

CONTRACT NAME: AGREEMENT BETWEEN AMERICAN FIDELITY ADMINISTRATIVE SERVICES, LLC AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This agreement between American Fidelity Administrative Services, LLC and DJUSD provides a software program which allows the District to accurately report employee information for the Affordable Care Act. Our current financial system does not support the requirements of the Affordable Care Act.

The annual fiscal impact to the District is approximately \$4,000.

STATEMENT OF WORK
TO THE MASTER CONSULTING SERVICES AGREEMENT (the “MASTER AGREEMENT”) BETWEEN DAVIS JOINT UNIFIED SCHOOL DISTRICT (“CLIENT” or “you” or “your”) AND AMERICAN FIDELITY ADMINISTRATIVE SERVICES, LLC (“CONSULTANT” or “we” or “us” or “our”)

PROJECT: ACA Employer Reporting Services

A. TERMS AND CONDITIONS: This statement of work (“SOW”) is made and entered into effective as of the latest date signed below (the “Effective Date”). This SOW is subject to the terms and conditions of the Master Agreement identified above.

B. SERVICE DATES

Subject to the Termination provision Article F. below, this SOW will continue for a period of twelve (12) months from the Effective Date (“Initial Term”). At the end of the Initial Term this SOW will renew automatically for additional periods (“Renewal Terms”) of one year each until either party gives written notice to terminate this Agreement, by method provided for by this Agreement. Such notice must be given not more than ninety (90) days or less than fifteen (15) days before the end of the Initial Term or any Renewal Term.

C. SERVICES AND DELIVERABLES

1. IN GENERAL

- a. So long as all fees payable under Section E below have been paid and Client’s other obligations under this SOW have been fulfilled, Consultant will make arrangements for Client to have access to a “Worxtime Employer Reporting Service” to be available, as described herein, in order to help Client generate Internal Revenue Service (IRS) 1094 and 1095 Forms, and satisfy the reporting requirements to the IRS and disclosure requirements to Client’s insured employees as required under Section 6055 and 6056 of the Internal Revenue Code of 1986, as amended. Consultant will also provide Consulting Services, described below, to assist Client with these obligations.
- b. The fees and services described in this SOW apply for an “Applicable Reporting Year.” An Applicable Reporting Year means a single calendar year for which the Client is required to generate IRS 1094 and 1095 Forms. Services provided early in the subsequent calendar year to assist with generating and filing IRS 1094 and 1095 Forms for an Applicable Reporting Year will still be considered part of the service for the Applicable Reporting Year.

2. WORXTIME EMPLOYER REPORTING SERVICES

- a. The Worxtime Employer Reporting Service will provide information and documentation necessary for Client to generate the applicable Internal Revenue Service (IRS 1094 and 1095 Forms. The Worxtime Employer Reporting Service utilizes certain computer programming (the “Worxtime Program”). The responsibility to report the required information to the IRS and provide disclosure documentation to the Client’s employees remains with the Client, although this is a service the Client may perform using the Worxtime Program.
- b. Consultant hereby permits Client to use the Worxtime Employer Reporting Service and Documentation in accordance with the terms, conditions and limitations of this SOW during the Term or Terms, as defined herein. Any use of the Worxtime Employer

Reporting Service that is inconsistent with the terms, conditions and limitations of this Agreement is prohibited. Client's permission to use the Worxtime Employer Reporting Service is subject to Client's payment in full of all fees and Client's compliance with all other terms and conditions of this SOW. The right to use the Worxtime Employer Reporting Service granted to Client by Consultant is limited, personal, non-exclusive, non-transferable and non-assignable (except as this SOW otherwise provides)."

3. CONSULTANT SERVICE

- a. If, prior to the Effective Date of this SOW, Client has entered into a Master Agreement which relates to services other than the Services described in this SOW, Client shall be considered to be an "Existing Client" under this SOW and Consultant will provide a one hour discussion with the Client to help Client understand the application of Section 4980H of the Internal Revenue Code of 1986 as amended, which is referred to as the Employer Mandate Penalty rules, and then gather the information needed to implement Worxtime Service.
- b. Travel expenses will be billed to the Client following the final consultation if Client requests the consultation described above to be in person.

