

Purchase Requisition # 65372

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 24th day of June, by and between the Mt. Diablo Unified School District (hereinafter "District") and DataWORKS Educational Research (hereinafter "Contractor").

District hereby engages Contractor to render described services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools, transportation, and workspace necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used with the written approval of the District only.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the Services on the following basis:

\$ 9,645.25 total fee for Services 010 - 3082 - 36 - 5800
BUDGET CODE

The basis of the fee for Services shall be as follows:

- a. \$ _____ per hour,
- b. \$ _____ per day, or
- c. \$ _____ per engagement.

Check one:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on 6/24/11. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance,

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vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand. Contractor hereby indemnifies District for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by District arising out of Contractor's breach of this Section.

- 5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1.
- 6. Rules and Regulations. All results and regulations of the Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
- 7. Indemnification. Contractor shall and does hereby indemnify, defend, and hold harmless District, and District's officers, employees, agents and representatives from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including, without limitation, interest, penalties, and reasonable attorneys fees and costs, that District may incur or suffer and that arise, result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties, and agreements contained in this Agreement.
- 8. Insurance. Insurance shall be endorsed to include the District, its officers, officials, agents, employees and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor. Such insurance shall contain a provision that the insurance afforded thereby to the District and its officers, officials, agents, employees and volunteers shall be primary insurance to the full limits of liability of the policy, and that if the District, its officers, officials, agents, employees and volunteers have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.
- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>DataWORKS Educational Research</u>
1936 Carlotta Drive	Address: <u>116 S. 7th Street</u>
Concord, CA 94519-1397	<u>Fowler, CA</u>
Attn: Superintendent	
	Phone: <u>800-485-1550</u>
	Fax: <u>email: info@dataworks-ed.com</u>
	Tax ID #: <u>77-0584790</u>

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree

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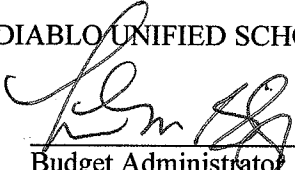
that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.


- 13. **Attorneys' Fees.** If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By:  6/24/11
 Budget Administrator Date

By:  6-29-2011
 Date

Title: Lisa Boje, School Support Administrator

Title: Vice President

Authorized by: _____
Assistant or Associate Superintendent Date

Approved: _____
Assistant Superintendent of Personnel Date

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR

It is my determination that this contractor is not required to comply with Ed. Code §45125.1 regarding the submission of fingerprints to the Department of Justice.

OR

This contractor is subject to the requirements of Ed. Code §45125.1 and will not begin services until I have received evidence that the Department of Justice has completed its criminal background investigation.

Administrator's Signature Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

Originator's Signature

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC

Distribution
 original: Fiscal Services for payment
 copy: Contractor
 copy: Originator/Budget Administrator

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EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

DataWORKS Educational Research will provide an Explicit Direct Instruction (EDI) workshop for teachers who have not received EDI workshop training. The workshop will take place at Shore Acres Elementary on July 21 & 22, 2011.

Services of Contractor arranged by

Signature

Department / School



All Students Successfully Taught Grade-Level Work Every Day.

Mt. Diablo Unified SD
2011 EDI Contract

Date of Contract: July 1, 2011	P.O#
Name of School:	Name of District: Mt. Diablo Unified
Address:	Address: 1936 Carlotta Dr. Concord, CA 94519
Telephone #	Tel: 925-682-8000 ext. 4023 Cell: 925-890-4387
Fax #:	Fax :
Principal:	Contact Person: Susan Petersen, Dir of Elem Support Lisa M. Bojé, Support Administrator 925-682-8000 Ext. 4040 bojel@mdusd.k12.ca.us
Email:	Email: petersens@mdusd.k12.ca.us

Send Contract to School

Send Contract to District

This is a Contract between **Mt. Diablo School District** and **DataWORKS Educational Research** for the following services:

Contract # 3625

Training	Purpose	Comments	Presenter <small>subject to change</small>	Cost
Explicit Direct Instruction (EDI) Workshop	Administrators and teachers are taught a strategic collection of instructional practices combined together to design and deliver well-crafted lessons that explicitly teach content, especially grade-level content, to all students.	Date: July 20 & 21, 2011 Audience Qty: Est. TBD Location: TBD Time: 8:00AM-3:00PM	Silvia Ybarra #13320	\$4,500/day Total Cost for 2-day training is: \$9000
Explicit Direct Instruction (EDI) Workshop Handouts	Handouts will be prepared by DataWORKS production department personnel and sent to the appropriate contact.	Final count of teachers by grade level needed by July 8, 2011 at the latest. Est 15 teachers	Dataworks Production Department #13321	\$18.00/ per attendee Plus tax/ship: Total Cost TBD, est \$306
Concept Development Books K-5	The DataWORKS Concept Development Books provide teachers with the original DataWORKS deconstructed California Content Standards as well as full Concept Development straight from the DataWORKS EDI Lessons, and Checking for Understanding questions to include in each lesson.	Grades K, 1, 2, 3, 4, 5 Still in draft stage; available to mail out beginning of June 27, 2011.	Dataworks Production Department #13322	\$50/each Total Cost is: \$300 (plus \$10 shipping & \$29.25 sales tax) = \$339.25

116 S. 7th St. Fowler, CA 93625 · 1 (800) 495-1550 · info@dataworks-ed.com
www.dataworks-ed.com



All Students Successfully Taught Grade-Level Work Every Day.

Total for EDI Training and Concept Development Books (not including Workshop Handouts yet to be determined) is: **\$9645.25**.

DataWORKS Educational Research will supply the district/school with a **master copy only** of all material used during the training unless otherwise indicated by the district/school.

Please check one and initial your selection:

Yes, I want DataWORKS to provide the workshop material for all participants. I understand I will be invoiced \$18.00 for each handout (shipping, handling, and tax additional) and the cost would be in addition to the grand total listed below. Here are the number of handouts I am requesting _____ Initials MA

No, I do not want DataWORKS to prepare the material for all participants. I understand my district/school will be responsible to copy and assemble all the DataWORKS provided master material for all participants. Initials _____

For the most effective group setting, DataWORKS has found that workshops with less than 50 attendees internalize and implement a greater amount of information over larger group settings.

The cost for these services will be **\$9645.25 (EDI training, plus cost of handouts yet to be determined)**. Please send your purchase order for billing purposes and reference the Contract ID on the purchase order.

DataWORKS will accommodate any changes to, or cancelation of, this contract with a written 30 day notice without penalty. After 30 days, DataWORKS reserves the right to charge the district/school for any expensing incurred.

Please sign both originals and return one to DataWORKS.

Approved and accepted by:

DataWORKS Ed. Authorized Signature: Date:

Martha Aguilar, Vice President

Lisa M. Boje 6/24/11

School/District Authorized Signature: Date:
LISA M. BOJE, SSA

Print Name and Title