

PO# 78501  
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RC2468

MT. DIABLO UNIFIED SCHOOL DISTRICT  
STATE AND FEDERAL PROGRAMS

MASTER CONTRACT

FOR SUPPLEMENTAL EDUCATIONAL SERVICES

UNDER THE NO CHILD LEFT BEHIND ACT OF 2001

RECEIVED  
OCT 22 2010  
Title I  
Mt. Diablo Unified School District  
**COPY**

Board Approved  
12/14/10

THIS MASTER CONTRACT ("Contract") is made and entered into on 10/22/10,  
between the Mt. Diablo Unified School District ("District"), a public school district duly operating  
under the laws of the state of California, and Professional Tutors of America  
3350 E. Birch Street, Suite 108, Brea CA 92821, 1-800-832-2487,

the supplemental service provider (hereinafter referred to as "PROVIDER") for the purpose of providing  
supplementary services to eligible District students. "Eligible students" are those students identified by  
the District who meet specific requirements under the No Child Left Behind Act.

WHEREAS, the District is authorized by California Government Code §53060 to contract with and  
employ any persons for the furnishing of special services and advice in financial, economic, accounting,  
engineering, legal or administrative matters, if such persons are specially trained and experienced and  
competent to perform the special services required;

WHEREAS, the District is in need of such special services and advice;

WHEREAS, PROVIDER is specially trained and experienced and competent to perform the special  
services required by the District, and such services are needed on a limited basis;

WHEREAS, the No Child Left Behind Act, 20 U.S.C. Section 6316(e), outlines the requirements for  
supplemental education services;

WHEREAS, Section 6316(e)(3) contains the following requirements:

- a. Requires the District to develop, in consultation with parents (and the provider chosen by parents),  
a statement of specific achievement goals for the student, how the student's progress will be  
measured, and a timetable for improving achievement which, in the case of a student with  
disabilities, is consistent with the student's Individual Education Plan ("IEP");
- b. Requires a description of how the student's parents/guardians and teacher/teachers will be  
regularly informed of the student's progress;
- c. Requires a provision for the termination of the Agreement if the PROVIDER is unable to meet the  
goals and timetables required;
- d. Requires provisions with respect to the making of payments to the PROVIDER by the District;
- e. Prohibits the PROVIDER from disclosing to the public the identity of any student eligible for  
receiving supplemental services, without the written permission of the parent/guardian of such  
student;

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WHEREAS, PROVIDER has been approved by the California State Department of Education and has met the qualifications to be certified as a supplementary service provider; and;

WHEREAS, PROVIDER is willing to provide such services to all District's eligible students if selected by the parents/guardians of eligible students.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, it is agreed between the parties as follows:

**1. Definitions**

The following definitions shall apply for purposes of this Master Contract:

- a. The term "Supplemental Educational Services" means additional academic instruction designed to increase the academic achievement of students in Title I schools. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such services have been evaluated and approved by the state educational agency. Supplemental Educational Services must be provided outside of the regular school day. Supplemental Education Services must be high quality, research-based, and specifically designed to increase student academic achievement [NCLB, Title I, Part A, Section 1116(e)(12)(C)].
- b. The term "District" means Mt. Diablo Unified School District and/or any person authorized to do business on behalf of Mt. Diablo Unified School District.
- c. The term "Provider" means a state approved entity which is authorized to provide Supplemental Educational Services as described in 1a.
- d. The term "Parent" means a natural or adoptive parent, legal guardian, or any other adult granted educational decision-making rights by the natural or adoptive parent or by court of competent jurisdiction.
- e. The term "Student" means a child in kindergarten through grade 12 who has been assigned to and attends a Mt. Diablo Unified school which has been designated as a school in their second year of school improvement, in corrective action, or in restructuring under the Federal No Child Left Behind (NCLB) Act of 2001. Furthermore, this child must be from a low-income family or attend a school which has a National School Lunch Program, Provision 3 status in which all students are considered low-income.
- f. The term "Per Pupil Allocation (PPA)" means the maximum dollar amount per eligible child established by the state on an annual basis, which a District may not exceed when paying for services as described in 1a.
- g. The term "Days" means calendar days unless otherwise specified.
- h. The term "Incentive" means any up-front monetary or material gifts valued at more than \$2.00 given to parents or students to encourage them to choose a specific Provider to offer Supplemental Educational Services to their child and incentives valued at \$5.00 each or \$50 in the aggregate used within a PROVIDER'S program to encourage students to reach certain achievement or attendance levels after they have begun service.

