

**CONTRACT NAME: AGREEMENT BETWEEN DR. ROBERT HOFFMAN, O.D. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is the annual renewal of the Professional Services Agreement between Dr. Robert Hoffman, O.D. and DJUSD. Dr. Hoffman will perform Modified Clinical Technique Vision Screening Services for District students as required by Education Code 49452.

The scope of services includes individual vision screening tests for a maximum of 300 students per day at mutually agreeable dates, times and school sites. Upon completion of the tests, results of the vision screenings will be provided to the District by Dr. Hoffman.

The term of this agreement covers the 2015-2016 school year.

**DAVIS JOINT UNIFIED SCHOOL DISTRICT  
PROFESSIONAL SERVICES AGREEMENT  
WITH DR. ROBERT A. HOFFMAN, O.D.**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered into as of July 22, 2015 (the "Effective Date") by and between the Davis Joint Unified School District, a public school district of the State of California (the "District"), and Dr. Robert A. Hoffman, O.D., a California licensed doctor of optometry ("Consultant"). The District and the Consultant are collectively referred to in this Agreement individually as "Party" and collectively as the "Parties." This Agreement is made with reference to the following facts:

**WHEREAS**, the District requires the services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters and such services and advice are not available within the District and cannot be performed satisfactorily by District employees; and

**WHEREAS**, Consultant possesses the necessary expert knowledge, experience, and ability to perform services not available through District personnel, and Consultant is specially experienced and competent to provide to the District certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, the District desires to engage Consultant because of Consultant's special expertise and experience, and Consultant desires to be engaged by the District; and

**WHEREAS**, the District and Consultant desire to reduce to writing the terms and conditions of the District's engagement of Consultant.

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

**ARTICLE 1.  
SERVICES TO BE PERFORMED BY CONSULTANT**

**Section 1.1      Performance Of Services.**

Consultant agrees to perform Modified Clinical Technique Vision Screening Services for District pupils as required by Education Code section 49452 and as described in Appendix A to this Agreement (the "Services").

**Section 1.2      Method Of Performance And General Supervision.**

Consultant will determine the methods, details, and means of performing the Services required by this Agreement. Subject to the foregoing, the District retains the right to inspect, to stop work, to prescribe alterations and generally to monitor Consultant's work to ensure its conformity with the terms of this Agreement.

### **Section 1.3 Employment Of Assistants.**

Consultant may, at Consultant's own expense, employ such assistants as Consultant deems necessary to perform the services required of Consultant by this Agreement. District may not control, direct, or supervise Consultant's assistants or Consultants in the performance of those services.

### **Section 1.4 Consultant's Certifications, Representations and Warranties.**

Consultant makes the following certifications, representations and warranties for the benefit of the District. Consultant acknowledges and agrees that the District, in deciding to engage Consultant pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representation and warranties and their effectiveness throughout the term of this Agreement and the course of Consultant's engagement hereunder.

(a) Consultant is qualified in all respects to provide to the District all of the service contemplated by this Agreement and, to the extent required by any applicable law, Consultant has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

(b) Consultant, in providing the services and in otherwise carrying out its obligations to the District under this Agreement; shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

(c) Consultant will perform its services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Consultant will furnish, at its expense, those services that are set forth in this Agreement and represents that these services as set forth herein are within the technical and professional areas of expertise of the Consultant or any sub-consultant the Consultant has engaged or will engage to perform the service(s).

## **ARTICLE 2. TERM AND TERMINATION**

### **Section 2.1 Term.**

(a) This Agreement shall become effective on the Effective Date and shall continue through June 30, 2016 (the "Consulting Term"), unless the Agreement is earlier terminated by either Party in accordance with Section 2.2, below.

### **Section 2.2 Termination.**

(a) This Agreement may be terminated by either Party upon fourteen (14) calendar days written notice to the other Party in the event of a substantial failure of performance by such other Party, including insolvency of Consultant or if the District should decide to abandon or indefinitely postpone the Project.

(b) In the event of a termination based upon abandonment or postponement by District, the District shall pay the Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due the Consultant for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Consultant. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased consultant and replacement consultant costs, shall be deducted from payments to the Consultant.

(c) In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 2.2 (d) below, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

(d) This Agreement may be terminated without cause by District upon thirty (30) days written notice to the Consultant. In the event of a termination without cause, the District shall pay to the Consultant for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination, plus any sums due the Consultant for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to other documents, whether delivered to the District or in the possession of the Consultant.

