[Model] ERGONOMICS PROGRAM

SERVICES AGREEMENT

This Services Agreement (the “Agreement”) is made and entered into this [date] by and between [District or School Name] (hereinafter referred to as “District”) and [Vendor Name], (hereinafter referred to as “Provider.”)

A. District desires to engage Provider services as more particularly described on “Statement of Work” which is attached hereto and incorporated herein by this reference (“Services”).

B. Provider has the necessary qualifications by reason of training, experience, preparation and organization, and is agreeable to performing and providing such Services, upon and subject to the terms and conditions as set forth below in this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Conditions**. Provider will have no obligation to provide services until District returns a signed copy of this Agreement.
2. **NATURE OF RELATIONSHIP**. The parties agree the relationship created by this Agreement is that of independent contractor. In performing all of the Services, Provider shall be, and at all times is, acting and performing as an independent contractor with District, and not as a partner, coventurer, agent, or employee of District, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Provider is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of District or to bind the District in any manner. Except for any materials, procedures, or subject matter agreed upon between Provider and District, Provider shall have complete control over the manner and method of performing the Services.

Provider understands and agrees to independent contractor status. Provider understands and agrees that the filing and acceptance of this Agreement creates a rebuttable presumption and that the Provider, officers, agents, employees, or subcontractors of Provider are not entitled to coverage under the California Workers’ Compensation Insurance laws, Unemployment Insurance, Health Insurance, Pension Plans, or any other benefits normally offered or conveyed to District employees. Provider will be responsible for payment of all Provider employee wages, payroll taxes, employee benefits, and any amounts due for federal and state income taxes and Social Security taxes. These taxes will not be withheld from payments under this agreement.

1. **NON-EXCLUSIVITY.**
2. During the term of this agreement Provider may, independent of Provider’s relationship with the District, without breaching this Agreement or any duty owed to the District, act in any capacity, and may render services for any other entity.
3. During the term of this Agreement the District may, independent of its relationship with the Provider, without breaching this Agreement or any duty owed to the Provider contract with other individuals and entities to render the same or similar services to the District.
4. **SERVICES**. Provider shall provide District with the services, which are described on the “Statement of Work” (the “Work” or “Service”) which is attached hereto and incorporated herein by this reference. The Statement of Work shall set forth the mutually agreed schedule for providing such services. In addition to the specifications and/or requirements contained in the Statement of Work and any warranty given by Provider hereunder, the Statement of Work may set forth those performance criteria agreed between District and Provider whereby the District can evaluate whether Provider has satisfactorily completed the Work (“Performance Criteria”).

Provider, at Provider’s sole cost and expense, shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to meet its obligations under this Agreement. No substitutions of service from those specified in this section shall be made without the prior written consent of the District.

1. **TIME OF PERFORMANCE**. The term of this Agreement shall commence on
July 1, 2020, and terminate on [Date]. All work and services contracted for under the terms of this Agreement shall be undertaken and completed in such sequence as to assure their full completion in accordance with the terms and conditions set forth in this Agreement.
2. **PAYMENT AND EXPENSES**. All payments due to Provider are set forth in the “Schedule of Fees” attached hereto and incorporated herein by this reference.

Provider shall send District periodic statements indicating Provider’s fees and costs incurred and their basis and any current balance owed. If no Provider’s fees or costs are incurred for a particular time period, or if they are minimal, the statement may be held by the Provider and combined with that for the following time period unless a statement is requested by the District.

All payments due Provider are set forth in “Schedule of Fees” and shall be paid by the District within 30 days of receipt of a proper undisputed invoice from Provider, which invoice shall set forth in reasonable detail the services performed. The District reserves the right, in its sole and absolute discretion, to reject any invoice that is not submitted in compliance with the District’s standards and procedures. In the event that any portion of an invoice submitted by a Provider to the District is disputed, the District shall only be required to pay the undisputed portion of such invoice at that time, and the parties shall meet to try to resolve any disputed portion of any invoice.

The rates set forth in “Schedule of Fees” are not set by law, but are negotiable between Provider and District.

