

**AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT  
AND  
BAY AREA COMMUNITY RESOURCES  
FOR DEVELOPMENT OF THE  
AFTER SCHOOL EDUCATION AND SAFETY PROGRAM**

**THIS AGREEMENT**, entered this first day of July, 2013, by and between the **Mt. Diablo Unified School District**, herein called the "**DISTRICT**" and **Bay Area Community Resources**, herein called the "**BACR**."

**WHEREAS**, the DISTRICT has secured grant funding from the California State Department of Education (CDE) for the purpose of development of the After School Education and Safety Program; and

**WHEREAS**, the DISTRICT is the lead agency for the purposes of the aforementioned CDE grant, and is authorized to enter into this agreement with the BACR to develop the Programs at various locations within the City of Concord and Martinez; and

**WHEREAS**, BACR, is qualified to assist DISTRICT to develop the Programs to provide direction and organization by providing assistants and coordinators to facilitate and coordinate each program element; and

**WHEREAS**, the DISTRICT wishes to engage the BACR to assist as stated above in the utilization of the grant funds in the manner in which it is mutually beneficial.

**WHEREAS**, the DISTRICT lacks the personnel to provide such programs; and

**WHEREAS**, the BACR holds itself out as qualified to operate and provide such programs; and

**NOW, THEREFORE**, in consideration of the performance of mutual promises contained herein, the parties agree, as follows:

I. **SCOPE OF SERVICE:**

The BACR, in a manner satisfactory to the DISTRICT, shall provide afterschool programs during FY 2013-14, in accordance with the Scope of Service submitted to the DISTRICT, and adopted herein as Exhibit "A" to this Agreement. The BACR further agrees that, should it fail to maintain the services proposed for the time specified by this Agreement, it shall reimburse the DISTRICT for all funds advanced pursuant to this Agreement.

**Program Delivery**

A. **Activities**

1. BACR shall implement an afterschool program at eleven schools for fiscal year 2013-2014. Activities include enrichment classes, tutoring, youth development, nutrition, life skills, sports, and mentoring programs.
2. Program components and service levels are set forth in Exhibit "A."

B. **Staffing**

Using the funds provided by the DISTRICT pursuant to this Agreement, BACR shall employ the personnel listed in Exhibit "A." BACR shall notify DISTRICT in writing within five (5) working days if any of the above positions becomes vacant for any reason.

C. **Performance Monitoring**

The DISTRICT will monitor the performance of the BACR against the goals and performance standards required herein. Substandard performance as determined by the DISTRICT will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the BACR within ten (10) working days after notice is given by the DISTRICT, agreement suspension or termination procedures will be initiated, consistent with the provisions set forth in Section VI I, "Suspension or Termination."

II. TIME OF PERFORMANCE

Services of the BACR shall start on the 1<sup>st</sup> day of July 2013 and end on the 30<sup>th</sup> day of June 2014.

III. PAYMENT

- A. It is expressly agreed and understood that the total amount to be paid by the DISTRICT under this Agreement shall not exceed \$1,844,822 in Exhibit "A." Drawdowns for the payment of eligible expenses shall be made in accordance with performance. BACR shall be paid monthly upon its submission of an itemized invoice.
- B. Each month, as part of its progress report, BACR shall submit to DISTRICT supporting financial information, which clearly documents the eligible expenses for which reimbursement is sought. Eligible expenses for which reimbursement shall be made shall be based upon Scope of Services set forth in Exhibit "A." The report is due within fifteen (15) days of the last day of the following month.

IV. NOTICES

Communication and details concerning this Agreement shall be directed to the following agreement representatives:

DISTRICT:  
Stephanie Roberts, Director of Development  
Mt. Diablo Unified School District  
1266 San Carlos Ave., A-6  
Concord, CA 94519  
(925) 691-0351

BACR:  
Marty Weinstein  
Executive Director of BACR  
171 Carlos Drive  
San Rafael, CA 94903  
www.bacr.org  
(415) 444-5580

V. GENERAL CONDITIONS:

- A. General Compliance  
The BACR agrees to comply with all applicable state and local laws and regulations governing the program and funds provided under this Agreement.

- B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The BACR shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The DISTRICT shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the BACR is an independent contractor.

- C. Indemnification:

The DISTRICT shall indemnify, defend, and hold harmless BACR against and from any and all claims or suits for damages or injury arising from DISTRICT's performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the BACR in conjunction with the performance of this Agreement, and shall further indemnify, defend, and hold harmless BACR against and from all claims or suits arising from any breach or default of any performance of any obligation of DISTRICT hereunder, and against and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

The BACR shall indemnify, defend, and hold harmless DISTRICT against and from any and all claims or suits for damages or injury arising from BACR's performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the DISTRICT in conjunction with the performance of this Agreement, and shall further indemnify, defend, and hold harmless DISTRICT against and from all claims or suits arising from any breach or default of any performance of any obligation of BACR hereunder, and against and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

D. Workers' Compensation

The BACR shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this Agreement. BACR will provide DISTRICT with a thirty (30) day written Notice of Cancellation of the Workers' Compensation Policy.