(e) In the event of a dispute between the Parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of this dispute, Consultant agrees to continue the work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind the Agreement nor stop the progress of the work, but Consultant's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before. The Parties may agree in writing to submit any dispute between the Parties to arbitration. The District agrees to pay the Consultant the undisputed amounts due under this Agreement.

(f) The Parties understand and agree that this Termination Article shall govern all termination rights and procedures between the Parties. Any termination provision that is attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

### ARTICLE 3. COMPENSATION

#### Section 3.1 Terms Of Payment.

In consideration for all Services to be performed by Consultant, the District agrees to pay

Consultant \$450 per day of vision screening or \$3.00 per student screened, whichever is greater.

Consultant shall submit to the District a detailed statement of services rendered in each month within thirty (30) days after the end of each month. The District agrees to pay the amount due to Consultant for the Services on or before the end of the month following the month in which Services are performed.

### **Section 3.2 No Payroll Or Employment Taxes.**

No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Consultant. The payroll or employment taxes that are the subject of this Section include, but are not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax.

## **ARTICLE 4. OTHER OBLIGATIONS OF CONSULTANT**

### **Section 4.1 Nonexclusive Services.**

Consultant may represent, perform services for, and/or be employed by such additional companies, persons, or clients as Consultant, in Consultant's sole discretion, chooses.

### **Section 4.2 Workers Compensation And Unemployment Insurance And Licenses.**

Consultant shall be responsible for providing, at Consultant's own expense, disability, unemployment and other insurance, workers' compensation, training, permits and licenses for Consultant and for Consultant's employees, agents and independent Consultants, as may be required by law.

### **Section 4.3 Materials And Equipment.**

Consultant shall supply all materials and equipment required to perform the Services under this Agreement, except as may be otherwise specified in Appendix A.

### **Section 4.4 Licenses, Permits, Fees And Assessments.**

Consultant shall obtain at Consultant's sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services required by this Agreement.

### **Section 4.5 Fingerprinting.**

For any work performed by Consultant, Consultant's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any District site pursuant to Education Code section 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in

Penal Code sections 667.5(c) and 1192.7(c), respectively. Consultant shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. Consultant shall provide District with a list of names of employees who may come into contact with students and must certify in writing to the District that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code section 45125.1. District may request the removal of an employee from a District site at any time. Failure to comply with any of the provisions of this Section may result in termination of this Agreement.

#### **Section 4.6 Confidentiality.**

Consultant acknowledges that, during the term of this Agreement, Consultant may have access to privileged and confidential materials and information in the custody of clients of the District, including, but not limited to, Student Information defined below. Consultant covenants and agrees to keep such information confidential and not to disclose such information directly or indirectly during, or subsequent to, the term of this Agreement. Consultant further acknowledges that, during the term of this Agreement, Consultant may obtain and have access to certain proprietary or confidential information, knowledge, technology, data, methods, files, records, and client lists relating to the District's business (collectively, the "Confidential Information"), which the District and Consultant agree are proprietary or confidential in nature.

Consultant acknowledges that:

- (a) The Confidential Information will be developed and acquired by the District at great expense, is of great significance and value to the District, and constitutes trade secrets;
- (b) The Confidential Information will be made known to the Consultant in full reliance on this Agreement;
- (c) The Confidential Information is material and critically important to the effective and successful conduct of the District's business operations and activities; and
- (d) Any use of the Confidential Information by Consultant other than for the District's benefit in connection with the business relationship between Consultant and the District established by this Agreement will constitute a wrongful usurpation of the Confidential Information by Consultant. The Consultant hereby agrees to forever hold the Confidential Information in strict confidence and secret; provided, however, that Consultant may disclose any or all of the Confidential Information to any corporation, partnership, trust, firm or other business entity not affiliated with the District if prior written consent of the District is obtained by Consultant.

#### **Section 4.7 Protection Of Student Education Records and Information.**

- (a) Student Information. Student data, records and information ("Student Information") includes paper and electronic student education record information supplied by District, as well as any data provided by District students and parents to the Consultant, which is

protected by federal and state law, including but not limited to, 20 U.S.C. section 1232(g) and Education Code sections 49060, *et seq.* Consultant acknowledges that the Agreement requires the Consultant access to Student Information to perform this Agreement. Consultant receives this Student Information in its capacity as a "school official" for purposes of performing its obligations under this Agreement. Both District and Consultant certify that they will abide by state and federal laws concerning confidential Student Information.

