

**MANHATTAN BEACH UNIFIED SCHOOL DISTRICT
INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of March 13, 2015, between the Manhattan Beach Unified School District ("District") and Bickmore ("Consultant") (together, "Parties").

WHEREAS, the District is authorized by Government Code section 53060 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 those persons are specially trained and experienced and competent to perform the special services required;

WHEREAS, the District is in need of those services and/or advice; and

WHEREAS, the Consultant is specially trained and experienced and competent to perform the services required by the District, and those services are needed on a limited basis;

NOW, THEREFORE, the Parties agree as follows:

- 1. Services.** The Consultant shall furnish to the District the services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services").
- 2. Term.** Consultant shall commence providing Services under this Agreement upon execution of the Agreement by both Parties, and will diligently perform such Services as required. The term for Services and schedule to provide Services shall be in accordance with the schedule included in Exhibit "A;"
- 3. Submittal of Documents.** The Consultant shall not commence the Services under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below;

_____	Signed Agreement
_____	Workers' Compensation Certificate
_____	Criminal Background Investigation Certification
_____n/a	Insurance Certificates and Endorsements
_____	W-9 Form
_____	_____
_____	_____

- 4. Compensation.** District compensation to the Consultant shall be as set forth in Exhibit "A" as the proposed fee for Services, but in no event shall total fees, costs, and expenses exceed \$10,950.00, without the express written approval of the District's Governing Board ("Board").
- 5. Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Services for District, other than as provided in Exhibit "A."
- 6. Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor with the sole authority for controlling and directing the performance of the details of the Services, District being interested only in the

results obtained. Consultant understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture 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 Worker's Compensation. Consultant 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 Consultant's employees.

- 7. Materials.** Consultant 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.
- 8. Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Consultant'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 for services to California school districts.
- 9. Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such Services.
- 10. Copyright/Trademark/Patent.** Consultant understands and agrees that all matters 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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 11. Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
- 12. Termination.**
 - 12.1. Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall

be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this Section, District shall compensate Consultant for Services completed to date as a pro-rata amount of the full fees, costs, and expenses.

12.2. Without Cause by Consultant. Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon termination, District shall only be obligated to compensate Consultant for Services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of Services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 12.3.1. material violation of this Agreement by the Consultant; or
- 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of termination, the District may secure the required services from another consultant. If the expense, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

12.4 Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

13. Indemnification. To the furthest extent permitted by California law, Consultant shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorneys fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, Services, or thing done, permitted, or suffered by the Consultant under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal

representation that Consultant proposes to defend the indemnified parties.

14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

- 14.1.1. **General Liability.** One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.
- 14.1.2. **Automobile Liability Insurance.** Automobile Liability Insurance, Occurrence Form, that shall protect the Consultant the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Consultant.
- 14.1.3. **Workers' Compensation and Employers' Liability Insurance.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Consultant shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
- 14.1.4. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - a. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of Service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.
 - b. For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions

of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

- 14.1.5. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 14.1.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 14.1.7. Consultant shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

14.2. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the District.

15. Assignment. The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

16. Compliance with Laws. Consultant shall observe and comply with all rules and regulations of the Board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any Services that are in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. Permits/Licenses. Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. Safety and Security: Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

19. Employment with Public Agency. Consultant, if an employee of another public agency, agrees that Consultant 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.Fingerprinting of Employees. It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of Services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the Board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this Section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

21.District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors. The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:

- 21.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 21.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

22.Anti-Discrimination. It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735.

23.Limitation of District Liability. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.

24.Confidentiality. The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

25.Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail,

postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District

Manhattan Beach Unified School District
325 S. Peck Ave.
Manhattan Beach, CA 90266

ATTN: Dawnalyn Murakawa-Leopard

Consultant

Bickmore Risk Services
1750 Creekside Oaks Drive
Suite 200
Sacramento, CA 95833
ATTN: Jeffrey Grubbs

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

26.No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

27.Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties. This Agreement is not valid until approved/ratified by the District's Board. Services shall not be rendered until Agreement is approved.

28.California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Los Angeles County, California.

29.Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

30.Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31.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.