- i. Mt. Diablo Unified School District's Title I Schools are as follows: Bel Air Elementary, Cambridge Elementary, Fair Oaks Elementary, Meadow Homes Elementary, Rio Vista Elementary, Shore Acres Elementary, Ygnacio Valley Elementary, Glenbrook Middle School, Oak Grove Middle School, and Riverview Middle School.

## **2. Individual Supplementary Service Agreement**

- a. Pursuant to ESEA Sec. 1116(e)(3), an individual agreement for supplementary services must be completed for each student. A form Individual Supplementary Services Agreement ("ISSA") shall be developed by the District and provided to each PROVIDER for completion prior to PROVIDER providing any services to students of the District. In lieu of the District form ISSA, a PROVIDER may provide its own individual agreement for supplementary services as long as said agreement contains all pertinent information required under 20 USC §6316(e), which is set forth in Paragraph 1(b) of this Agreement.
- b. The PROVIDER will complete the individual agreement for supplementary services in consultation with parents/guardians and the District for each eligible student whose parent/guardian elects to receive supplementary services from PROVIDER. The individual agreement for supplementary services will be completed prior to the commencement of instructional services by the PROVIDER to the student and will include specific achievement goals for the student, a description of how the students progress will be measured, a timetable for improving the students achievement that, in the case of a student with disabilities, is consistent with the student's individualized education program ("IEP") and how the students, parents, and teachers will be regularly informed of the student's progress. A copy of each student's completed individual agreement for supplementary services shall be provided to the District immediately upon completion for review by the District to ensure compliance with the provisions herein.
- c. The ISSA will be re-submitted at the end of the program to provide a summary of the students' overall academic achievement. A Program Summary Final Report for all students with measurable attendance which includes student name, ISSA goal, pre/post test scores and record of academic gains (losses) may be submitted in lieu of resubmitting the students' ISSA at the program conclusion.
- d. Subsequent changes in any student's individual agreement may only be made with the written consent of the District in consultation with parents/guardians. PROVIDER, the District or the parents/guardians may request a review of a student's Individual Agreement.
- e. PROVIDER shall not unilaterally terminate any Individual Agreement. PROVIDER shall obtain written authorization from the District before terminating any Individual Agreement.
- f. PROVIDER shall not disclose to the public the identity of any student eligible for, or receiving supplemental educational services without the written permission of the parents or legal guardian of such student.
- g. Parents/guardians shall not be charged for any services rendered under the individual agreement for supplementary services unless such services and charges are clearly identified in writing and agreed upon in advance in writing signed by the parents/guardians. In no event shall the agreed

upon charges obligate the District financially, nor shall the District incur any obligation or expense in excess of the state/federal reimbursement amount.

### **3. Student Records Maintenance and Access**

- a. PROVIDER shall maintain daily records of student services provided, including the name/ address of student, the name of PROVIDER'S employee who rendered the service, student attendance, and the amount of time of such service. PROVIDER shall permit access to and/or a copy of such records to the District upon request.
- b. All student records shall be kept in a secure location preventing access by unauthorized individuals. PROVIDER will maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not the direct employee of the PROVIDER. PROVIDER agrees to provide access to and copies of student records to the District and/or the parents/guardians of the District's student. PROVIDER shall not forward to any other person other than parents/guardians or District any student record or student name without the written consent from the parent/guardian or the District. Upon completion or termination of the individual agreement for supplemental services (ISSA or other approved form) or termination of this Contract, PROVIDER shall deliver to District copies of all student records for whom the PROVIDER has provided services under this Contract.
- c. PROVIDER shall retain originals of all records relating to the provision of services, under this Agreement, including but not limited to student records and all records relating to each students' individual supplementary services agreement, for a period of five years from the date the last service is provided to said student. All other records relating to this Agreement shall be retained for a period of five years from the date the Agreement with the PROVIDER terminates.

### **4. Access by the District**

PROVIDER shall notify the District of the location and/or any change in location at which it is providing services to the District's eligible students. It shall allow access to its facilities for periodic monitoring of each student's instructional program by the District and shall be invited to participate in the review of each student's progress by the District. The District representatives shall have access to observe each student at work, observe the instructional setting, interview PROVIDER, and review each student's progress including the behavior intervention plan, if any.