D. RESTRICTIONS AND RESPONSIBILITIES CONCERNING THE WORXTIME EMPLOYER REPORTING SERVICE

1. Without implying that Client will have access in the Worxtime Program by accepting the rights granted by Consultant, Client agrees that Client will not, without the prior written consent of Consultant; (a) sell, license, sublicense, grant rights to, distribute, lease or otherwise transfer or allow the transfer of the Worxtime Program, or any backup copy, to third parties; (b) use the Worxtime Program in any manner inconsistent with the rights granted herein; (c) use the Worxtime Program in any manner for the purpose of monitoring or evaluating a greater number of employees than such number of employees anticipated by the agreed to pricing, herein; (d) modify or create derivative works of the Worxtime Program or Documentation or separate the Worxtime Program's component parts; or (e) unless specifically permitted under applicable law without the possibility of contractual waiver, attempt to decompile, disassemble or reverse engineer the Worxtime Program, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organization from the Worxtime Program or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Worxtime Program, including without limitation any such mechanism used to restrict or control the functionality of the Worxtime Program.
2. Client may not transfer the Documentation, or assign any rights granted hereunder prior to receiving written authorization from Consultant.
3. Client agrees that Client will not use the Worxtime Employer Reporting Service in any manner that could damage, disable, overburden, or impair such services or interfere with any other party's use and enjoyment of them.
4. Client acknowledges and agrees that Client is solely responsible for the accuracy and completeness of all data required to be input into the Worxtime Employer Reporting Service and that Consultant has no responsibility or obligation to determine if such information is accurate or complete.
5. Client agrees that Client is solely responsible for designating users who will have authorized access to Client's data and ensuring that only such authorized users have access. Consultant shall have no responsibility, obligations or liability for any unauthorized access to the Client's data resulting from Client's failure to follow Consultant's procedures with regard to accessing data.

E. FEES

1. **Annual Fee.** In order to initiate the Worxtime Employer Service where the Client does not already have an in-force SOW for Worxtime Time and Eligibility Services, Client agrees to pay an annual fee in the amount of \$995 for each Applicable Reporting Year, which is payable upon execution of this SOW for the first Applicable Reporting Year and, thereafter for subsequent Applicable Reporting Years the annual fee will be due in July of each Applicable Reporting Year. This annual fee includes 5 hours of Client support to set up Client's group data in the Worxtime Program for each Applicable Reporting Year. If Client requires more than 5 hours of support in connection with establishing the Worxtime Employer Reporting Service in an Applicable Reporting Year, Client shall pay an additional fee at the rate of \$400 per hour, billed in quarter-hour increments.
2. **Per Employee Fees.** Client agrees to pay the associated pricing per Applicable Reporting Year of \$3.50 for each employee whose information is provided for the purpose of the Worxtime Employer Reporting Service. An estimated 50% of the per employee fee will be billed no earlier than July of the Applicable Reporting Year and the remainder will be billed the following January. Payment of per employee fees is due within 30 days of receipt of invoice.
3. **Late Fees.**
 - a. Client shall provide the necessary information required for reporting and the information will be made available to Worxtime on a monthly basis. However, should information for the applicable reporting year through September not be made available to Worxtime on or before October 15 of the same year, a fee of \$995 will be imposed. Should information for the applicable reporting year through October not be made available to Worxtime on or before November 15 of the same year, a fee of \$1,995 will be imposed. Should information for the applicable reporting year through November not be made available to Worxtime on or before December 15 of the same year, a fee of \$2,995 will be imposed.
 - b. Should information for the applicable reporting year through December not be made available to Worxtime on or before January 15 of the subsequent year, Consultant will not confirm an ability to meet the time frames for reporting information to the employees or the IRS.
4. **Fee Increases.** The fees set forth in this Section E shall remain in effect for first Applicable Reporting Year following the Effective Date. Beginning the second Applicable Reporting Year, AFAS may increase the fees described above by providing written notice to the Client by June 1 of an Applicable Reporting Year.
5. **Out of Pocket Expenses.** Client will pay out-of-pocket travel expenses incurred by the Consultant for in person meetings, if any.

F. TERMINATION OF SOW

If either party materially breaches any provision of this SOW, the other party may terminate this SOW with thirty (30) days written notice, provided, however that the party in breach shall have thirty (30) days from receipt of notice of breach to cure the breach ("Cure Period"). In the event the breaching party fails to cure the breach during the Cure Period, the SOW shall be deemed to have been terminated as of date of notice of breach. Either party may terminate all or part of this SOW for any reason effective no earlier than 30 days after written notice is provided to the other party. This SOW will automatically terminate on the earliest of the following dates:

1. If the reason for termination is the failure by Client to pay a fee by the due date (including any grace period), termination of this SOW will be retroactively effective as of the last day of the period for which a fee was properly made in accordance with this SOW, except as otherwise provided in writing by Consultant.

2. The date that this SOW or the Client violates applicable law.

Termination of this SOW shall not terminate the rights or obligations of either party arising prior to the effective date of such termination.

In the event the Client terminates this SOW prior to paying the first invoice, all data entered into the Worxtime Employer Reporting Service by or for Client, all databases of information related to the Worxtime Employer Reporting Service and reports generated by the Worxtime Employer Reporting Service will be the property of Consultant. Consultant shall make reasonable efforts to keep such data confidential and in the alternative may elect to destroy all such data.

G. COPYRIGHT AND PROPRIETARY INFORMATION

Consultant and its Provider reserve all of the intellectual property rights with respect to the Worxtime Program, the Worxtime Employer Reporting Service and Documentation and any copies under all applicable national and international laws and treaties for the protection of Intellectual Property Rights, including, but not limited to, trade secrets, copyrights, trademarks and patents. Any rights not expressly granted to Client in this SOW are retained by Consultant and the Provider.

