



SECTION 403(b) PROGRAM
QUALIFIED SERVICE PROVIDER AGREEMENT
(HOLD HARMLESS AGREEMENT)

WHEREAS, the governing board of Foothill-De Anza Community College District (the "Employer") wishes to make available to its employees tax-deferred annuities and/or custodial accounts pursuant to the provisions of Section 403(b) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"); and

WHEREAS, _____ (the "Company") is authorized pursuant to State and Federal law to offer and has offered to provide tax-deferred annuity contracts or custodial accounts for eligible employees of the Employer;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Employer shall make available tax-deferred annuities and/or custodial accounts to all of its employees, except those permitted to be excluded under Code Section 403(b)(12), subject to an annual minimum contribution of no more than \$200, as set forth in Code Section 403(b)(12).
2. In connection with the annuities or custodial accounts, the Company shall provide the following administrative services. The Company agrees to:
 - A. Calculate the maximum annual contribution permitted by law under the 403(b) program for employees contributing to a 403(b) program product offered by the Company, upon: (i) enrollment, (ii) non-automatic increases in deferrals, if the Company is notified in advance thereof, or (iii) request by the Employer or employee. This calculation shall include calculation of the limits under Code Sections 415(c), 402(g) and 414(v), as applicable to 403(b) programs. In performing the calculation, the Company is entitled to rely on information provided by the participant and/or the Employer.
 - B. Review salary reduction contributions, as identified to the Company by the Employer, for each employee directing contributions to a Company annuity or custodial account, at the end of each year, and notify the Employer within a reasonable time thereafter if any employee has contributed in excess of the elective deferral limit of Code Section 402(g), as applicable to 403(b) programs and as set forth in the Company's annuity contract or custodial account. In calculating the Code Section 402(g) limit, the Company is entitled to rely on information provided by the participant and/or the Employer concerning qualification for and the calculation of the elective cap expansion under Code Section 402(g)(7).
 - C. Notify participants of the minimum distribution requirements under Code Sections 403(b)(10) and 401(a)(9) and the regulations promulgated thereunder. Required minimum distributions will be calculated in a manner consistent with the methodology set forth under the Code and underlying Treasury regulations.
 - D. Based upon information provided by the Employer and/or the employee, limit distributions to those events described in Section 403(b)(11), or Section 403(b)(7) and the regulations promulgated thereunder as applicable, and as set forth in the Company's annuity contract or custodial account. Any additional plan restrictions, where appropriate, will be applied, provided that they are communicated to the Company in advance and in writing.
 - E. Report benefit distributions and deemed distributions on IRS Form 1099-R, and withhold Federal income taxes on distributions meeting the requirements of Paragraph 2(D) of this Agreement, as requested by the participant or the participant's beneficiary, or as required by law.
 - F. Provide employees with notice of their rights to elect a direct rollover or to receive the distribution directly, within a reasonable time and prior to making an eligible rollover distribution, consistent with Section 403(b)(8), Section 402(f) and regulations promulgated thereunder.

