

SPORTS OFFICIATING AGREEMENT AND RELEASE OF LIABILITY

This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651. Do not use for Public Works, Repairs or Maintenance to a Building.

This Agreement entered into as of the District’s execution date (“Effective Date”), by and between the Foothill-De Anza Community College District, a public educational agency (hereinafter referred to as “District”) and _____, (hereinafter referred to as “Contractor”) Each of District and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.” By signing this Agreement, the Parties acknowledge their acceptance of all the terms and conditions in this Agreement and any Exhibits attached hereto (collectively the “Agreement”).

RECITALS

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Contractor warrants and represents to District that Contractor has the experience, expertise, licensure, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations

WHEREAS, Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

WHEREAS, the public interest, convenience, necessity and general welfare will be served by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. SERVICES TO BE PERFORMED BY CONTRACTOR.

Contractor agrees to provide Sports Officiating Services (“Services”). Contractor will personally perform these Services and will assign referees from the roster that have been trained and approved for collegiate level referee assignments. Contractor acknowledges that Contractor will use appropriate language, attire, demeanor and behavior in performing the Services. Contractor understands that Contractor must comply with all applicable state, federal, and local laws and regulations related to the Services, including licensing requirements, if any. Contractor agrees to not consume or possess on site alcohol or any illegal substance on the day of, and during, the below-described Event.

2. EVENT. The Services will be performed at the following Event: (attach separately if necessary)

Name of Event:	
Location:	
Date(s):	
Start Time:	
End Time:	

3. PAYMENTS.

In return for Contractor’s satisfactory performance, District shall compensate Contractor the total sum not to exceed \$ _____. Contractor is solely responsible for all tax consequences and obligations related to the District’s payment for the Services and will indemnify, defend, and hold the District harmless from any claim or demand by any taxing authority, and from any sum assessed against District by any taxing authority, arising from or related to compensation paid to Contractor.

4. TERM AND TERMINATION.

This Agreement expires at the completion of the Event, unless earlier terminated, or unless otherwise agreed to in writing by the Parties. The District may terminate this Agreement for its convenience at any time, including during the Event. The District will not pay Contractor any compensation if it terminates this Agreement before the Event. If the District terminates this Agreement during the Event, it will pay Contractor a pro rata portion of Services performed prior to termination of this Agreement, as solely determined by the District. Contractor may terminate this Agreement by written notification 90 days before the Event. Contractor acknowledges that this 90-day period is necessary and acceptable so the District can attempt to procure another Contractor for the Event. The Parties agree that the District will suffer damages if Contractor terminates this agreement less than 90 days before the Event or fails to personally perform, for any reason, at the Event. These damages are inherently uncertain and difficult to calculate and quantify in the event of such breach. The Contractor therefore agrees to pay the District 50% of the total sum of compensation listed in Section 3 if he/she terminates this Agreement less than 90 days before the Event or fails to personally perform, for any reason, at the Event.

5. EXPENSES.

Contractor is solely and fully responsible for all costs and expenses incident to the performance of the Services, including any and all instrumentalities, supplies, tools, equipment, or materials necessary to perform the Services and not provided by the District.

6. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor, and not an employee, officer, partner, agent, or joint venture of the District by virtue of this Agreement. Nothing in this Agreement shall be construed to mean the District retains any control over the manner and means of how Contractor performs the Services, but only as to the results of the Services.

7. ASSUMPTION OF RISK.

Contractor understands and acknowledges that performing the Services may be dangerous and hazardous and by its very nature may pose the potential risk of severe and serious physical and emotional injury or illness, including death, to Contractor. Additional risks include, but are not limited to: Third-party allegations, claims, and/or liabilities. Contractor acknowledges and accepts all known and unknown risks associated with performance of the Services. CONTRACTOR AGREES TO ASSUME ANY AND ALL RISKS OF PHYSICAL OR EMOTIONAL INJURY AND ANY RESULTS FROM ANY SUCH INJURY.

8. RELEASE OF LIABILITY.

Contractor voluntarily releases, discharges, waives and relinquishes forevermore all claims or actions that he/she/it may have against the District, its trustees, officers, agents, contractors, employees, and volunteers for bodily injury, emotional distress, property damage, wrongful death, and/or any other harm or damage occurring to Contractor arising out of or in any way connected to Contractor's performance of the Services, including, but not limited to, those claims or actions arising out of any negligence on the part of the District, its trustees, officers, agents, contractors, employees, and volunteers, excepting only claims or damage/loss due to fraud or intentional misconduct of District or its sole negligence, or violation of law.