E. Insurance

BACR shall hold DISTRICT free, clear, and harmless from all claims of third persons for damages arising out of negligent acts of BACR and its agents and, in furtherance thereof, BACR shall, at its expense, procure and maintain in full force at all times during the term of this contract the following insurance which shall be provided on an occurrence basis.

BACR represents that it is self-insured and participates in the Tarallone Pacific Insurance and that it has sufficient insurance to pay claims for bodily injury, personal injury, or property damage which may arise as a result of BACR'S performance of this Agreement.

BACR agrees to provide DISTRICT a thirty (30) day notice of any reduction or cancellation.

F. DISTRICT Recognition

The BACR shall ensure recognition of the role of the DISTRICT in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the BACR will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

1. DISTRICT or BACR may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the DISTRICT. Such amendments shall not invalidate this Agreement, nor relieve or release DISTRICT or BACR from its obligations under this Agreement.
2. DISTRICT may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by

written amendment signed by both the DISTRICT and BACR. In the event performance of this agreement becomes impracticable because of changes in federal, state, or local guidelines, policies, available funding amounts, or other reasons, either party may terminate the agreement pursuant to Paragraph H.1.

H. Suspension or Termination

1. Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. In the event of any such termination for convenience, all finished or unfinished documents, reports or other materials prepared by BACR under this Agreement shall, at the option of the DISTRICT, become the property of the DISTRICT. Also, the DISTRICT is not responsible for any identified invoices in Paragraph III of the Agreement after the effective date of termination. However, invoices may be submitted for payments due within in the 30 day time period within a reasonable time after termination.
2. DISTRICT may also suspend or terminate this Agreement, in whole or in part, where, in the determination of the DISTRICT:
  - a. There is an illegal or improper use of the funds provided by the DISTRICT; or
  - b. There is a failure to comply with any terms, covenants, or conditions of this Agreement or exhibits thereto; or
  - c. There are reports submitted to the DISTRICT that are incomplete, untimely or incorrect in any material respect; or
  - d. The BACR is incapable of carrying out the proposed services, or those services are improperly performed; or
  - e. There are insufficient funds budgeted to continue the provision of services under this Agreement.
3. If the BACR materially fails to comply with any term of this Agreement or with any of the laws, rules, regulations or provisions referred to herein, the DISTRICT may declare the BACR ineligible for any further participation in DISTRICT agreements, in addition to other remedies as provided by law.
4. In the event there is probable cause to believe the BACR is in noncompliance with any applicable laws, rules or regulations, the DISTRICT will notify BACR as soon as practicable. BACR, in turn, will be given ten (10) working days within which to comply or remedy the situation. In the absence of compliance, the DISTRICT may withhold up to fifty (50) percent of said Agreement funds until such time as the BACR is found to be in compliance by the DISTRICT, or is otherwise adjudicated to be in compliance.
5. If suspension or termination is in order, the DISTRICT will provide at least ten (10) days written notice to the BACR.

VI. ADMINISTRATIVE REQUIREMENTS:

A. Financial Management

1. Accounting Standards

BACR shall bill the DISTRICT on a monthly basis with a detailed accounting of expenditures

incurred by BACR.

B. Documentation and Record-Keeping

1. Records to be Maintained

The BACR shall maintain all records required by the terms of the grant and that are pertinent to the activities to be funded under this Agreement. Such records shall generally include, but not be limited to:

- a. Records providing a full description of each activity undertaken pursuant to this Agreement.
- b. Records of all expenditures, project funds, all persons employed in the program including volunteers, and records showing compliance with all legal requirements for the program and funding.

2. Retention

The BACR shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment.

3. Close-Outs

The BACR shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment.

4. Audits & Inspections

All BACR records with respect to any matters covered by this Agreement shall be made available to the DISTRICT or its designees at any time during normal business hours, as often as the DISTRICT deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the BACR within 30 days after receipt by the BACR. Failure of the BACR to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments or termination of the agreement. The BACR hereby agrees to have an annual agency audit conducted in accordance with current DISTRICT policy concerning BACR audits.

C. Reporting and Payment Procedures

1. Budgets

Prior to the release of any funds under this Agreement, the BACR must have submitted a detailed budget to be approved by DISTRICT. The DISTRICT and the BACR may agree to revise the budget from time to time by DISTRICT in accordance with existing DISTRICT policies. Any such revisions must be approved in writing, and will not necessarily change the amount approved previously.

2. Indirect Costs

If indirect costs are charged, the BACR will develop an indirect cost allocation plan for determining the appropriate DISTRICT share of administrative costs and shall submit such plan to the DISTRICT for approval.

3. Payment Procedures

The DISTRICT will pay to the BACR funds available under this Agreement based upon information submitted by the BACR and consistent with any approved budget and DISTRICT policy concerning payments. The DISTRICT reserves the right to liquidate funds available under this Agreement for costs incurred by the DISTRICT on behalf of the BACR.