- G. To the extent loans are available under the terms of the Employer's 403(b) program, offer nontaxable loans that are consistent with the requirements of Section 72(p) and the regulations thereunder. The Employer and the Company shall agree upon procedures for confirming that the loan being requested, when added to any other loans under the plans of the Employer, will not cause the participant to exceed the maximum nontaxable loan amounts available under the Code or the terms of the Employer's plan, and/or that the participant has no loan defaults with another account under the plan or under another plan which is required to be aggregated with the plan for purposes of applying this limitation.
 - H. Furnish to employees upon request information concerning the terms and provisions of the annuity or custodial account purchased, including any distribution options available at the time of retirement or distributions other than at retirement.
 - I. For any qualifying insurance product offered under the Employer's 403(b) plan or program, verify that the premiums paid for any qualified incidental insurance offered by the Company through the allocation of contributions or other amounts held under the plan or program are within the limits specified by law, and report the appropriate costs incurred by employees who participate in the Company's qualified incidental insurance, if any. Such reporting will comply with the reporting requirements promulgated by the Internal Revenue Service.
 - J. Extend its full and complete cooperation in providing data to the Employer, including any and all necessary documents required in the event of an audit by the Internal Revenue Service, as such data and/or documents are requested by the Employer for the sole purpose of administering the plan in conformity with requirements of the Code. The data and/or documents provided will reflect information as identified to the Company by the Employer, and will be provided to the extent reasonably available from records maintained by the Company in the ordinary course of business. The Employer acknowledges that its release of such data or documents may be subject to applicable federal and/or state privacy limitations, and that release by the Company of certain information may be subject to participant consent.
 - K. Cooperate in the correction of any defects in the Employer's 403(b) program under applicable Internal Revenue Service guidance regarding correction and self-correction of applicable defects to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Company. In the event that the Company identifies any operational defects in the ordinary course of business, the Employer hereby authorizes the Company to correct any such operational defects in the 403(b) program in a manner consistent with applicable guidance. The Company also agrees to cooperate in the correction of any defects in the Employer's 403(b) program which the Employer submits to the IRS or addresses under applicable self-correction or audit programs, pursuant to applicable IRS guidance for such correction to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Company, provided that: (i) the Employer notifies the Company within a reasonable time in advance of a submission in accordance with the Employee Plans Compliance Resolutions System (EPCRS) program, and (ii) the Employer and the Company agree in advance as to the scope of the potential correction the Company will undertake, as it relates to annuity contracts or custodial accounts issued by the Company.
 - L. Comply, and to direct its agents and representatives to comply, with all pertinent written directives regarding the solicitation of employees of the Employer and the purchase of annuities or custodial accounts, to the extent that such directions are consistent with applicable law and are provided to the Company within a reasonable time in advance of the enforcement of any such directives.
3. The Company shall maintain errors and omissions insurance for each of its agents, or shall require each of its agents to maintain errors and omissions insurance. The Company shall also maintain general corporate liability and fidelity coverage and provide proof thereof to the Employer upon request. All such insurance coverage shall be maintained while this Agreement remains in effect. The Company shall notify the Employer in writing within thirty (30) days of a termination of such coverage which occurs while this Agreement remains in effect, where the coverage is not replaced by similar coverage from another insurer.
 4. The Company shall hold harmless and indemnify the Employer, its officers and employees from any statutory tax penalties, and/or interest on tax deficiencies or on statutory tax penalties, that may be lawfully imposed by any governmental authority by reason of: (i) the making of contributions to tax-sheltered annuity contracts or custodial accounts sold by the Company in excess of the limits on tax-deferred contributions imposed by the Code, if such excess contributions arise from an erroneous calculation of such contribution limits by the Company or a representative thereof;

or (ii) any challenge to the tax-qualified status of the form of any annuity contracts or custodial accounts purchased from the Company on behalf of employees of the Employer.

A. The paragraph directly above shall not apply if the event giving rise to the imposition of statutory tax penalties or interest: (i) is directly attributable to erroneous information furnished to the Company by the Employer or any employee thereof, or (ii) occurs after the Company has notified the Employer or the affected employee in writing of an error and either or both has failed or refused to take appropriate corrective action, or (iii) is directly attributable to the failure of the Employer to follow a legal requirement for the 403(b) program if the Employer had been duly notified in writing of such requirement and compliance therewith was beyond the control of the Company.

B. In the event that the Internal Revenue Service or other governmental authority notifies the Employer of any proposed action that could give rise to any claim against the Company under the Agreement, the Employer shall promptly notify the Company in writing of such proposed action. Following the Company's receipt of notification in writing of such proposed governmental action, the Company may discharge its liability under this Agreement by making appropriate payment to the Employer or affected employee at any time prior to the final disposition of the proposed governmental action; in such event, the Company shall not be liable for additional interest which may accrue with respect to the amount of the payment after the date thereof. If the Company concludes that the proposed governmental action is erroneous or unwarranted, it may request that the Employer or affected employee pursue available legal remedies to contest the proposed governmental action, in which case the Company shall offer to bear all reasonable fees and costs associated with the pursuit of such legal remedies. If the Company makes such request and offer and the Employer or affected employee declines to pursue the available legal remedies, or if the Employer fails to notify the Company of the pendency of the proposed governmental action within a reasonable time after the Employer has been notified of the proposed action, the Company shall have no liability under this Agreement in connection with that governmental action.

5. The Company and the Employer reserve the right, upon thirty (30) days' written notice to the Employer or the Company, respectively, by Registered or Certified mail, to terminate this Agreement, but such termination shall in no manner affect any liability incurred under this Agreement prior to the effective date of such termination.

6. Notice under this Agreement shall be sent to the parties at the address listed below:

Company:

Employer:

7. Premiums shall be sent to the Company at:

8. This Agreement supersedes and replaces any and all prior written or oral agreements of the Company regarding the purchase of annuities or custodial accounts by the Employer for its employees.

9. This Agreement may be modified by either party to the Agreement in writing and by signature of both parties.

COMPANY:

EMPLOYER:

Name of Company

Name of Employer

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Title

Title

Date

Date