9. INDEMNIFICATION.

Except for the sole negligence or willful misconduct of the District, Contractor agrees to indemnify, defend, and save and hold harmless the District, and its trustees, officers, agents, contractors, employees, and volunteers from any and all liability, actions, causes of actions, debts, claims, or demands of any kind and nature whatsoever (including third-party claims), including, without limitation, any claim that Contractor infringed a third party patent or copyright or other intellectual property right or failed to obtain appropriate licenses, which may arise by or in connection with the performance of the Services or Contractor's actions or conduct during or related to the Event. This provision shall survive the termination or expiration of this Agreement.

10. INSURANCE.

Contractor agrees to confirm that any official assigned to games carries general liability insurance, provided either through the National Association of Sports Officials (NASO) or otherwise, with limits of not less than \$1 million per occurrence and \$2 million in the aggregate. Contractor agrees to provide District with proof of such insurance upon request.

11. PUBLICATIONS.

Contractor authorizes the District to photograph and make video or audio recordings of Contractor during and before the Event, and to use Contractor's likeness and name in any District publications or promotions, in any medium whatsoever, without additional compensation.

12. ENTIRE AGREEMENT.

This Agreement represents the entire and integrated contract between District and Contractor and supersedes all prior understandings, negotiations, representations, or agreements, whether oral or written.

13. 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.

14. MODIFICATION, AMENDMENT, WAIVER.

No modification or amendment of any provision of this Agreement shall be effective unless approved in writing and signed by both Parties. The failure of a Party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

15. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed and original, but all of which together shall constitute one and the same agreement.

16. GOVERNING LAW/VENUE.

This Agreement is 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. Any action or proceeding brought to enforce this Agreement shall be maintained in the State or federal district court located in County of Santa Clara.

17. DISPUTE RESOLUTION.

Parties agree that if any dispute or controversy arises between them which in any way is related to, or connected with this Agreement or its subject matter, they will participate in good faith in mediation to resolve the dispute, and agree to equally share all mediator fees. If the Parties are unable to resolve the dispute or controversy through mediation, the Parties agree to submit the pending dispute or controversy to final and binding arbitration to be held in Santa Clara County, California, pursuant to California Code of Civil Procedure section 1280 et seq., with each side bearing their own attorneys' fees and costs. By agreeing to this binding arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right to bring a claim as a class member in any purported class or representative proceeding, and a right to invoke formal rules of procedure and evidence. The provisions of this section will apply during the term of this Agreement and survives after the termination or expiration of this Agreement.

CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR HAS CAREFULLY READ THIS AGREEMENT FOR SERVICES AND RELEASE OF LIABILITY. CONTRACTOR UNDERSTANDS THE POTENTIAL DANGERS INCIDENT TO PERFORMING THE SERVICES DESCRIBED IN THIS AGREEMENT. CONTRACTOR IS FULLY AWARE OF THE LEGAL CONSEQUENCES OF THIS AGREEMENT, AND AGREES TO ITS TERMS AND UNDERSTANDS CONTRACTOR IS WAIVING CERTAIN RIGHTS AND ASSUMING THE RISK OF INJURY, DEATH, OR DAMAGE FROM CONTRACTOR'S PERFORMANCE OF SERVICES CONTAINED IN THIS AGREEMENT.

In Witness Hereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below.

FOR CONTRACTOR:	FOR DISTRICT:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

AGREEMENT OF INDEPENDENT CONTRACTOR: By signing above, I agree to perform the services described above for the payment indicated. I understand that while performing Agreement services I am not an employee of the Foothill-De Anza Community College District because (1) I follow an independent trade or profession. (2) I will not be subject to the control and direction as to the details and means for accomplishing the anticipated results of my service. (3) I customarily perform work that is outside the usual course of the District’s business offering the same type of services to other clients as being offered to the District.

<u>FOR CAMPUS USE ONLY:</u>	
Originator: _____	Date: _____
FOAP: I _____ F _____ O _____ A _____ P _____	
Campus Finance/Fiscal Services Authorization:	
Name: _____	Signature : _____
Title: _____	Date: _____