VII. PERSONNEL & PARTICIPANT CONDITIONS:

A. Conflict of Interest

Consistent with applicable state limitations, no officer(s), employee(s) or agent(s) of the DISTRICT who exercise(s) any function or responsibility with respect to this grant may participate as a board member or officer of BACR in the planning or carrying out of the activities or program herein proposed and approved for funding.

B. Fingerprinting

The BACR shall comply with the fingerprinting requirements of Education Code section 45125.1 with respect to all BACR's employees and all of its Subcontractors' who may have contact with District pupils in the course of providing services pursuant to the Contract and the California Department of Justice shall have determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Before the commencement of any work under this agreement, a complete and accurate list of BACR's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contractor shall have been provided to The DISTRICT.

C. Civil Rights

1. Compliance

The BACR agrees to comply with all local and state civil or human rights requirements, and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375 and 12086. BACR will ensure that, consistent with the ADA, all facilities wherein services are provided under this Agreement are accessible to all Bay Point, Concord, and Martinez residents, regardless of handicapping condition. If a facility is not accessible, but the BACR has developed an alternative plan that meets ADA requirements for such, it must be submitted to DISTRICT for its approval within thirty (30) days of the date of the execution of this Agreement. Failure to do so may result in suspension or termination of this Agreement.

2. Nondiscrimination

The BACR will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The BACR will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and

selection for training, including apprenticeship. The BACR agrees to post in conspicuous places, available to employees and applicants for employment or service, a notice to be provided by the DISTRICT setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The BACR shall permit access to its books, records and accounts by the DISTRICT for purposes of investigation to ascertain compliance with the laws, rules, regulations and provisions stated herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year written above.

**MT. DIABLO UNIFIED SCHOOL DISTRICT**, a district organized under the laws of the State of California:

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
**John Bernard**  
Interim Superintendent

**Bay Area Community Resources**, agency

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Marty Weinstein  
Executive Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Counsel for  
Mt. Diablo Unified School District

**Exhibit “A”**

**Bay Area Community Resources (BACR)**

BACR CARES staff will hire a Program Supervisor for developing and supervising the Mt. Diablo CARES After School Programs in Concord. The ten school sites include; Bel Air, Delta View, El Monte, Fair Oaks, Rio Vista, Shore Acres, Sun Terrace, Wren Avenue Elementary, Riverview Middle and Ygnacio Valley High Schools.

BACR will hire Recreation Specialist and Recreation Coordinators at each of the ten sites listed above. BACR will hire a Staff Development Coordinator to work with the fifteen CARES After School Programs for the school-year program 2013-14. BACR will hire 2 Garden Educators and garden and staff to work at the Riverview Garden and the El Monte Garden.

Program Description

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Implement an After School Programs at ten sites in the Concord and Bay Point communities. Activities include enrichment classes, youth development, tutoring, life skills, sports, gardening, nutrition education, leadership and service projects, mentoring programs, ongoing staff development and technical assistance.

Services.

BACR shall perform only the services indicated by a check-mark under its column below during the term of this Agreement in connection with the Program (the “Covered Services”), and District shall be responsible for those services indicated by a check-mark under its column below (“Excluded Services”):

	BACR	District
<u>Program employment</u>		
Recruiting and selecting Leased Employees for hire	__X__	_____
Screening Leased Employees (as defined below), including, without limitation, performing criminal	__X__	_____



background checks

Supervising and training Leased Employees in Program activities	<u>  X  </u>	<u>      </u>
Maintaining Leased Employees' personnel records	<u>  X  </u>	<u>      </u>
Payroll administration for Leased Employees	<u>  X  </u>	<u>      </u>

BACR                      District

Program students and activities

Conducting Program announcements and promotions	<u>      </u>	<u>  X  </u>
Maintaining files and records of Program students	<u>      </u>	<u>  X  </u>
Setting Program curriculum	<u>      </u>	<u>  X  </u>
Disciplining Program students	<u>  X  </u>	<u>  X  </u>
Selecting, hiring, and supervising Independent contractor(s)	<u>  X  </u>	<u>  X  </u>
Overseeing accounting/bookkeeping for Program	<u>  X  </u>	<u>  X  </u>
Providing non-transportation equipment and supplies for use in the Program	<u>  X  </u>	<u>  X  </u>
Providing facilities for the Program	<u>      </u>	<u>  X  </u>
Providing transportation (buses, etc.) for the Program	<u>      </u>	<u>  X  </u>
Ensuring Program compliance with local, state, and federal law (including, without limitation, the Americans with Disabilities Act)	<u>  X  </u>	<u>  X  </u>
Compiling grant reports for Program funders	<u>      </u>	<u>  X  </u>

Any additional items, or explanations or elaborations of the above categories and assignments (including, for example, allocations of shared responsibilities), are set forth on Appendix 1 to this Agreement.