

SECTION 403(b)/457(b)/401(a) PLAN SERVICE AGREEMENT

This Agreement is made by and between Foothill-DeAnza Community College District (the "Employer") and _____ (the "Company").

This Agreement is separate from and in addition to any and all hold harmless agreements, service provider agreements, information sharing agreements, or similar agreements with respect to 403(b) plan compliance or information sharing and, if applicable, 457(b) and/or 401(a) plan compliance or services, in effect between the parties on the date hereof (collectively, "403(b) Agreement" or "403(b) Agreements"), including any amendment to such 403(b) Agreement or 403(b) Agreements. In the event of a conflict between this Agreement and any such 403(b) Agreement, the terms of this Agreement shall control.

WHEREAS, Employer has entered into an agreement with AIG Retirement Services Company ("Administrator") to provide ministerial and non-fiduciary services for Employer's 403(b) plan and, if applicable, 457(b) plan and/or 401(a) plan (the "Services" or "Retirement Manager"), which services may include common remittance services, non-biased and objective Internet services, and consolidated participant statement services;

WHEREAS, Employer has designated Company as an authorized provider under Employer's 403(b) plan and, if applicable, 457(b) plan and/or 401(a) plan; and

WHEREAS, Employer desires that Company agree to and abide by the terms and conditions of this Agreement with Employer.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is hereby agreed as follows:

- 1. Electronic Communications Between Administrator and Company.** All data to be shared between Administrator and Company under the terms of this Agreement shall be transferred electronically between the Company and the Administrator.
- 2. File Format.** Company must submit data to Retirement Manager related software or computing systems via File Transport Protocol (ftp) using the Retirement Manager (gff) file that is in a text format or the industry standard SPARK (Society of Professional Asset Managers and Record Keepers) file format. The Employer may designate the file format to be used. Administrator reserves the right to make changes from time to time to the Retirement Manager file format with ninety (90) days' written notice to Company.
- 3. Time of Delivery.** Company shall provide the Administrator the data on a monthly basis or more frequently as agreed upon by Employer and Administrator. With regard to monthly data, Company shall provide the data file to Retirement Manager related software or computing systems on or before the 15th of each month with data

current to the last day of the previous month. Data provided on a more frequent basis shall be subject to time standards agreed upon by Employer and Administrator.

4. Identification of Participants. For purposes of this Agreement, the Company shall identify all current or former employees and beneficiaries whose accounts are required to be included in the Employer's 403(b) plan and, if applicable, 457(b) plan and/or 401(a) plan to which this Agreement applies.

5. Data. Company shall provide the Administrator with information regarding loans, hardship and unforeseeable emergency withdrawals, distributions due to severance from employment and other partial distributions or other transactions as requested by the Employer/plan sponsor.

6. Distribution Eligibility Certificate Procedures. The Distribution Eligibility Certificate ("Certificate"), a sample copy of which is attached to this Agreement, will be completed by the participant on Retirement Manager related software or computing systems, and the participant will provide the Certificate to Company. Company may also access the Certificate on Retirement Manager related software or computing systems by using Company's login as provided by the Administrator. The Employer hereby directs Company to utilize information provided on the Certificate in determining a participant's eligibility for certain plan transactions, including hardship distributions and loans.

- The Company will require a valid Distribution Eligibility Certificate prior to approving a loan or distribution. The Company must validate a current effective date on the Certificate and not process based on an expired Certificate.
- The Company should not approve a loan in excess of 50% of the account balance at the Company.
- Because a Distribution Eligibility Certificate will be based upon information provided to the Administrator by Employer, one or more providers including Company, and/or a participant, and because a Company investment product may have restrictions in addition to applicable Plan restrictions, nothing in such a Certificate should be interpreted or applied to override more restrictive provisions in Company's investment product(s) or to authorize or direct Company to disregard relevant information otherwise available to Company that might adversely affect the participant's eligibility for the requested distribution or loan.
- In the event of a hardship distribution, or a loan for a principal residence, Company shall be responsible for maintaining supporting qualification documentation, including but not limited to invoices, bills or other documentation of the reason for the requested hardship withdrawal, or a contract for purchase of a principal residence.