### **5. Inspections and Audit**

PROVIDER understands that the District reserves the right to institute a program audit with or without cause. The program audit may include, but is not limited to, a review of core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal and procedural compliance.

PROVIDER shall provide access to records or reports, or other matter relating to the Contract, upon request by the District. Fiscal records shall be maintained by PROVIDER for five (5) years and shall be available for audit. At the end of each school year, copies of student records shall be returned and/or submitted to the District. Unless PROVIDER and District otherwise agree in writing, PROVIDER shall pay to the District the full amount owed as a result of PROVIDER'S over-billing and/or failure to perform, in whole or in part, any of its obligations under this Master contract, as

determined by an inspection, review, or audit by the District, a state agency, a federal agency and/or an independent agency/firm. PROVIDER shall make such payment to the District within thirty (30) days of receipt of written notice demanding payment.

**6. Description of Services**

Provider shall provide services that are secular, neutral and non-ideological in compliance with ESEA Section IIIb(e)(5)(D). PROVIDER shall provide a description of services to be provided, which shall be set forth in Exhibit A which is attached hereto and incorporated herein. All services will be provided outside of the regular school day.

PROVIDER shall provide a calendar which delineates the start/end date of services. This calendar shall denote the days/hours of the week services will be offered. This calendar shall include the total program hours as described in Exhibit A, section d. District and local holidays shall be noted on the calendar.

**7. Supplies/Equipment/Facilities**

PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a student as required in his/her ISSA. A PROVIDER who desires to use District facilities must make a separate application for use of facilities through the District's Use of Facilities procedures. The Facility Use application must be individually approved by the District and may require fees for use.

**8. Incentives**

The PROVIDER shall not provide any up-front incentive valued at over \$2.00 per student to parents or students to encourage signing up for PROVIDER'S services or to encourage any other student or parent to sign up for PROVIDER'S services. Acceptable are such items as pencils, pens, magnets, etc. In any marketing information or other explanation, verbal, written, and in the delivery of services, PROVIDER may not offer to parents and/or students incentives valued at more than \$5.00 each or \$50 in the aggregate per student as achievement and/or attendance incentives once the student has signed up for PROVIDER'S services.

**9. Student Progress Report Cards/Assessment**

PROVIDER shall provide to parents, each student's home school, and the District written progress reports/report cards. A copy of the progress reports/report shall be maintained at the PROVIDER'S place of business and made available upon request of District and student's parents. A minimum of one progress report will be issued at program midpoint.

PROVIDER shall administer pre-test assessments at the beginning of service to each student and administer post-test assessments to each student before the end of the program. PROVIDER shall be responsible for the designated assessment tools necessary to comply with this requirement. These assessments shall be used to generate the information on the Program Summary Final Report and/or finalized Student ISSAs as described in Paragraph 2 c.

## **10. Fingerprints/TB Testing**

PROVIDER shall comply with the requirement of California Education code sections 44237, 3502.1, 35021.2, Title 5 California code of Regulations section 13075(J) including, but not limited to: obtaining clearance from the California Department of Justice (hereinafter referred to as "CDOJ"), clearance from the Federal Bureau of Investigation (hereinafter referred to as "FBI"), and TB clearance for PROVIDER'S employees prior to providing service to a District student unless PROVIDER determines that the employees will have no contact with District students or if those services will be provided at a non-District site. Such CDOJ and FBI clearance shall include a determination that any such person has not been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237 (h), unless despite such person's conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to a California Education Code section 44237 (i) or (j). In addition, PROVIDER shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2 with respect to each such person. PROVIDER shall certify in writing to the District that PROVIDER has at all times complied with this Section of the Master Contract.

PROVIDER shall supply the District with a list of names of those employees who are to work with students of the District prior to any employee providing services to students of the District. This list of employee names will include a Clearance Certification statement that certifies that all listed employees who will have any contact with District students have met all DOJ, FBI and TB compliance requirements. This Clearance Certification shall be updated as needed when employee changes are made. This Clearance Certification shall be signed by PROVIDER.

All current employees of the District retained by PROVIDER to provide services to students of the District who have previously undergone said criminal background check shall be exempt from the requirements of this paragraph.