1. **ASSIGNMENT AND SUBCONTRACTORS**. Provider shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the prior written consent of the District, which may be withheld by the District in its sole and absolute discretion for any reason. Nothing contained herein shall prevent Provider from employing independent associates, subcontractors, and subconsultants as Provider may deem appropriate to assist in the performance of services herein, subject to the prior written approval of the District. Any attempted assignment, sublease, or transfer in violation of this Agreement shall be null and void, and of no force and affect. Any attempted assignment, sublet, or transfer in violation of this Agreement shall be grounds for the District, in its sole discretion, to terminate the Agreement
2. **TERMINATION OR AMENDMENT**. This Agreement may be terminated or amended in writing at any time by mutual written consent of all of the parties to this Agreement, and may be terminated by either party for any reason by giving the other party 30 days advance written notice. In the event of cancellation prior to completion of the specified services, all finished or unfinished projects, documents, data, studies, and reports prepared by the Provider under this agreement shall, at the option of the District, become District property. The Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such items prior to termination of the Agreement.

The parties to this Agreement shall be excused from performance thereunder during the time and to the extent they are prevented from obtaining, delivering, or performing due to act(s) of God. Satisfactory evidence thereof to the other party is required, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

1. **NOTICE**.

All notices permitted or required under this Agreement shall be in writing to the party entitled thereto or on its successors and assigns, and may be given by:

1. Personal delivery;
2. Overnight commercial courier;
3. Certified or registered prepaid U.S. mail, return receipt requested; or
4. Electronic mail or electronic facsimile transmission; provided that if given electronically, an additional copy shall also be delivered by a, b, or c, above.

If mailed, such notice, demand, or request shall be mailed certified or registered mail, return receipt requested, and deposited in the United States mail addressed to such party at its address set forth below or to such address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day following posting; or if sent by a nationally recognized overnight express carrier, prepaid, such notice shall be deemed to have been made on the next business day following deposit with such carrier. For the purposes herein, notices shall be sent to the District and the Provider as follows:

[District Name] [Vendor Name]

District Provider

Attn: Attn:

Street Street

City, State, Zip Code City, State, Zip Code

1. **WARRANTY**. Provider hereby warrants to District that the Work shall be performed in a professional and workmanlike manner consistent with the highest industry standards. For a period of one (1) year following completion of the Work, Provider shall correct or make arrangements to correct any breach of the warranty for the Work within ten (10) business days of notice from District of same.
2. **COMPLIANCE WITH LAWS**. Provider hereby agrees that Provider, officers, agents, employees, and subcontractors of Provider shall obey all local, state, and federal laws and regulations in the performance of this Agreement, including, but not limited to minimum wages laws and/or prohibitions against discrimination.

Provider, officers, agents, employees and/or subcontractors of Provider shall secure and maintain in force for the full term of this Agreement, at Provider’s sole cost and expense, such licenses and permits as are required by law, in connection with the furnishing of all the Services, materials, or supplies necessary for completion of the Services described.

1. **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

Provider represents and agrees that it does not and shall not discriminate against any employee or applicant for employment, company, individual or group of individuals, because of ancestry, age, color, disability (physical and mental, including HIV and AIDS),genetic information, gender identity, gender expression, marital status, medical condition, military or veteran status, national origin, race, religion, sex/gender, and sexual orientation.

1. **INDEMNIFICATION**. To the fullest extent permitted by law, Provider agrees to defend, indemnify, and hold harmless District, its governing board, officers, agents, employees, successors, assigns, independent contractors and/or volunteers from and against any and all claims, demands, monetary or other losses, loss of use, damages and expenses,, including but not limited to, legal fees and costs, or other obligations or claims arising out of any liability or damage to person or property resulting from bodily injury, illness, communicable disease, virus, pandemic, or any other loss, sustained or claimed to have been sustained arising out of activities of the Provider or those of any of its officers, agents, employees, participants, vendors, customers or subcontractors of Provider, whether such act or omission is authorized by this Agreement or not. Provider also agrees to pay for any and all damage to the real and personal property of the District, or loss or theft of such property, or damage to the Property done or caused by such persons. District assumes no responsibility whatsoever for any property placed on District premises by Provider, Provider’s agents, employees, participants, vendors, customers or subcontractors. Provider further hereby waives any and all rights of subrogation that it may have against the District. The provisions of this Indemnification do not apply to any damage or losses caused solely by the negligence of the District or any of its governing board, officers, agents, employees and/or volunteers.
2. **INSURANCE**. Provider, at its own cost and expense, shall procure and maintain during the term of this Agreement, policies of insurance for the following types of coverage:
3. Commercial General Liability Insurance. Provider shall procure and maintain, during the term of this Agreement, the following General Liability Insurance coverage:

|  |  |  |
| --- | --- | --- |
|  | Each Occurrence | Aggregate |
| Ergonomics Services | $ 1,000,000.00 | $ 2,000,000.00 |

Commercial General Liability insurance shall include products/completed operations, property damage, and personal and advertising injury coverage.

Any and all subcontractors hired by Provider in connection with the Services described in this Agreement shall maintain such insurance unless the Provider’s insurance covers the subcontractor and its employees.

1. Automobile Liability. Provider shall procure and maintain, during the full term of this Agreement, Automobile Liability Insurance, including non-owned and hired automobiles, as applicable with the following coverage limits:

Personal vehicles: $ 500,000.00 combined single limit or

 $100,000.00 per person / $300,000.00 per accident

1. Workers’ Compensation Insurance. Provider shall procure and maintain, during the term of this Agreement, Workers’ Compensation Insurance, as required by California law, on all of its employees engaged in work related to the performance of this Agreement. Provider shall procure and maintain Employers’ Liability insurance coverage of $1,000,000.

In the case of any such work which is subcontracted, Provider shall require all subcontractors to provide Workers’ Compensation Insurance and Employers’ Liability insurance for all of the subcontractor’s employees to be engaged in such work unless such employees are covered by the protection afforded by the Provider’s Workers’ Compensation Insurance.

Absent proof of Workers’ Compensation Insurance, Provider will submit a statement requesting a waiver from this requirement and indicating the reason Workers’ Compensation Insurance is not required.

1. Errors and Omissions Insurance. Provider shall procure and maintain, during the term of this Agreement, Professional Liability/Errors and Omissions Insurance in an amount of the following:

|  |  |
| --- | --- |
| Ergonomics Services | $1,000,000.00 |

1. Other Coverage as Dictated by the District. Provider shall procure and maintain, during the term of this Agreement, the following other Insurance coverage:

|  |  |  |
| --- | --- | --- |
|  | Each Occurrence | Aggregate |
| * Abuse and Molestation
 | $ 2,000,000.00 | $4,000,000.00 |

1. If the Provider or Provider’s subcontractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
2. Provider’s and any and all subcontractors’ insurance is primary and will not seek contribution from any other insurance available to the District.
3. Certificates of Insurance. Provider and any and all subcontractors working for Provider shall provide certificates of insurance to the District as evidence of the insurance coverage required herein, not less than Fifteen (15) days prior to commencing work for the District, and at any other time upon the request of the District. Certificates of insurance will be deemed invalid if proper endorsements are not attached. Certificates of such insurance shall be filed with the District on or before commencement of the services under this Agreement.
4. Endorsements. Provider’s and any and all Provider subcontractor’s Commercial General Liability insurance; Commercial Automobile Insurance; Liability Excess, Umbrella and/or Reinsurance; and Abuse and Molestation coverage shall name the District, its governing board, officers, agents, employees, and/or volunteers as additional insureds. All endorsements specifying additional insureds for any of the Insurance Policies shall be as indicated below or an equivalent endorsement reasonably acceptable to the District.
5. General Liability
* Ergonomics services: CG 20 26 10 01.
1. Primary, Non-Contributory
* CG 20 01 01 13
1. Waiver of Subrogation
* CG 24 04 05 09
1. Deductibles. Any deductible(s) or self-insured retention(s) applicable to the insurance and/or coverage required by the foregoing provisions of this agreement must be declared to and approved by the District. Provider shall be responsible to pay that deductible or self-insured retention and the District shall not be responsible to pay these costs. In the event that Provider’s deductibles or self-insured retentions collectively total more than $50,000.00, District reserves the right to request proof of Provider’s financial solvency in relation to remittance thereof or require Provider to post a bond guaranteeing payment of the deductible, or both.
2. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the District.
3. Insurance written on a “claims made” basis is to be renewed by the Provider and all Provider subcontractors for a period of five (5) years following termination of this Agreement. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this agreement, and will cover the provider for all claims made.

