

INDEPENDENT CONTRACTOR AGREEMENT

This agreement is hereby entered into this _____ day of _____ in the year _____ in the County of Orange, State of California, by and between the Newport-Mesa Unified School District, hereinafter referred to as "District" and _____
(CONTRACTOR)

(MAILING ADDRESS)	(CITY)	(STATE)	(ZIP CODE)
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hereinafter referred to as "CONTRACTOR" DISTRICT and CONTRACTOR shall be collectively referred to as the Parties. The Parties agree that this Agreement has been mutually drafted and authored by all the Parties and that it shall not be construed against any one Party. 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, 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, for the consideration stated herein, mutually agree as follows:

1. Agreement Documents. The complete Independent Contractor Agreement (AGREEMENT) includes all of the Agreement documents including Exhibit "A" – Criminal Records Check Certification, the CONTRACTOR's Certificate Regarding Workers' Compensation Insurance, Bonds (Payment/Performance/Material where applicable), Drug-Free Workplace Certification, Guarantee (where applicable), Insurance Policies or Certificates, Tobacco Use Policy, this AGREEMENT, and all modifications, addenda, and amendments thereto, by this reference and are incorporated herein. This AGREEMENT documents are complementary and what is called for by any one shall be binding as if called for by all.

2. Scope. DISTRICT hereby engages CONTRACTOR as an Independent Contractor to:

the environmental consultant's progress.

3. Term. CONTRACTOR shall:

- ☐ Provide services under this AGREEMENT on the following specific dates _____, _____, _____, _____, _____, _____, _____, and diligently perform as required and complete performance no later than _____; OR
- ☒ Commence providing services under this AGREEMENT on _____ and diligently perform as required and complete performance no later than _____.

4. Compensation. DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee _____ dollars (\$_____) DISTRICT shall pay CONTRACTOR according to the following terms and conditions:

a. Such compensation shall be based on:

- ☐ An hourly rate of \$_____ for a total amount of _____ hours.
☐ A daily rate of \$_____ for a total amount of _____ days.
☒ A flat fee not to exceed \$10,000.00

b. Payment method shall be:

- ☐ Upon completion.
☐ Date of Service.
☒ Other (Specify): **Net 30 Days, unless cash discount provided by vendor.**

Payment shall be made upon approval of DISTRICT and receipt of an invoice from CONTRACTOR one copy clearly marked original. CONTRACTOR's invoice shall be sent to: Newport-Mesa Unified School District, 2985 Bear Street, Costa Mesa, California 92626, Attention: Accounts Payable.

5. Expenses. DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT.
6. Independent Contractor. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. 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 and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation Insurance. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees.
7. 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:

CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

8. Originality of Services. CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, and 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 source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.
9. Copyright/Trademark/Patent. CONTRACTOR understands and agrees that all materials produced under this AGREEMENT shall become the 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.
10. Business Termination. In the event that CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of DISTRICT this AGREEMENT shall terminate and be of no further force and effect and any property or rights tangible or intangible, shall forthwith be returned to DISTRICT.
11. Termination. DISTRICT may, at any time, for any reason, terminate this 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 no later than three 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; or CONTRACTOR is adjudged a bankrupt, 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 shall contain the reasons for such intention to terminate and unless within five (5) 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 five (5) 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 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 three days after the day of mailing, whichever is sooner.

12. Duty to Provide Fit Workers. CONTRACTOR and subcontractors, if any, shall at all times enforce appropriate discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in providing the services required under this AGREEMENT. It shall be the responsibility of the CONTRACTOR to ensure compliance with this section. Any person in the employ of the CONTRACTOR or subcontractor, whom DISTRICT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this AGREEMENT and shall not again provide services except with written consent of DISTRICT.

The CONTRACTOR shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The CONTRACTOR shall certify in writing to the governing board of the DISTRICT that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The CONTRACTOR shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the DISTRICT. Reference California Education Code Section 45125.1.

13. Hold Harmless. CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend 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:

- (a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the services called for in this AGREEMENT, however caused, to the extent resulting from Contractor's negligence or other wrongful negligence, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.
- (b) Any injury to or death of any persons, including the DISTRICT or its officers, agents and employees, or damage to or loss of any property to the extent caused by any wrongful act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.
- (c) 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.