All employees of a PROVIDER which provides services at an off-campus location shall be exempt from the requirements of this paragraph.

## **11. Staff Qualifications**

PROVIDER shall ensure that all individuals employed and/or otherwise hired by PROVIDER to provide classroom and/or individualized instruction or related services are qualified in the area in which the individuals are providing service.

## **12. Independent Contractor Status**

PROVIDER is an independent contractor. Nothing in this Agreement shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. PROVIDER understands and agrees that it shall be responsible for providing its own salaries, payroll taxes, withholding, insurance, workers compensation coverage and all other benefits of any kind, as required by law for its own employees, and assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this agreement.

PROVIDER hereby certifies that it is fiscally sound and not currently in bankruptcy proceedings.

### **13. Conflict of Interest/Statement of Organization**

PROVIDER agrees to furnish to the District a valid endorsed filed copy of its enabling document, be it articles of incorporation or statement of partnership filed with the appropriate governmental entity and to timely update said information as changes in such Governance occur. Provider hereby certifies that it is legally constituted to do business in California. Any PROVIDER that is not a registered California corporation or other legal entity must register with the California Secretary of State as an entity doing business in the State of California as a condition to entering into this contractual relationship with the District.

PROVIDER represents that provider has no existing financial interest and will not acquire any such interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this agreement. PROVIDER shall not conduct or solicit any non-District business while on District property or time.

PROVIDER shall avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder.

PROVIDER warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of District any cash or non-cash gratuity or payment with view towards securing any business from District or influencing such person with respect to the conditions or performance of any contracts with or orders from District. Any breach of this warranty shall be a material breach of each and every contract between District and Provider.

Should a conflict of interest arise, Provider agrees to fully cooperate in any inquiry and to provide the District with all documents or other information reasonably necessary to enable the District to determine whether or not a conflict of interest existed or exists.

### **14. Certification/Approval**

PROVIDER shall be certified or otherwise approved by the California Department of Education (hereinafter referred to as "CDE") as a Supplemental Educational Services provider. A current copy of the PROVIDER'S California Department of Education approved SES application must be provided to the District on or before the date this Master Contract is executed. This Master Contract shall be null and void if such application expires, or is revoked, rescinded, or otherwise nullified during the Term of this Master Contract.

### **15. Indemnification**

PROVIDER shall defend, hold harmless, and indemnify the District and its governing board, officers, agents, and employees from and against all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including, without limitation, all consequential damages and expenses (including attorney fees), from any cause whatsoever arising from or connected with its service hereunder, resulting from the error, omission, negligent or intentional acts of PROVIDER, its agents or employees. It is understood and agreed that such indemnity shall survive the termination of this Agreement.

The District shall defend, hold harmless and indemnify PROVIDER and its governing board, officers, agents, and employees from all liabilities and claims for damage for death, sickness, or injury to any person(s) or damage to any property, including, without limitation, all consequential damages and expenses (including attorney fees), from any cause whatsoever resulting from the error, omission, negligent or intentional acts of the District, its agents or employees. It is understood and agreed that such indemnity shall survive the termination of this Agreement.

## **16. Insurance**

During the entire term of this Contract and any extension or modification thereof, PROVIDER, at its sole cost and expense, shall keep in effect a policy or policies of liability insurance, including coverage of owned and non-owned vehicles if used in relation to the performance of service(s) by PROVIDER, and, if provider has in effect such insurance, errors and omissions/professional liability insurance, of at least one million dollars (\$1,000,000.00) for each person and two million dollars (\$2,000,000.00) for all accidents or occurrences for all damages arising out of death, bodily injury, sickness or diseases from any one accident or occurrence, and one million dollars (\$1,000,000.00) for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. The insurance coverage must be from a California licensed insurer with an A minus (A-), VII or better rating from A.M. Best sufficient to cover any claims, damages, liabilities, costs and expenses (including counsel fees) arising out of or in connection with contractor's fulfillment of any of its obligations under this agreement. Not later than the effective date of this Agreement, PROVIDER shall provide the District with satisfactory evidence of insurance which will include a Certificate of Insurance and Endorsement Page that must name the District (Mt. Diablo Unified School District) as an additional named insured, including a provision for a thirty (30) calendar day written notice to the District before cancellation or material change, evidencing the above-specific coverage. The PROVIDER shall at its own cost and expense procure and maintain insurance under the Worker's Compensation Law of California, if applicable. The District reserves the right to revise the requirements of this provision at any time. If the District determines that additional insurance coverage is necessary, the District will reopen negotiations with PROVIDER to modify the terms of this Agreement. Failure to maintain the above mentioned insurance coverage shall be cause for termination of this Master Contract.

