

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN TRI-CITY HEALTHCARE DISTRICT
AND [REDACTED]
FOR [REDACTED]**

This Professional Services Agreement (“AGREEMENT”) is made on this 19th day of September, 2013, by and between TRI-CITY HEALTHCARE DISTRICT, a California hospital district (“TRI-CITY”), and [REDACTED] (“CONTRACTOR”), an independent contractor, with a principal place of business in California (collectively, the “PARTIES,” or individually, a “PARTY”).

**ARTICLE 1
TERM OF AGREEMENT**

1.01 This AGREEMENT will become effective on the date stated above, and will continue in effect until the earlier of one (2) year or the completion of services provided for in this AGREEMENT or until terminated as provided under Article 7.

**ARTICLE 2
SERVICES TO BE PERFORMED BY CONTRACTOR**

Specific Services

2.01 CONTRACTOR will perform the deliverables within the scope described in Attachment A. CONTRACTOR will provide TRI-CITY with periodic reports regarding the progress of services performed, at TRI-CITY’s request. Any changes to the scope of services or timeframes identified in Attachment A must be authorized by TRI-CITY in writing.

2.02 CONTRACTOR will determine the method, details, and means of performing the above-described services.

Status of CONTRACTOR

2.03 CONTRACTOR and its employee(s) are engaged in an independent contractor relationship with TRI-CITY in performing all work, duties and obligations hereunder. TRI-CITY shall not exercise any control or direction over the methods by which CONTRACTOR shall perform its work and functions. TRI-CITY’s sole interest and responsibility is to ensure that the services covered by this AGREEMENT are performed and rendered in a competent, satisfactory and legal manner. The PARTIES agree that no work, act, commission or omission of CONTRACTOR or its employee(s) pursuant to this AGREEMENT shall be construed to make CONTRACTOR or its employee(s) the agent, employee or servant of TRI-CITY. CONTRACTOR and its employee(s) are not entitled to receive from TRI-CITY vacation pay, sick leave, retirement benefits, Social Security, workers’ compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

Payment of Income Taxes

2.04 CONTRACTOR shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment law requirements with respect to CONTRACTOR or its employee(s).

2.05 CONTRACTOR agrees to indemnify, defend and hold TRI-CITY harmless from any and all liability, damages or losses (including attorneys' fees, costs, penalties and fines) TRI-CITY suffers as a result of (a) CONTRACTOR's failure to meet its obligations under paragraph 2.04, or (b) a third party's designation of CONTRACTOR or its employee as an employee of TRI-CITY, regardless of any actual or alleged negligence by TRI-CITY.

Compliance with Laws/Rules

2.06 CONTRACTOR will perform all services under this AGREEMENT in good faith and in the best interests of TRI-CITY. In performing the services specified in this AGREEMENT, CONTRACTOR agrees to comply with all federal and state laws, rules and regulations, applicable TRI-CITY policies and procedures, departmental rules and other directives applicable to the services to be performed. Any changes to TRI-CITY policies and procedures that relate to CONTRACTOR will be provided to CONTRACTOR in writing. CONTRACTOR agrees to review such policies, procedures, rules and directives the contents of which CONTRACTOR will be deemed to have knowledge.

2.07 CONTRACTOR shall ensure that any report generated under this AGREEMENT complies with California Government Code section 7550.

ARTICLE 3 COMPENSATION

3.01 Compensation for all work performed under this AGREEMENT shall be calculated on a fixed price amount. Compensation for the services described in Attachment A shall not exceed \$0. This amount shall not be exceeded unless there is a change in scope of work, in writing and agreed to by both PARTIES. The PARTIES agree that this compensation was developed in accordance with the customary and prevailing compensation level in the community and surrounding area for comparable services. CONTRACTOR and TRI-CITY agree that this fee was arrived at through arms' length negotiations between the PARTIES. TRI-CITY shall make payment to CONTRACTOR within sixty (60) days of receipt of approved invoice.