Failure to Procure Insurance**.** Failure on the part of Provider, or any of its subcontractors, to procure or maintain required insurance shall constitute a material breach of contract under which the District may immediately terminate this Agreement.

1. **GOVERNING LAW AND VENUES**. Provider hereby acknowledges and agrees that District is a public entity, which is subject to certain requirements and limitations. This Agreement and the obligations of District hereunder are subject to all applicable federal, state and local laws, rules, and regulations, as currently written or as they may be amended from time to time.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in state or federal court situated in the County of Ventura, State of California. Provider hereby waives and expressly agrees not to assert, in any way, any claim or allegation that it is not personally subject to the jurisdiction of the courts named above. Provider further agree to waive any claim or allegation that the suit, action, or proceeding is either brought in an inconvenient forum or that the related venue is improper.”

1. **DISPUTE RESOLUTION.**
2. The parties agree that, in the event of any dispute under the agreement in which the amount sought is $5,000.00 or less, any litigation to resolve the dispute shall be brought in the Ventura County Small Claims Court.
3. If the amount in dispute exceeds $5,000.00, the parties agree that they will first submit the matter to a mutually agreed upon mediator. Notwithstanding section 17, Attorneys Fees, the cost of the mediator shall be borne equally by the parties.
4. If the mediator is unable to resolve the dispute, then the parties shall submit the matter to binding arbitration in Ventura County or other mutually agreed location pursuant to the rules of the American Arbitration Association (AAA), as amended or as augmented in this Agreement (the “Rules”). The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute.

Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorneys’ fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award.

All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within 30 days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify the AAA and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind.

The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters, which are directly relevant to the claims in controversy. The document demand and response shall conform to Code of Civil Procedure section 2031. The deposition notice shall conform to Code of Civil Procedure section 2025. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in Code of Civil Procedure sections 2025 and 2031.

1. **ATTORNEYS FEES.** In the event of any action or proceeding to interpret or enforce the terms of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recover its reasonable attorney’s fees and costs incurred in connection with such actions or proceeding
2. **DOCUMENT RETENTION.** After Provider’s services to District conclude, Provider shall, upon the District’s request, deliver all documents for all matter in which Provider has provided services to the District, along with any property of the District in Provider’s possession and/or control. If the District does not request District document(s) for a particular service, Provider will retain document(s) for a period of five (5) years after the date of service. If District does not request delivery of the document(s) for the service before the end of the five (5) year period, Provider will have no further obligation to retain the document(s) and may, at Provider’s discretion, destroy the documents without further notice to the District. At any point during the five (5) year period, District may request delivery of the document(s).

Exceptions: Attorney work-product and medical records shall not be destroyed by provider without the prior written consent of the District.

1. **NATURE OF AGREEMENT.** This Agreement constitutes a binding expression of the understanding of the parties with respect to the services to be provided hereunder and is the sole contract between the parties with respect to the subject matter thereof. There are no collateral understandings or representations or agreements other than those contained herein. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all other agreements and communications however characterized, written or oral, between or on behalf of the parties hereto with respect to the subject matter hereof. This Agreement may only be modified by a written instrument signed by authorized representatives of each of the parties hereto.
2. **BINDING EFFECT**. This Agreement shall inure to the benefit and shall be binding upon all of the parties to this Agreement, and their respective successors in interest or assigns.
3. **WAIVER.** No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver is in writing.
4. **SEVERABILITY.** It is intended that each paragraph of this Agreement shall be treated as separate and divisible, and in the event that any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected.
5. **PARAGRAPH HEADINGS.** The headings of paragraphs hereof are inserted only for the purpose of convenient reference. Such headings shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect whatsoever.
6. **AUTHORITY.** Provider represents and warrants that Provider has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
7. **COUNTERPART EXECUTION: ELECTRONIC DELIVERY.** This Agreement may be executed in any number of counterparts which, when taken together, shall constitute one and the same instrument. Executed counterparts of this Agreement may be delivered by PDF email or electronic facsimile transmission, and shall have the same legal effect as an “ink-signed” original.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

