

**SAN BERNARDINO COMMUNITY COLLEGE DISTRICT
114 SOUTH DEL ROSA DRIVE
SAN BERNARDINO, CA 92408**

PERFORMANCE/SPEAKER AGREEMENT

This agreement is made and entered by and between the San Bernardino Community College District hereinafter referred to as "DISTRICT," and _____, hereinafter referred to as "CONTRACTOR."

1. **Description of Services**

- Brief description of program, activity, or service provided:

- Date(s) of performance or presentation: _____

- Time of Arrival: _____
- Time(s) of performance(s) or presentation(s): _____

- Location of performance(s) or presentation(s): _____

2. **Special Equipment, Facility, or Set-Up**

CONTRACTOR shall notify the college sponsor of the event at the time of signing of the agreement if any special equipment, facility, or set-up is required for the services to be rendered. Such special equipment, facility or set-up shall be attached to the agreement as an addendum.

3. **Compensation**

The "Relationship of Parties" specified in paragraph 5 of this agreement determines the method by which compensation is paid. Based on your answers to the questions in Attachment A enter the amount of compensation in either category "a" or "b" below. The DISTRICT reserves the right to make the final determination as to the appropriate method of payment.

a. **Independent Contractor**

In consideration for the services provided by CONTRACTOR, DISTRICT shall pay CONTRACTOR in accordance with the following:

- 1) CONTRACTOR shall be paid the sum of _____

2) CONTRACTOR shall invoice the DISTRICT for the agreed amount.

a. Payment(s) shall be made in one of the following manners:

_____ Single payment upon completion of the performance: This will require approved invoice(s) to be submitted to Account Payable at least 25 working days prior to the performance date.

_____ Other: Payments(s) paid on a net 60 after Accounts Payable receives approved invoice(s).

3) DISTRICT will not withhold federal or state income tax from payments made to CONTRACTOR under this agreement, but will provide CONTRACTOR with a statement of payments made by DISTRICT to CONTRACTOR at the conclusion of each calendar year.

4. **Termination**

This Agreement may be canceled by either party without cause by written notice and with seven (7) calendar days.

5. **Relationship of Parties**

Your relationship to the DISTRICT, either as an independent contractor or in an employee relationship, is determined by your answers to the questions in Attachment A developed by the IRS. After you have carefully read the questions indicate your status below.

_____ Independent Contractor

_____ Employee Relationship

6. **Hold Harmless**

CONTRACTOR agrees to defend, indemnify, save and hold DISTRICT, its officers, agents and employees harmless from any liability for any claims, accusations, or suits at law or in equity, or in any administrative proceeding, that may be brought by third persons on account of personal injury, death, or damage to property, or a property of business or personal interest, or for any fine, forfeiture or civil penalty arising from any act or omission by CONTRACTOR its officers, agents or employees while performing operations under this Agreement.

7. **Liability/Independent Contractor Status**

CONTRACTOR agrees to procure and maintain in force during the term of this Agreement and any extension thereof, at its expense, public liability insurance

adequate to protect against liability for damage claims through public use of or arising out of accidents occurring from said services, in a minimum amount of \$3,000,000 combined single limits for bodily injury and property damage. Such insurance policies shall provide coverage for DISTRICT'S contingent liability on such claims or losses. DISTRICT, its officers, agents and employees shall be named as an additional insured. A certificate of insurance shall be delivered to DISTRICT'S Office of Business Services. CONTRACTOR agrees to obtain a written obligation from the insurers to notify DISTRICT in writing at least thirty (30) days prior to cancellation or refusal to renew any such policies.

8. Workers' Compensation Insurance/Independent Contractor Status

CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Agreement full Workers' Compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the DISTRICT throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to DISTRICT. The policy shall also be amended to waive all rights of subrogation against the DISTRICT, its elected or appointed officials, employees, agents, or CONTRACTORS for losses which arise from work performed by the named insured for the DISTRICT.

DISTRICT may, at its sole discretion, and if then permissible under the requirements of the Labor Code of the State of California, permit CONTRACTOR, by acknowledgment herein, to waive Workers' Compensation insurance coverage on himself/herself provided CONTRACTOR does not employ any other persons in his/her business. CONTRACTOR does hereby elect to waive Workers' Compensation insurance coverage on himself/herself while performing services for DISTRICT pursuant to the contract. CONTRACTOR expressly acknowledges that he/she is making the election hereunder with the full knowledge and understanding that he/she will not, under any circumstances, be insured for an "on-the-job" injury under the DISTRICT's Workers' Compensation or other liability insurance policies, in the event CONTRACTOR is injured while performing services pursuant to this Agreement.

_____ District

_____ Contractor

9. **Public Employee**

If CONTRACTOR is a regular employee of a public entity, all services which CONTRACTOR renders under this agreement will be performed at times other than CONTRACTOR'S regular assigned workday for said entity, or during periods of vacation or leave of absence from said entity.

10. **STRS Retiree**

CONTRACTOR shall provide DISTRICT with a statement indicating whether or not CONTRACTOR is a retired member of the State Teacher's Retirement System of the State of California.