Payment of Expenses

3.02 TRI-CITY will reimburse CONTRACTOR for all reasonable expenses incurred in performing services under this AGREEMENT as the work progresses. CONTRACTOR shall submit invoices to TRI-CITY's Project Manager once per month. Such invoices shall include a brief narrative description of the work performed, as well as detailed time expenditures on a task-by-task basis pursuant to Attachment A. The term "expenses" means telephone bills, and federal express charges, mailing charges and any other pre-approved expenses by TRI-CITY. CONTRACTOR will provide TRI-CITY with receipts for all expenses. TRI-CITY shall make payment to CONTRACTOR within sixty (60) days of receipt of approved invoice. Payment provision for any service other than those described in Attachment A will be set forth in an amendment to the AGREEMENT.

**ARTICLE 4
OBLIGATIONS OF CONTRACTOR**

Tools, Materials, and Equipment

4.01 CONTRACTOR will supply all tools, materials, and equipment required to perform the services under this AGREEMENT.

CONTRACTOR's Qualifications

4.02 CONTRACTOR represents that its employee(s) have the qualifications and skills necessary to perform the services under this AGREEMENT in a competent, professional manner, without the advice or direction of TRI-CITY. This means CONTRACTOR is able to fulfill the requirements of this AGREEMENT. Failure to perform all the services required under this AGREEMENT constitutes a material breach of the AGREEMENT. CONTRACTOR has complete and sole discretion for the manner in which the work under this AGREEMENT will be performed.

Indemnity

4.03 To the maximum extent allowable by law, CONTRACTOR agrees to indemnify, defend, and hold TRI-CITY and its officials, officers, directors, employees, agents and volunteers free and harmless from all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, attorneys' fees, and costs that such entities or persons may incur that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct, whether an act or omission, of CONTRACTOR. CONTRACTOR's provision of insurance coverage as described in this Article 4 shall not affect CONTRACTOR's indemnity obligations.

Insurance

4.04 CONTRACTOR will provide and keep in full force and effect during the term of this AGREEMENT the insurance policies listed below.

4.04.1 California Workers' Compensation, in compliance with California requirements.

4.04.2 General Liability Insurance [occurrence form CG 0001], covering bodily injury, personal injury and property damage with a combined single limit of no less than One Million Dollars (\$1,000,000) per occurrence, and a minimum annual aggregate of Three Million Dollars (\$3,000,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

4.04.3 Automobile Liability Insurance [form number CA 0001, covering code 1 (any auto)] covering bodily injury and property damage, with a combined single limit of no less than One Million Dollars (\$1,000,000) per claim.

4.04.4 Employer's Liability Insurance with a combined single limit of no less than One Million Dollars (\$1,000,000) per claim.

4.04.5 Error and Omissions Insurance appropriate to CONSULTANT's services, with a combined single limit of no less than Five Million Dollars (\$5,000,000) per claim.

4.05 At a minimum, all general liability and auto insurance policies shall contain the following provisions, or the CONTRACTOR shall provide endorsements on forms supplied or approved by TRI-CITY to add the following provisions to the insurance policies: (1) TRI-CITY, its officers, officials, directors, employees, volunteers and agents shall be covered as additional insured with respect to the work or operations performed by or on behalf the CONTRACTOR including any materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects TRI-CITY, its officers, officials, directors, employees, volunteers and agents. General liability coverage shall be at least as broad as ISO Form CG 20 10, 11 85, or both CG 20 10 and CG 20 37 forms if a version of CG 20 10 issued after CG 20 10, 11 85 is used. Any insurance or self-insurance maintained by TRI-CITY, its officers, officials, directors, employees, volunteers and agents shall be excess to the CONTRACTOR's insurance and shall not be called upon to contribute to it in any way.

4.06 At a minimum, all workers' compensation and employer's liability policies shall contain the following provision, or CONTRACTOR shall provide endorsements on forms supplied or approved by TRI-CITY to add the following provision to the insurance policies: The insurer shall agree to waive all rights of subrogation against TRI-CITY, its officers, officials, directors, employees, volunteers and agents for losses paid under the terms of the insurance policy which arise from work performed by CONTRACTOR.