32.Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

33. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

34. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

38. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**MANHATTAN BEACH UNIFIED SCHOOL
DISTRICT**

Bickmore

Date: _____, 20__

Date: March 13, 2015

By: _____

By: RL/K

Print Name: _____

Print Name: Rob Kramer

Its: _____

Its: Senior Vice President

Information regarding Consultant:

License No.: _____

Address: 1750 Creekside Oaks Dr., Suite 200
Sacramento, California 95833

Telephone: 800-541-4591

Facsimile: 855-242-8919

E-Mail: jgrubbs@bickmore.net

Type of Business Entity:

☐ Individual

☐ Sole Proprietorship

☐ Partnership

☐ Limited Partnership

☒ Corporation, State: California

☐ Limited Liability Company

☐ Other: _____

68-0114143:

Employer Identification and/or Social
Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Consultant to furnish the information requested in this Section.

Exhibit A

Scope of Services

Schedule

Compensation/Expenses

GASB 45 Actuarial Valuation and Report: \$9,400

Valuation results and the annual OPEB expense will be developed reflecting the District's current OPEB funding policy for the fiscal years ending June 30, 2014 and June 30, 2015. Results will be provided separately, and in total, for explicit subsidy (direct premium) and implicit subsidy liabilities. The valuation fee includes two telephone conferences to review the valuation results and/or report. An illustration of results on a prefunding basis will be provided, on request, at no additional charge. Additional information needed to complete the OPEB disclosures in the District's financial statement will be provided.

Optional services:

Personal visit (report presentation)	\$800
Breakout of OPEB costs results by subgroup	\$250 per group
Illustration of results at a variety of discount rates and/or amortization periods	\$250 per illustration
Consulting/calculations regarding plan redesign	Hourly rates or separate quote

Bickmore believes that the services described above will meet the District's objectives for this project. Bickmore does not anticipate any other work related to the valuation which could result in additional services, with the possible exception of the following:

- If benefits are substantially different than they were described by the District
- Consulting/calculations to illustrate variations of different OPEB funding policies
- Consulting/calculations regarding plan redesign requiring an actuarial cost study.

Should additional service be needed, Bickmore's 2015 hourly rates are:

<u>Consultant</u>	<u>Hourly Rate</u>
Senior Actuarial Consultants	\$300
Actuarial Staff	\$160
Administrative Staff	\$90

Timetable:

The following table provides an outline of Bickmore's approximate timeline for completing each task. A more specific timeline suitable to the District's needs will be compiled upon execution of this agreement.

Typical Time for Bickmore	Elapsed Time	Description of Tasks
Day 1	1 week	Contract is signed by the agency and Bickmore
Week 1		Lead actuary, analyst and Agency representatives discuss project. overview/issues. Data request materials are sent to the Agency from the actuarial analyst.
Varies - Agency's timing		Data request materials are returned to Bickmore analyst
1 week	2 weeks	Returned data is organized by analyst and (if needed) subsequent questions asked.
1 week	3 weeks	Organized data is coded by analyst and checked by senior actuary.
1 week	4 weeks	Coding is checked by a second senior actuary and (if needed) additional questions asked.
1 week	5 weeks	Numbers from coding output are used by analyst to create report exhibits.
1 week	6 weeks	Report exhibits are checked by both senior actuaries.
1 day	7 weeks	Report exhibits are entered into report draft by analyst.
2 days		Report draft is reviewed and edited by both senior actuaries.
1 day		Final touch-ups to report draft are made by analyst.
1 day		Report draft is issued to the Agency.
Varies - Agency's timing		Lead actuary reviews draft report with Agency staff.
Varies - Agency's timing		Once the Agency approves the report draft, Bickmore will issue the final report.

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- ❖ By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- ❖ By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

Check only one of the boxes below.

<input checked="" type="checkbox"/> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services of this Agreement.	<input type="checkbox"/> I do not employ anyone in the manner subject to the workers' compensation laws of California.
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Date: 3/13/15

Name of Consultant or Company: Pickmore

Representative's Name and Title: Rob Kramer, Senior Vice President

Signature: PK

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Agreement.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

Consultant certifies that it has taken at least one of the following actions with respect to the Project that is the subject of the Agreement (check all that apply):

- ☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's Services under this Agreement and Consultant certifies its compliance with these provisions as follows:

Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing Services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.

- ☐ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Services, a physical barrier at the work site, that will limit contact between Consultant's employees and District pupils at all times; and/or
- ☐ Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its subcontractors' employees is

Name: _____

Title: _____

Consultant's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.

The undersigned does hereby certify that I am a representative of the Consultant currently under contract with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this Certificate on behalf of Consultant.

Date: _____

Name of Consultant or Company: _____

Representative's Name and Title: _____

Signature: _____

Services cannot be rendered until all documentation is submitted and final approval is received.