Except as otherwise provided in this SOW, Client shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the Worxtime Program or Documentation, or the delivery or distribution of any part thereof to any third party, for any purpose, without the prior written permission of Consultant. This restriction shall continue beyond the termination of this SOW. In the event Client becomes aware of any unauthorized use, copying, reproduction or disclosure of the Worxtime Program or Documentation, Customer shall notify Consultant, in writing, immediately.

H. LIMITED WARRANTY/DISCLAIMER

1. Subject to the limitation of liability provisions contained in the Master Agreement and as set forth in this SOW, Consultant warrants that it has sufficient rights to grant Client the rights to access the Worxtime Employer Reporting Service pursuant to this Agreement. No warranty is made that the Worxtime Employer Reporting Service will be uninterrupted or error-free. Client is solely responsible for all data input. Consultant expressly disclaims any and all liability resulting from inadequate data input, incomplete data input or improper input data. This warranty is limited to the duration for the Initial Term and any Renewal Terms.
2. THE PRECEDING WARRANTY IS THE ONLY WARRANTY RELATED TO THE WORXTIME EMPLOYER REPORTING SERVICE, DOCUMENTATION AND SUPPORT SERVICES AND IS MADE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT. CONSULTANT IS NOT LIABLE FOR ANY DAMAGES, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL, ATTORNEY'S FEES, PUNITIVE OR SPECIAL DAMAGES RELATING TO LOSS OF DATA, PROFIT, REVENUE OR BUSINESS OR THE LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY, WHETHER YOU, CLIENT'S ASSIGNEE OR ANY OTHER TRANSFEREE SUFFER THE LOSS OR DAMAGE AND WHETHER OR NOT CONSULTANT IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
3. If an implied warranty or condition is created by Client's state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, Client may also have an implied warranty or condition, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (90 DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY (90) DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition

lasts, so the above limitation may not apply to you. This limited warranty gives Client specific legal rights. Client may have other rights, which vary from state/jurisdiction to state/jurisdiction.

4. Consultant is acting on behalf of its suppliers for the purpose of disclaiming, excluding, and/or limiting obligations, warranties, and liability as provided in this Agreement, but in no other respects and for no other purpose.
5. Client understands and acknowledges that Client is solely responsible, among other things, for:
 - (a) all uses of the Worxtime Employer Reporting Service using user names or passwords assigned to you;
 - (b) input of data into the Worxtime Employer Reporting Service;
 - (c) confirmation of the accuracy of the data input into and received from the Worxtime Employer Reporting Service;
 - and, (d) compliance with all applicable laws associated with the use of the data.

I. LIMITATION OF LIABILITIES

SUBJECT TO THE LIMITATION OF LIABILITY AND OTHER TERMS CONTAINED IN THE MASTER AGREEMENT, CONSULTANT AND ITS PROVIDER'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS LIMITED WARRANTY OR FOR ANY OTHER BREACH OF THIS AGREEMENT OR FOR ANY OTHER LIABILITY RELATING TO THE WORXTIME SYSTEM SHALL BE LIMITED TO (A) CORRECTION OF ERRORS IN THE OPERATION OF THE WORXTIME SYSTEM OR (B) REFUND OF FEES. CLIENT WILL RECEIVE ONE OF THE TWO REMEDIES, SELECTED BY CONSULTANT IN ITS SOLE DISCRETION, WITHOUT CHARGE.

IN NO EVENT WILL CONSULTANT, THE PROVIDER OR ANY OF THEIR RESPECTIVE AFFILIATES HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN TORT, CONTRACT, WARRANTY OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, PRODUCT LIABILITY, OR STRICT LIABILITY), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE, LOSS OF OR DAMAGE TO DATA, PROFITS OR BUSINESS INTERRUPTION LOSSES, SUSTAINED OR ARISING FROM OR RELATED TO THE WORXTIME PROGRAM, THE WORXTIME SERVICE OR THE DOCUMENTATION OR, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONSULTANT'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL AT ALL TIMES AND IN THE AGGREGATE AMOUNT BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CLIENT TO CONSULTANT UNDER THIS AGREEMENT.

This limitation of liability also applies to the Provider. It is the maximum for which the Provider and Consultant are collectively responsible. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Client.

The parties hereby agree and consent to the terms and conditions of this SOW and acknowledge such by executing the SOW below.

Davis Joint Unified School District



Name: Bruce Colby

Title: Associate Superintendent of Business Services

Date: 9/16/2015

Notice Address:

**Davis Joint Unified School District
526 B Street
Davis, CA 95616**

American Fidelity Administrative Services, LLC

Name: Susan Relland

Title: Chief Executive Officer

Date: _____

Notice Address:

**American Fidelity Administrative Services, LLC
Attn: Chief Executive Officer
2000 N Classen Blvd
Oklahoma City, OK 73106**

AND

**American Fidelity LAW Department
2000 N Classen Blvd
Oklahoma City, OK 73106**