[District Name] [Vendor Name]

District Provider

By:

Signature Signature

Name Name

Title Title

# STATEMENT OF WORK

**DESCRIPTION OF WORK:**

**Scope of Services:**

The goal of the District Ergonomics Program is to control or reduce repetitive motion injuries (RMI) and cumulative trauma injuries and disorders (CTD) and associated claims and costs. Services of Provider will consist of accepted methods and techniques for prevention of RMIs and CTDs.

Provider will not diagnose, treat, or recommend self-care for any injuries.

**Services and Programs Offered:**

Scheduling of the following services will be initiated by an authorized representative of a District. Provider will work closely with the authorized representative of the District to obtain work product orders.

* **Individual Jobsite Evaluations and Training:** A jobsite assessment to evaluate the worker’s biomechanical positioning and movement, assess jobsite risks related to RMIs and CTDs, and establish corrective recommendations. Immediate workstation changes will be made if possible. The worker will be provided appropriate handouts and reminders. These evaluations can be performed either pre- or post-injury.

Training of individuals will be considered equivalent to individual jobsite evaluations. An employee will be trained on proper body mechanics and preventative techniques for their specific job tasks. Pertinent handouts will be given to the employee.

* **Follow Up Evaluations:** A return visit with an employee to perform tasks such as: review of ergonomic equipment use, review preventative techniques already discussed, and/or reinforce and verify suggested changes have been performed. Any repeat evaluation or individual training session to an employee or department within two (2) years at the same work location will be considered a follow-up evaluation.
* **Group Training:** A group of workers will be trained on injury prevention techniques for their specific job tasks. This training can include practicing techniques such as how to lift properly, job specific materials handling techniques, job specific activities involving posture and body mechanics, core stabilization, and/or stretching programs.

**Tracking of Evaluations and Training:** A monthly log will be provided to the District Representative within the first week following the month services were provided.

**Communication and Reports:** The appropriate District Board Member, Risk Manager, or District designee will be contacted to review and authorize corrective recommendations as stated in written reports or summaries, as well as to discuss training needs for their respective employees.

Comprehensive reports will be issued for each jobsite evaluation and individual training session. Reports will be issued in format and content acceptable to the District.

A sign-in sheet and summary of training will be issued for each group training session.

Recaps will be issued for each follow-up visit. Individual recaps may be combined into one (1) report.

Monthly summaries to Risk Manager or District designees to identify specific projects or progress on various tasks being performed. Reports of all evaluations and follow-up visits and sign-in sheets of group and individual training sessions will be sent to the District.

**WORK SCHEDULE:**

Services will be provided during the regular business hours of the District beginning on July 1, 2020 and ending [Date], unless otherwise modified.

**SCHEDULE OF FEES**

**FEES:**

* Jobsite Evaluations: $275.00
* Follow Up Visits: $150.00
* Group Training Sessions: $550.00

Proper invoicing is required.

**PAYMENT SCHEDULE:**

Provider shall send District monthly statements indicating Provider’s fees and costs incurred and their basis and any current balance owed. A statement consists of an invoice and a log of services. The log of services can be in table form and should include the date of service, the employee or department involved, location of the employee or department, and type of service. The invoice and log of services may be combined into a single document.

Documentation of each line item on the log of services is due with the statement.

**ADDITIONAL COSTS OF EXPENSES:**

Additional costs will be requested in writing, and a written amendment to this Agreement shall be prepared by the District and executed by all of the parties before any additional costs are incurred.