- (d) The CONTRACTOR, at CONTRACTOR'S own expense, cost and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the DISTRICT and its officers, employees, agents, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT and its officers, agents, or employees in any action, suit or other proceedings as a result thereof.
14. Insurance. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, take out prior to commencing the work, and maintain in force and effect, from the commencement of services until expiration of this AGREEMENT, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain a policy or policies of insurance covering CONTRACTOR'S and subcontractor's services and furnish to DISTRICT a certificate of insurance evidencing all coverages and endorsements required hereunder. Said certificate of insurance shall be due upon execution of this AGREEMENT, or such subsequent date as agreed to by the DISTRICT. Such insurance shall be with an insurance company admitted by the Insurance Commissioner of the State of California to transact such insurance in the State of California. Minimum coverages shall be as follows:
- (a) General Liability Insurance for injuries including accidental death, to any one person in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
 - (b) Subject to the same limit for each person on account of one accident, in an amount not less than \$1,000,000 per occurrence.
 - (c) Property Damage Insurance in an amount not less than \$1,000,000 per occurrence.
 - (d) Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned and hired vehicles with combined bodily injury and property damage in an amount not less than \$1,000,000 per occurrence.
 - (e) Statutory Workers' Compensation Insurance in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.
 - (f) Special Hazards Insurance, where appropriate, with special rider to include automotive and truck, where operated, and material hoist, where used, in an amount not less than \$1,000,000 per occurrence.
 - (g) Sexual Abuse or Molestation Insurance in an amount not less than \$3,000,000 per occurrence.
 - (h) Fire Insurance on all work subject to loss or damage by fire. Amount of fire insurance shall be sufficient to protect against loss or damage in full until work is accepted by the DISTRICT.
 - (i) An endorsement to said policy(s) naming DISTRICT and its officers, agents and employees as additional insured while rendering services under this AGREEMENT.
 - (j) A thirty (30) day written notice to DISTRICT of cancellation or reduction in coverage, ten (10) days notice if cancellation is due to nonpayment of premium.

- (k) CONTRACTOR hereby grants to the DISTRICT a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
- (l) CONTRACTOR shall furnish the District with certificates and endorsements affecting coverage required by the agreement/contract. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

To the fullest extent permitted by law, The District, its officers, officials, employees, and volunteers are to be covered as insureds as respects any and all liability arising out of, or pertaining to, products of the CONTRACTOR; and with respect to liability arising out of automobiles owned, leased, hired, or borrowed by CONTRACTOR.

The CONTRACTOR's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-maintained by the District, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

- 15. Attorney's Fees. If either party hereto becomes involved in litigation arising out of this AGREEMENT or the performance thereof, the court in such litigation, or in a separate suit, shall award reasonable costs and expenses, including attorney fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.
- 16. Assignment. The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this AGREEMENT or of its rights, title or interest in or to the same or any part thereof.
- 17. Compliance With Applicable Laws. The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. 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 accruing out of the performance of such operations.
- 18. Permits/Licenses. All business licenses, permits and/or fees required by the codes, ordinances and statutes of the State of California, the County of Orange, and the Cities of Costa Mesa or Newport Beach, as appropriate, must be taken out by the CONTRACTOR at CONTRACTOR'S sole cost and expense.
- 19. 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.

20. Conflict of Interest. CONTRACTOR affirms that to the best of his/her knowledge, there exists no actual or potential conflict between CONTRACTOR's family, business, or financial interest and the services provided under this AGREEMENT, and in the event of change in either private interests or services under this AGREEMENT, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the DISTRICT. CONTRACTOR shall not be in a reporting relationship to a DISTRICT employee who is a near relative, nor shall a near relative be in a decision-making position with respect to the CONTRACTOR.
21. Affirmative Action Employment. In the performance of the terms of this AGREEMENT, CONTRACTOR agrees that it will not engage in, nor permit such subcontractor as it may employ to engage in, unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.
22. 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 third 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 follows:
- | DISTRICT: | CONTRACTOR: |
|---|-------------|
| <u>Newport-Mesa Unified School District</u> | <u></u> |
| <u>2985 Bear Street</u> | <u></u> |
| <u>Costa Mesa, CA 92626</u> | <u></u> |
| <u>Attn: Purchasing Director</u> | <u></u> |
23. Tobacco Use Policy. In the interest of public health, the DISTRICT is proud to provide a healthy, tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the DISTRICT pursuant to DISTRICT'S Policy 3620. Failure by CONTRACTOR to abide with the conditions of Policy 3620 may result in the termination of this AGREEMENT.
24. Non-Waiver. The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this AGREEMENT or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
25. 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.

26. Governing Law. The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California.
27. Provision of Law Clause. Each and every provision of law clause required by law to be inserted in the AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.
28. 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.

DISTRICT:
NEWPORT-MESA UNIFIED SCHOOL DISTRICT

CONTRACTOR:
TRG LAND INC.

Signature

Signature

Typed Name

Typed Name

Title

Title

Date

Date

Social Security or Taxpayer
Identification Number

5.14.13 SS

Exhibit A
CRIMINAL RECORDS CHECK CERTIFICATION
AB 1610, 1612 and 2102

To the Governing Board of Newport-Mesa Unified School District:

I/We, _____ certify that:

Name of Contractor

1. I/We have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code Section 45125.1) required by the passage of AB 1610, 1612 and 2102.
2. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.
3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I/We declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California on _____.

Date

Signature

Typed or printed name

Title

Address

Telephone

NOTICE REGARDING CRIMINAL RECORDS CHECK

(EDUCATION CODE SECTION 45125.1)

Education Code Section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony.

Penal Code Section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

Penal Code Section 1192.7 lists the following "serious" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.