7. Company Remittance Procedures. All remittance instructions will be sent from the Administrator to the Company electronically via File Transport Protocol (ftp) using the Retirement Manager (gff) file that is in a text format, or the file may be downloaded from a secure Retirement Manager download facility. All funds shall be sent via Fed Funds wire.

8. Implementation Procedures. A Retirement Manager Provider Implementation Guide will be provided to Company upon initiation of the implementation process. This package will include implementation instructions and procedure explanations. Company will submit the following information to the Administrator: Remittance Contact Information, Bank Information (for the transmission of remittance files), Authorized Personnel List (to retrieve remittance files from Retirement Manager related software or computing systems), Company Information (name, web address, contact information and applications in (pdf) format).

9. Reliance on Information and Instructions. Administrator shall have the right to conclusively rely on information and instructions received from time to time from Company pursuant to the terms of this Agreement. Administrator shall not be liable for acting in reliance upon any such information or instructions. Nothing in this Agreement shall be construed as making Administrator an insurer or guarantor of any investment vehicle or of any benefit under the Plans. Company shall have the right to conclusively rely on information and instructions received from time to time through Administrator from the Employer and/or employees pursuant to the terms of this Agreement. Company shall not be liable for acting in reliance upon any such information or instructions. Company shall remain responsible for the proper administration of Company's 403(b) and if applicable, 457(b) and/or 401(a), contracts and/or accounts maintained under the Plan(s).

10. Contribution Data. Company shall notify Administrator, as soon as administratively feasible, if any contribution data causes discrepancies with the Company's record keeping system. Company shall maintain safeguards and operating procedures to ensure the timely posting of participant contributions based on the contribution data supplied by Administrator. Such contribution data may include but not be limited to participants who do not have an account with Company.

11. Resources. Company agrees to use commercially reasonable efforts to cooperate with Administrator and make available the necessary personnel and resources to provide and implement the Services. Company agrees to provide a contact person to Administrator in the event of file transmission issues. Company agrees to jointly review with the Administrator at the request of either party or the Employer, performance under the Agreement and to use commercially reasonable efforts to correct any problems and/or resolve issues. Such review shall occur within a reasonable period of time after the request.

12. Fees and Expenses. Company shall bear its own expenses relating to its obligations under this Agreement and shall not be responsible for the expenses of the Employer or Administrator.

13. Non-Solicitation. Company and Administrator shall not directly or indirectly through an affiliate or another party use (or permit to be used) the participant information acquired solely as a result of this Agreement to solicit clients of any authorized provider

under Employer's Plan. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party's employees from providing services on site for the Employer or the Employer's employees, or reduce the level of service currently provided by such employees to Employer's employees. Furthermore, the terms of this Agreement shall not apply to any generic participant communications materials generated and provided to Plan participants by either party.

14. No Right to Remain Authorized Provider. Nothing in this Agreement shall be deemed to give Company any right to remain an authorized provider under Employer's 403(b) plan or, if applicable, 457(b) plan and/or 401(a) plan.

15. Amendment and Termination. This Agreement may be amended by mutual written agreement, provided however that a permitted modification described in Section 2 or 3 hereof or in an amendment or addendum hereto shall not be considered an amendment for purposes of this Section 15. This Agreement may be terminated upon both (a) mutual agreement of Employer and Company as to the continued sharing of information for purposes of 403(b) compliance between Employer and Company, and (b) assumption by Employer from Administrator of responsibility for compliance coordination with respect to accounts with Company. Unless otherwise amended, the Agreement shall terminate upon termination of the Retirement Manager agreement between Employer and Administrator. Notwithstanding the foregoing, the Non-solicitation and Indemnification provisions hereof shall survive any such termination or amendment.