11. **Amendments**

This Agreement may be amended or modified only by written agreement signed by both parties. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a continuous waiver of the right to compel enforcement of such provision or provisions, nor shall such waiver be construed as a release of any surety from its obligations under this Agreement.

12. **Attorney's Fees**

Should any party violate or breach any term or condition of this Agreement, any other party shall have, without limitation, the right to move for entry of judgment by a court of competent jurisdiction, to seek specific performance thereof, and otherwise exercise all remedies available to him, her or it under the law to obtain redress from injury or damage resulting from any such violation or breach. In any such legal proceeding(s) brought to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred as a consequence hereof.

13. **Entire Agreement**

There are no understandings or agreements except as herein expressly stated. Any modifications must be in writing.

14. **Law to Govern; Venue**

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

15. **Notices**

All notices herein required shall be in writing and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

IF TO DISTRICT
San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408
Atten: Ronald P. Gerhard

IF TO CONTRACTOR

16. **Validity**

If any terms, condition, provision, or covenant of this Agreement shall to any extent be judged invalid, unenforceable, void, or violable for any reason whatsoever by a court of competent jurisdiction, each and all remaining terms, conditions, promises and covenants of this Agreement shall be unaffected and shall be valid and enforceable to the fullest extent permitted by law.

17. **Assignment**

This Agreement is neither assignable nor transferable by either party or by operation of law without the consent in writing of the other party. Consent by either party to one or more assignments or transfers shall not constitute consent to a subsequent assignment or transfer.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

DISTRICT SIGNATURE

Date _____

Ronald P. Gerhard, Business Manager
San Bernardino Community College District
114 S Del Rosa Drive
San Bernardino, Ca., 92408
909-382-4000

CONTRACTOR SIGNATURE

Date _____

Name: Print or Type

Mailing Address

City, State and Zip Code

() _____
Telephone Number

Social Security No. or Tax Payer ID No.

ATTACHMENT A

IRS GUIDELINES FOR EMPLOYEE CLASSIFICATION

IF THE ANSWER IS “YES” TO ANY OF THE FIRST SEVEN QUESTIONS AN EMPLOYMENT RELATIONSHIP EXISTS.

1. Has this category of worker already been classified an “employee” by the IRS?
 Yes No
2. Is the individual working as an employee prescribed by the Education Code? The IRS predisposes an employer/employee relationship when state law mandates such a relationship.
 Yes No
3. Is the individual already an employee of the DISTRICT in another capacity?
 Yes No
4. Has the individual performed substantially the same services for the DISTRICT as an employee in the past? Is the individual retired, returning to substitute, or train, etc.?
 Yes No
5. Are there currently employees of the DISTRICT doing substantially the same services as will be required of this individual?
 Yes No
6. Does the DISTRICT have the legal right to control the method of performance by this individual? Consider whether the DISTRICT has to train this individual or give instruction as to when, where, how, and in what order to work. Does the DISTRICT require the individual to submit reports or perform the services at a DISTRICT site: These factors would indicate the DISTRICT maintains control, sufficient for an employer/employee relationship. However, it is not necessary that the DISTRICT exercise this right or have the expertise required to do so. In many cases this would not be practical or advisable.
 Yes No
7. Are the services, as being provided, an integral part of school operations? Are the services being provided necessary to the operation of the school, program, project, etc.? This indicates the district has an interest in the method of performance and implies the maintenance of legal control.
 Yes No

IF THE ANSWER TO ANY OF THE NEXT THREE QUESTIONS IS “YES,” THERE IS A GOOD POSSIBILITY THAT AN EMPLOYMENT RELATIONSHIP EXISTS.

Questions 3 and 9 are indicators of DISTRICT control that, in conjunction with the other factors, imply an employment relationship.

8. Must the required services be performed by this individual? May the individual designate someone else to do the work without the DISTRICT’s knowledge or approval.
 Yes No
9. Does the DISTRICT have a continuing relationship with the individual? Is this a “one shot deal” or will the DISTRICT continue to use this individual in the future? This could be on an infrequent or irregular basis but a continuous relationship exists.
 Yes No
10. Can the relationship be terminated without the consent of both parties?
 Yes No

IF YOUR ANSWERS ARE "NO," HERE ARE MORE QUESTIONS.

11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, school districts are considered to be separate entities. If the DISTRICT is utilizing this individual's services on a full-time basis, the individual is not available to the general public. Possession of a business license or incorporation does not automatically satisfy this requirement. The determination must be made on the actual relationship between the DISTRICT and the individual performing services.
 Yes No
12. Does the individual have a substantial investment in his/her business; i.e., maintains a facility, equipment, etc.?
 Yes No
13. Does this individual provide all materials and support services necessary for the performance of this service? The DISTRICT should not provide office space, clerical, secretarial, or any other support for the individual such as materials, copying, printing, office supplies, etc.
 Yes No
14. Is this individual paid by the job or on a commission?
 Job Commission
15. Does the individual bear the cost of any travel and business expenses incurred to perform the service?
 Yes No