4.07 At a minimum, all policies shall contain the following provisions, or CONTRACTOR shall provide endorsements on forms supplied or approved by TRI-CITY to add the following provisions to the insurance policies: (1) coverage shall not be canceled by insured or insurer except after thirty (30) days prior written notice by certified mail has been given to TRI-CITY; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to TRI-CITY, its officers, officials, directors, employees, volunteers and agents; (3) coverage for contract liability; and (4) standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to TRI-CITY, its officers, officials, directors, employees, volunteers and agents.

4.08 TRI-CITY shall not be liable for loss or damage to any tools, machinery, equipment, materials or supplies of CONTRACTOR. CONTRACTOR shall supply to TRI-CITY with an endorsement waiving the insurance carrier's right of subrogation against TRI-CITY for all policies insuring such tools, machinery, equipment, materials or supplies.

4.09 All insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the state. All insurance carriers shall have a minimum of an "A" policyholder's rating and a minimum financial rating of "Class VI" according to the latest Best Key Rating Guide.

4.10 Any deductibles or self-insured retention limits must be disclosed to and approved by TRI-CITY prior to execution of this AGREEMENT. CONTRACTOR will furnish TRI-CITY with certificates of insurance prior to the commencement of work under this AGREEMENT, and as periodically as may be requested by TRI-CITY. All insurance policies required by this AGREEMENT shall be produced by CONTRACTOR at TRI-CITY'S request.

4.11 CONTRACTOR shall notify TRI-CITY in the event of any changes in insurance carrier or scope of coverage for insurance required by this AGREEMENT.

4.12 In the event that CONTRACTOR employs other contractors (subcontractors) as part of the services covered by this AGREEMENT, it shall be CONTRACTOR's responsibility to require and confirm that all of its subcontractors meet the minimum insurance requirements specified above.

Conflict of Interest

4.13 Upon execution of this AGREEMENT, CONTRACTOR may be required to complete and file with TRI-CITY a Conflict of Interest form, to be provided to CONTRACTOR by TRI-CITY.

Assignment

4.14 Neither this AGREEMENT nor any duties or obligations under this AGREEMENT may be assigned by CONTRACTOR without the prior written consent of TRI-CITY.

ARTICLE 5 OBLIGATIONS OF TRI-CITY

5.01 TRI-CITY agrees to comply with all reasonable requests of CONTRACTOR and provide access to all documents reasonably necessary to the performance of CONTRACTOR's duties under this AGREEMENT.

Place of Work

5.02 TRI-CITY agrees to furnish space on TRI-CITY premises for use by CONTRACTOR while performing the above-described services.

Indemnity

5.03 To the extent allowable by the California's Tort Claims Act, TRI-CITY agrees to indemnify and hold CONTRACTOR free and harmless from all claims, demand, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, attorneys' fees, and costs, that CONTRACTOR may incur as a result of a breach by TRI-CITY of any representation or agreement contained in this AGREEMENT.

ARTICLE 6 TERMINATION OF AGREEMENT

Termination for Default

6.01 If either PARTY defaults in the performance of this AGREEMENT or materially breaches any of its provisions, the non-breaching PARTY may immediately terminate this AGREEMENT by giving written notification to the breaching PARTY. Termination will take effect immediately on receipt of notice by the breaching PARTY or five (5) days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this AGREEMENT includes, but is not limited to, the following:

6.01.1 CONTRACTOR's failure to complete the services specified in Article 2 of this AGREEMENT.

6.01.2 CONTRACTOR's material breach of any representation or term contained in this AGREEMENT.

6.01.3 TRI-CITY's material breach of any representation or agreement contained in this AGREEMENT.

Termination Without Cause

6.02 Either PARTY may terminate this AGREEMENT without cause upon thirty (30) days written notice.

Compensation Upon Termination

6.03 Upon termination by either PARTY, TRI-CITY will pay to CONTRACTOR any outstanding service fees minus any costs reasonably incurred by TRI-CITY related to CONTRACTOR's services under this AGREEMENT prior to the notice of termination.

ARTICLE 7 PROPRIETARY RIGHTS

Confidential Information

7.01 Any written, printed, graphic, or electronically or magnetically recorded information furnished by TRI-CITY for CONTRACTOR's use are the sole property of TRI-CITY. This proprietary information includes, but is not limited to, marketing information and information concerning TRI-CITY employees, products, services, prices and operations.