16. Governing Law. Except where Federal laws would otherwise control, this Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the state of the Employer's principal place of business.

17. Acts or Omissions. Neither Company nor its affiliates, successors and assigns shall have any liability, duty or other obligation with respect to actions or omissions (including incomplete or incorrect data provided to Company) of the Employer, the Plan Administrator, or other authorized Plan representative, or of any concurrent or predecessor investment or service provider. Neither Employer nor its affiliates, successors and assigns shall have any liability, duty or other obligation with respect to actions or omissions of Company or its affiliates, successors and assigns.

18. Indemnification. Company acknowledges that the accuracy of Retirement Manager is based on Company's providing Administrator complete and accurate data and that the accuracy of Retirement Manager depends on all adjustments and corrections being made through Retirement Manager. Company shall indemnify Employer and Administrator and their successors or assigns for any claim, cause, or demand arising out of Company's failure to perform one or more of its obligations hereunder, including any claim, cause or demand arising as a result of incomplete or incorrect data provided by Company to Administrator. Administrator shall be entitled to rely on and will be fully

protected in acting on data and direction provided by Company and will have no duty to inquire with respect to such data or direction. Company shall indemnify Administrator and their successors or assigns for any claim, cause, or demand arising as a result of Company's submission of data to Retirement Manager related software or computer systems containing corrupt data, malicious or harmful code, or which is otherwise injurious to the operation of Retirement Manager related software or computer systems. With regard to this section, Administrator is a third-party beneficiary to this Agreement.

19. Notices. Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Employer: Foothill-De Anza College District
 Attn: Hong Nguyen
 12345 El Monte Road
 Los Altos Hills, Ca 94022

If to Company: _____

or such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

All operational notices and transmittals may be oral or written as the parties may agree from time to time. Provided, however, any notice one party provides to the other concerning termination or suspension of performance under this Agreement must be in writing.

20. Entire Agreement; Modifications. This Agreement supersedes any conflicting provision or provisions in any prior agreements, written or oral, between Company and Employer and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Employer and Company.

21. Assignment. Absent the advance written approval of Employer, Company's interest in this Agreement and its rights and duties hereunder may not be subcontracted, assigned or delegated to an unaffiliated third party.

22. No Waiver. A delay or omission by either party in exercising any right or power under this Agreement shall not be construed as a waiver of that right or power. A waiver by either party of any term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of this Agreement.

23. Severability. If any provision or part of a provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination shall not affect any other provision of this Agreement, which shall be interpreted as if the invalid or unenforceable provision or part thereof had not been included.

24. Force Majeure. Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, material changes in applicable laws or regulations over which a party has no control that prohibit that party from performing all of its obligations under this Agreement (collectively, a “**Change in Laws**”), or any other circumstances of like character (each, a “**force majeure occurrence**”). Provided, however, in order to ensure the orderly performance and, if necessary, transition of responsibilities under this Agreement, each party is responsible for:

- (a) monitoring the applicable legal and regulatory environments and identifying any potential Change in Laws as far in advance as is reasonably possible, and
- (b) ensuring that the other party is made aware of and is fully informed about any potential Change in Laws as far in advance as is reasonably possible.

25. Rights in and Ownership of Retirement Manager. Company shall be limited to those rights expressly granted herein. Company agrees not to cause or permit the: (i) use, copying, modification, rental, lease, sublease, or transfer of Retirement Manager and related software, computing systems, and documentation, except as expressly provided in this Agreement; (ii) creation of any derivative works based on Retirement Manager and related software, computing systems, and documentation; or (iii) reverse engineering, disassembly, or decompiling of Retirement Manager and related software, computing systems, and documentation. The Administrator retains all right, title and interest in Retirement Manager and related software, computing systems, and documentation, and in all copies, improvements, enhancements, modifications and derivative works of Retirement Manager and related software, computing systems, and documentation, including, without limitation, all patent, copyright, and trade secret rights, and all trademark rights not otherwise granted under this Agreement. With regard to this section, Administrator is a third-party beneficiary to this Agreement.