If PROVIDER is self-insured, PROVIDER shall submit to District a description of the self insurance plan, excess coverages, and evidence that the plan is adequately funded to provide:

- a. At least \$1,000,000 per occurrence and \$2,000,000 general aggregate and general liability
- b. \$1,000,000 per occurrence and \$2,000,000 general aggregate professional liability coverage for all damages arising from each accident or occurrence,
- c. A statement by Plan Administrator that written notice of discontinuance or material change in coverage or provision of the plan will be sent to the District at least thirty (30) days before such discontinuance of material change
- d. Any deductibles or self-insured retentions shall be declared in writing to the District. District approval in writing is required for any amount of over \$25,000.
- e. Upon approval in writing by the District, this self-insurance will satisfy the liability insurance requirement of this Paragraph 16 of this Master Contract.



## 17. Monthly Invoices/Payments

PROVIDER shall submit to the District monthly invoices itemized by name and by address or student identification number of each student, service provided and actual number of hours for which services were provided, at the rate specified in Exhibit A. Such invoices shall be submitted to the Executive Director of State and Federal Programs at the address specified in Paragraph 40 of this Agreement within thirty (30) days of the rendering of services. For each student receiving services, the District shall pay no more than the current Per Pupil Allotment (PPA) of \$1,152.95 as established by the California Department of Education (CDE) under the NCLB Act for the 2010-2011 academic year for Supplemental Educational Services. No payment will be made for services to any student until an ISSA for that student has been received, reviewed and approved by the District. The amount paid will be prorated based upon the services provided. The District shall not be responsible for the payment of services when a student is absent.

Based on the total number of student sign-ups for Supplemental Educational Services for the 2010-2011 academic year, the total payment to the PROVIDER shall not exceed the estimated amount of \$ ~~-78,401.00-~~ \$148,731.00

Services for the **first** window of enrollment must be completed by January 31, 2011 and **final** billing submitted by February 10, 2011. Services for the **second** window of enrollment must be completed by May 31, 2011 and **final** billing submitted by June 10, 2011.

Discrepancies in billing including, but not limited to, eligibility of students on invoice, actual hours of student attendance, will be reported to PROVIDER by District within ten (10) days of receipt of invoice. PROVIDER shall correct deficiencies and submit rebilling invoices no later than thirty (30) days after District has identified the discrepancies.

Additional provisions regarding invoicing and payment are set forth in Exhibit A.

## 18. Complaint Procedures

PROVIDER shall maintain and adhere to its own written procedures for responding to parent complaints. These procedures shall include annually notifying and providing parents of District students with appropriate information (including complaint forms) for the following:

- a. Uniform Complaint Procedures pursuant to Title 5 of the California Code of regulations section 460 et seq.
- b. Nondiscrimination policy pursuant to Title 5 of the California Code of Regulations section 4960 (a)
- c. Sexual Harassment Policy, California Education Code 231.5 (a) (b) (c)
- d. Title IX 34 CFR 106.8 (a) (d) and 106.9 (a) and any other policies required by law.

A description of PROVIDER'S Complaint Procedures must be included in Exhibit A.

## 19. Non-Discrimination

PROVIDER shall not discriminate on the basis of race, religion, color, creed, sex, national origin, age, gender identity, or sexual orientation in employment or operation of its programs. PROVIDER will provide Supplemental Education Services consistent with applicable health, safety and civil rights laws.

## **20. Student Change of Enrollment**

If the District student's change of enrollment is to a school of residence outside of Mt. Diablo USD's service boundaries or a District school of residence whose students are not eligible for SES under the No Child Left Behind Act, the District shall not be responsible for the cost of services delivered after the student's change of enrollment.

## **21. Withdrawal of Student from Program**

PROVIDER shall immediately report (by phone, fax, or email) to District when a student withdraws from services.

## **22. Parent Access**

PROVIDER shall comply with any known court orders regarding parental visits and access to MDUSD students.