(b) Prohibition on Unauthorized Use or Disclosure of Student Information. Consultant agrees to hold Student Information in strict confidence. Consultant shall not use or disclose Student Information received from or on behalf of District, except as permitted or required by the Agreement, or as required by law. Consultant agrees that it will protect the Student Information it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

(c) Return or Destruction of Student Information. Upon termination, cancellation, expiration or other conclusion of the Agreement, Consultant shall return all Student Information to District, or if return is not feasible as determined by District in written notice to Consultant, destroy any and all Student Information.

(d) District Remedies. If District reasonably determines in good faith that Consultant has materially breached any of its obligations under this Article, District, in its sole discretion, shall have the right to provide Consultant with a fifteen (15) day period to cure the breach or terminate the Agreement immediately if cure is not possible. District shall provide written notice to Consultant describing the violation and the action it intends to take.

(e) Maintenance of the Security of Student Information. Consultant shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all maintained or transmitted Student Information received from or on behalf of District or its students. These measures will be extended by contract to all subcontractors used by Consultant.

(f) Reporting of Unauthorized Disclosures or Misuse of Student Information. Consultant, within one day of discovery, shall report to District any use or disclosure of Student Information not authorized by the Agreement or in writing by District. Consultant's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Student Information used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what Consultant has done or shall do to mitigate any effect of the unauthorized use or disclosure; and (v) what corrective action Consultant has taken or shall take to prevent future similar unauthorized use or disclosure. Consultant shall provide such other information, including a written report, requested by District.

(g) Indemnity. Consultant shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorneys' fees, which arise as a result of Consultant's failure to meet any of its obligations under this Article.

#### **Section 4.8 Insurance.**

Consultant shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

- (a) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.
- (b) Comprehensive general and auto liability insurance with limits of not less than \$1,000,000 combined single limit, bodily injury and property damage liability per occurrence, including:
  - (i) owned, non-owned and hired vehicles;
  - (ii) blanket contractual;
  - (iii) broad form property damage;
  - (iv) products/completed operations; and
  - (v) personal injury.

Each policy of insurance required in Section 4.8 (b) above shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation; and shall waive all rights of subrogation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Consultant shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event Consultant shall reimburse District upon demand for the cost thereof.

#### **Section 4.9 Indemnification.**

To the fullest extent permitted by law, Consultant shall fully indemnify, defend and hold harmless the District, its employees, agents and independent Consultants from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Consultant's services performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force.



#### **Section 4.10 Return Of District Property.**

On the termination of this Agreement or whenever requested by the District, Consultant shall immediately deliver to the District all property in Consultant's possession or under Consultant's control belonging to the District in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Consultant excepted.

### **ARTICLE 5. CONSULTANT'S WORK PRODUCT**

#### **Section 5.1 Ownership Of Consultant's Work Product.**

(a) Consultant agrees that any and all intellectual properties, including, but not limited to, all ideas, concepts, themes, computer programs or parts thereof, documentation or other literature, or illustrations, or any components thereof, conceived, developed, written, or contributed by Consultant, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District.

(b) Consultant agrees that all rights in all works prepared or performed by Consultant pursuant to this Agreement, including patent rights and copyrights applicable to any of the intellectual properties described in Subsection (a) above, shall belong exclusively to District and shall constitute "works made for hire."

(c) The provisions of this Section shall not apply to any of Consultant's rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Consultant's own time, and which:

(i) Does not relate, at the time of conception or reduction to practice of the invention, to District's business or to District's actual or demonstrably anticipated research or development; or

(ii) Does not result from any work performed by Consultant for District.

#### **Section 5.2 Use Of Copyrighted Materials.**

Consultant warrants that any materials provided by Consultant for use by District pursuant to this Agreement shall not contain any material that is protected under the Copyright Act or any other similar law, except to the extent of "fair use," as that concept is defined in the Copyright Act, and except to the extent that Consultant has obtained permission to use such work from the copyright holder. Consultant shall be solely responsible for ensuring that any materials provided by Consultant for use by District pursuant to this Agreement satisfy this requirement. Consultant agrees to hold District harmless from all liability or loss, including debt or exercise for attorneys' fees to which District is exposed on account of Consultant's failure to perform this duty.

## ARTICLE 6. GENERAL PROVISIONS

### Section 6.1 Disputes Resolution.

In the event of any disputes or disagreement between the District and Consultant with respect to the interpretation of any provision of this Agreement, or to the performance of the Parties under this Agreement, each Party shall appoint a designated representative to meet in good faith, to resolve the dispute or to negotiate an adjustment to any provision of this Agreement. Such negotiations shall be conducted in a timely manner to avoid undue delay in resolving the dispute. No formal proceeding for judicial resolution of any dispute or disagreement shall be commenced until a Party concludes in good faith and provides written notice to the other Party that an amicable resolution of the matter at issue through continued negotiation does not appear likely.