26. Confidentiality. In this Agreement, the phrase "Confidential Information" means all information, including all documents and other tangible items which record information, whether on paper or in electronic or other storage form, in computer

readable format or otherwise, relating to Employer, its affiliates, plan participants, and/or Administrator, including, without limitation, all data of any kind whatsoever; data contained on Distribution Eligibility Certificates, including identification of provider accounts for plan participants; know-how; experience; expertise; business plans; ways of doing business; business results or prospects; pricing; supplier information and agreements; business processes (whether or not the subject of a patent); computer software and specifications therefore; database mining and marketing; any technical, operating, design, economic, client, customer, consultant, consumer or collector related data and information; marketing strategies or initiatives and plans which at the time or times concerned is either capable of protection as a trade secret or is considered by Employer or Administrator to be of a confidential nature and is supplied to or obtained by Company whether in the form of specifications, written or electronic data, drawings, or disclosed orally or otherwise.

Company shall, regardless of when the Confidential Information was or is received by Company: (a) hold in confidence all Confidential Information and not reveal any Confidential Information to any other person without the prior written approval of a senior officer of Employer; (b) use the Confidential Information solely in connection with Company's provision of services under this Agreement, and not use such Confidential Information for any other purpose; (c) keep all Confidential Information secret and confidential and diligently protect all Confidential Information against loss, and prevent unauthorized use or reproduction thereof; and (d) if requested by Employer, or immediately upon termination of this Agreement, return to Employer all Confidential Information, all copies (including backup copies), reproductions, reprints and translations thereof, whether written, electronic or otherwise, in the possession of, or under the control of, the Company. With regard to this section, Administrator is a third-party beneficiary to this Agreement.

27. Trademark Rights. Administrator hereby grants to Company a non-exclusive, non-transferable, royalty-free license to use the AIG RETIREMENT MANAGER trademark solely in connection with an accurate description of Company's provision of services under this Agreement, consistent with the prior use(s) by Administrator, and subject to the following Guidelines:

- The Company will ensure that the presentation of the AIG RETIREMENT MANAGER trademark will be consistent with Administrator's own use of the AIG RETIREMENT MANAGER trademark in comparable media. From time to time during the term of the Agreement, Administrator may provide to Company written guidelines as to the size, typeface, colors, and other graphic characteristics of the AIG RETIREMENT MANAGER trademark, which upon delivery to the Company shall be deemed to be incorporated into the Agreement and into these Guidelines.
- All uses of the AIG RETIREMENT MANAGER trademark will be designated with "SM", "TM" or "®", in the manner directed by Administrator.

- The AIG RETIREMENT MANAGER trademark will not be presented or used: a) in a manner that suggests that editorial content has been authored by, or represents the views or opinions of, Administrator or any Administrator personnel or affiliate; b) in a manner that is misleading, defamatory, libelous, obscene, infringing or otherwise objectionable; c) in connection with any material that infringes the trademark, copyright or any other rights of any third party; d) as part of a name of a product or service of a company other than Administrator; or e) in a manner that infringes, derogates, dilutes, or impairs the rights of Administrator in the AIG RETIREMENT MANAGER trademark. Administrator shall have complete discretion to evaluate Company's use and to decide whether that use violates any of the foregoing restrictions.

The trademark rights granted pursuant to this Agreement are subject to all pre-existing contracts and to all rights of third parties related to the AIG RETIREMENT MANAGER trademark. Administrator expressly reserves the right to use the AIG RETIREMENT MANAGER trademark anywhere in the world in connection with any materials or products developed or sold by or for Administrator or any services rendered by or for the Administrator. With regard to this section, Administrator is a third-party beneficiary to this Agreement.

28. Captions. The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

{The remainder of this page has been intentionally left blank.}

This Agreement has been executed by duly authorized representatives as of the dates set forth below their signatures and is effective _____, 20____.

COMPANY:

EMPLOYER:

Name of Company

Name of Employer

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date