EBSA and ALTA MONTCLAIR, their agents and representatives shall comply with all pertinent written directives from Employer regarding the solicitation of Employees and the purchase of investment accounts.
- 3) Cooperation from EBSA and ALTA MONTCLAIR. EBSA and ALTA MONTCLAIR shall, in the event of an audit by the Internal Revenue Service, the internal audit by Employer, or a third party firm designated by Employer or in any other instance, in which Employer required it, promptly provide necessary information as requested by Employer.
- 4) Prior Agreements. This Agreement supersedes all prior discussions, understandings or agreements between the Parties relative to the subject matter hereof.
- 5) Alteration of Terms. No alteration or variation of the terms of this Agreement shall be valid unless the Parties mutually consent in writing to such alterations or variations.
- 6) Governing Law/Venue. The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.
- 7) Severability. In the event that any one or more of the covenants, terms, or conditions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other covenants, terms, or conditions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable covenant, term, or condition had never been contained herein, unless the deletion of such covenant, term, or condition would result in such a material change so as to cause completion of the services contemplated herein to be unreasonable.
- 8) Extraordinary Circumstances. Neither party shall be held responsible for the delay or failure to perform services and/or obligations under this Agreement when such delay or failure is due to fire, flood, epidemic, strike, an act of God or any public enemy, unusually severe weather, failure or malfunction of any electronic, electric or mechanical equipment, legislative or regulatory acts of any public authority, delays or defaults caused by public carriers, or other circumstances which cannot reasonably be forecast or provided against.
- 9) Limitation of Authority to Act. Neither Party shall have any authority to incur any expense or obligation of any kind or nature, in the name of or on behalf of the other Party, without express written authority.

- 10) Compliance with Law. The Parties shall be subject to and shall comply with all Federal, State and local laws and regulations applicable with respect to its performance under this Agreement including but not limited to: licensing, employment and purchasing practices, and wages, hours and conditions of employment, including nondiscrimination.
- 11) Integration. This Agreement and any exhibits attached hereto contain the entire Agreement of the Parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. No modification of this Agreement shall be effective unless in writing and signed by all Parties.
- 12) Compensation. Refer to attached Fee Schedule (Appendix B) for description of fees and charges related to this Agreement.

13) Notices/Contact Persons for Purposes of this Agreement. All notices under this Agreement shall be in writing, deemed effective upon receipt and addressed as indicated below:

EBSA CONTACT PERSON

Name: Rene Rocamora, CEO

Phone: (408) 371-7661

Mailing Address as to this Agreement:

Employee Benefits Services & Advisor, Inc.
2542 So. Bascom Avenue, Suite 100
Campbell, CA 95008

EMPLOYER CONTACT PERSON

Name: Carolyn Chow

Phone: (650) 312-7269

Mailing Address as to this Agreement:

1170 Chess Drive, Foster City, CA 94404

ALTA MONTCLAIR CONTACT PERSON

Name: Sam Monastyrsky, CEO

Phone: (866)-641-8477

Mailing Address as to this Agreement:

Alta Montclair
15400 Winchester Blvd. #5
Los Gatos, CA 95030

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed by their respective authorized representatives, as of the date first written above.

EMPLOYEE BENEFITS SERVICES & ADVISORS, INC.

By: _____
AUTHORIZED REPRESENTATIVE

ROCKY ROCAMORA
PRINT NAME

CEO
TITLE

DATE

26-3337808
FEDERAL TAX ID

SAN MATEO-FOSTER CITY SCHOOL DISTRICT
EMPLOYER

By: _____
AUTHORIZED REPRESENTATIVE

CAROLYN CHOW
PRINT NAME

CHIEF BUSINESS OFFICIAL
TITLE

DATE

FEDERAL TAX ID

ALTA MONTCLAIR CORPORATION

By: _____
AUTHORIZED REPRESENTATIVE

SAM MONASTYRSKY
PRINT NAME

CEO
TITLE

DATE

47-1581984
FEDERAL TAX ID