7.02 CONTRACTOR and its employee(s) will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with TRI-CITY approval, and only to the extent necessary to perform the services under this AGREEMENT. This prohibition also applies to CONTRACTOR's employees, agents, and subcontractors. On termination of this AGREEMENT, CONTRACTOR will promptly return any confidential information in its possession to TRI-CITY.

ARTICLE 8 GENERAL PROVISIONS

Notices

8.01 Any notices required to be given under this AGREEMENT by either PARTY to the other may be affected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices must be addressed to the PARTIES at the addresses below, but each PARTY may change the address by giving written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of the day of receipt or the fifth (5th) day after mailing, whichever occurs first.

To TRI-CITY:	Tri-City Healthcare District 4002 Vista Way Oceanside, California 92056 Attention: Chris Miechowski
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To:

Attention: _____

Entire Agreement of the Parties

8.02 This AGREEMENT contains the entire understanding among the PARTIES hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This AGREEMENT may not be modified or amended other than by an agreement in writing.

Partial Invalidity

8.03 If any non-material provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

Attorneys' Fees

8.04 If any legal action, including an action for declaratory relief, is brought to enforce or interpret the provisions of this AGREEMENT, the prevailing PARTY will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that PARTY may be entitled.

Document and Materials Ownership

8.05 All original drawings, diskettes, and other copies of documents and materials developed for the project, including detailed calculations, shall be furnished to and become the property of TRI-CITY. TRI-CITY agrees to indemnify the CONTRACTOR for claims, damages, or liabilities caused by any use by TRI-CITY of the plans, drawings, specifications, and all information gathered by CONTRACTOR on any project other than the one for which such plans, drawings, and specifications were prepared and information gathered by CONTRACTOR.

Patent and Copyright Indemnity

8.06 CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONTRACTOR Products") provided to TRI-CITY under this AGREEMENT infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless TRI-CITY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. TRI-CITY will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without TRI-CITY's prior written consent, to any settlement, which would require TRI-CITY to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.

8.06.1 If CONTRACTOR is obligated to defend TRI-CITY pursuant to this paragraph 8.06 and fails to do so after reasonable notice from TRI-CITY, TRI-CITY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to TRI-CITY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with TRI-CITY's defense and/or settlement of such proceeding.

8.06.2 In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for TRI-CITY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

8.06.3 Notwithstanding this paragraph 8.06, TRI-CITY retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.

Audits

8.07 If this AGREEMENT involves an expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), the AGREEMENT is subject to examination and audit of the State Auditor, at the request of TRI-CITY or as part of any audit of TRI-CITY, for a period of three (3) years after final payment under the AGREEMENT.

Counterparts

8.08 This AGREEMENT may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same AGREEMENT, and the signature of any PARTY to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Facsimile or photocopy signatures shall have the same force and effect as original signatures.

Provisions Required By Law

8.09 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 the AGREEMENT shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either PARTY, the AGREEMENT shall forthwith be physically amended to make such insertion.

Governing Law

8.10 This AGREEMENT and all questions relating to its validity, interpretation, performance, and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the state of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom, or rule of law requiring construction against the draftsman.

Jurisdiction, Forum and Venue

8.11 The proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this AGREEMENT shall be in the state and federal courts located in the

State of California, County of San Diego. TRI-CITY and CONTRACTOR agree not to bring any action or proceeding arising out of or relating to this AGREEMENT in any other jurisdiction, forum or venue. TRI-CITY and CONTRACTOR hereby submit to personal jurisdiction in the State of California for the enforcement of this AGREEMENT and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this AGREEMENT, whether on grounds of inconvenient forum or otherwise.

Signatures

8.12 Each person below warrants and guarantees that she/he is legally authorized to execute this AGREEMENT on behalf of the designated PARTY and that such execution shall bind the designated PARTY to the terms of this AGREEMENT.

Executed in San Diego County, California, on the date set forth above.

TRI-CITY

CONTRACTOR

By: _____

By: _____

Chief Executive Officer

ATTACHMENT A
Scope of Services

1. Proposal is attached and included as part of this agreement.