### Section 6.2 Default.

A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

### Section 6.3 Amendments.

This Agreement may not be altered or modified, except by a writing signed by the Parties.

### Section 6.4 Status Of Consultant.

Consultant enters into this Agreement, and will remain throughout the term of the Agreement, an independent Consultant. Neither Consultant nor its employees, agents or independent Consultants shall become an employee, joint venturer, partner, agent or principal of the District while this Agreement is in effect. Consultant's employees, agents and independent Consultants shall not be entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit.

### Section 6.5 Governing Law.

This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all Parties were residents of California and the Agreement was made and performed in California.

### Section 6.6 Notices.

All notices and demands between the Parties hereto shall be in writing and shall be served either personally or by registered or certified mail. Such notices or demands shall be

deemed given when personally delivered or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the Party to whom such notice or demand is to be given or made. Such notices and demands may also be sent by telex, telegraph, telecopier or other similar electronic transmission device providing for a permanent record of the notice or demand, and, if so served, such notice or demand shall be deemed given and made at the time the device confirms to the sender delivery thereof to the addressee.

All notices and demands shall be given as follows:

<b>To the District:</b>	Davis Joint Unified School District
Attn: Bruce Colby, Associate	526 B Street
Superintendent Business Services	Davis, CA 95616-3811

<b>To the Consultant:</b>	Dr. Robert A. Hoffman, O.D.
Attn: Dr. Robert Hoffman	2390 East Bidwell, Suite 400
	Folsom, CA 95630

Each Party may designate in writing such other place or places that notices and demands may be given.

#### **Section 6.7 Assignment.**

This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

#### **Section 6.8 Order Of Precedence.**

In the event of any conflict or inconsistency in the interpretation of this Agreement (including Attachments), such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement, then to the Attachments.

#### **Section 6.9 Agreement Interpretation.**

This Agreement is the result of arm's length negotiations between the Parties, and shall be construed as drafted by all Parties such that any ambiguities shall not be construed against either Party.

#### **Section 6.10 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all signatories hereto have signed a counterpart of this Agreement.

#### **Section 6.11 Entire Agreement.**

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all other prior and contemporary agreements, understanding, and commitments between the Parties with respect to the subject matter of the Agreement.

**Section 6.12 Severability.**

If any provision in 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 without being impaired or invalidated in any way.

**Section 6.13 Effect Of Recitals.**

The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

**Section 6.14 Force Majeure.**

Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Agreement as of the Effective Date of this Agreement.

**THE DISTRICT:**

**DAVIS JOINT UNIFIED SCHOOL DISTRICT:**

By:

Bruce Colby, Associate Superintendent Business Services

**THE CONSULTANT:**

**DR. ROBERT A. HOFFMAN, O.D.**

By:

Title:

## APPENDIX A

### SCOPE OF SERVICES

Dr. Robert A. Hoffman, O.D. hereinafter known as "Consultant" agrees to provide Modified Clinical Technique Vision Screening Services for children of the District as follows:

- 1) Consultant shall administer individual vision screening tests to up to approximately 300 pupils per day at the mutually agreeable date(s) and time(s) and site(s). Consultant shall be notified by the District at least ten (10) days prior to a scheduling screening day in order to avoid being charged for that testing day.
- 2) District shall designate which pupils are to be tested as well as the school site(s) where testing is to occur.
- 3) Fully compliant tests are administered by a licensed optometrists in accordance with the requirements of Education Code section 49452. Consultant shall provide reports of the vision screening tests to the District.
- 4) It is the responsibility of the District to exclude participation of students whose parents or guardians have filed a written statement with regard to Education Code, section 49451.
- 5) Employees of Consultant are duly licensed by all applicable Local, State and Federal agencies to provide the services referred to herein and have complied with all laws and regulations to which employees of Consultant are required to comply.
- 6) Employees of Consultant who are in contact with students while providing the services referred to herein are subject to a criminal background check through the State of California Justice Department fingerprint program (CA Ed Code section 45125.1) and it has been verified that these employees have not been convicted of a violent or serious felony as specified in Penal Code sections 667.5(c) and/or 11923(c).
- 7) The Consultant shall maintain confidentiality of student records and information, in accordance with federal and state law, to include the Family Educational Rights and Privacy Act (FERPA), the California Education Code, HIPAA as applicable, and the Welfare and Institutions Code governing confidentiality. The discussion, transmission, or narration (in any form) of student information is forbidden except as permitted by law. This includes candid discussion between Consultant employees and school personnel, including parent volunteers and teachers.