## **23. Health and Safety**

PROVIDER shall comply with all applicable federal, state, local, laws, regulations, ordinances, policies, and procedures regarding student health and safety.

## **24. Facilities and Facilities Modifications**

PROVIDER shall offer services to District students in facilities that comply with all applicable federal, state, and local laws, regulations, and ordinances related, but not limited to: disability access; fire, health, sanitation, and building standards and safety; fire warning systems; zoning permits; and occupancy capacity. PROVIDER shall not make any structural changes and/or modifications to District facilities.

## **25. Administration of Medication**

PROVIDER shall comply with the requirements of California Education Code Section 49423 when provider serves a District student that is required to take prescription and/or over-the-counter medication during the session. PROVIDER shall maintain a written log for each student to whom medication is administered. Such written log shall specify the student's name; the type of medication; the date, time, and amount of each administration; and the name of employee who administered the medication.

## **26. Report of Missing Children**

PROVIDER assures District that all staff members, including volunteers, are familiar with and agree to adhere to requirements for reporting missing children as specified in California Education Code section 49370.

## **27. Child Abuse Reporting**

PROVIDER assures the District that PROVIDER'S staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures

under California law, including but not limited to, California Education Code § 49370 and California Penal Code § 11166, et seq. PROVIDER agrees to provide annual training to all its employees regarding mandated reporting of child abuse and missing children.

PROVIDER shall submit immediately by fax and/or mail, within twenty-four (24) hours, an accident or incident report to the District when it becomes aware of circumstances including, but not limited to, allegations of molestation, child abuse, and missing children under PROVIDER'S supervision in addition to any direct report to the appropriate agency as required by law.

### **28. Accident/Incident Report**

PROVIDER agrees to submit a written accident/incident report to the District within twenty-four (24) hours of an accident or incident when a student has suffered an injury, injured another individual, or has been involved in an activity requiring notification of law enforcement or emergency personnel. Said accident/injury report shall be provided to the student's principal and to the Executive Director of State and Federal Programs at the address specified in Paragraph 40.

### **29. Right to Withhold**

The District may, at its option in lieu of terminating this Contract pursuant to Paragraph 33, herein, withhold payment to PROVIDER, on ten (10) days written notice of such withholding, when in the opinion of the District:

- a. PROVIDER'S performance, in whole or in part, either has not been carried out or is insufficiently documented.
- b. PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records.
- c. PROVIDER has failed to submit the invoice in a timely manner.

If the District gives notice of intent to withhold, PROVIDER shall have fourteen (14) days from the date of receipt of said notice to correct such deficiency and/or invoke the dispute resolution provision herein.

### **30. Subcontract and Assignment**

PROVIDER shall not subcontract or assign any of the work contemplated under this Contract to any third party entity.

### **31. Modifications and Amendments**

This Master Contract may be modified or amended only by a written document signed by authorized representatives of PROVIDER and the District. No change in this Master Contract or in the individual supplementary services agreement shall result in financial obligation to PROVIDER by the District in excess of the State/Federal reimbursement rate per student per year.

### **32. Disputes and Attorney's Fees**

- a. Disputes between the District and PROVIDER concerning the terms and conditions of this Master Contract, other than its termination as provided in Paragraph 33 shall be submitted to the Superintendent of the District or his designee for resolution. The determination of the Superintendent or his designee shall be in writing and shall be final insofar as an administrative remedy is concerned.
- b. PROVIDER designates Russ Nowell, located at 324 S. Brea Blvd, Brea CA 92821 as its California agent for service of process for purposes of any litigation brought under this Contract.
- c. If legal action shall be brought by either of the parties in connection with this Agreement, the party prevailing in said action shall be entitled to recover from the party not prevailing its costs of suit and reasonable attorneys' fees, which shall be fixed by the court.

### **33. Termination**

- a. This Agreement is subject to termination by the District without cause or notice. Termination of Contract shall not alleviate PROVIDER'S responsibilities to complete any existing individual supplementary services agreements. This contract shall be terminated on the date set forth by the District. Upon termination without default of PROVIDER, the District shall pay, without duplication, for all services satisfactorily performed to date of termination.
- b. In consideration of the payment referred to in Paragraph 17, PROVIDER waives all rights to any further payment or damages. Upon termination, PROVIDER shall immediately turn over to the District copies of all student records in its possession generated as a result of services rendered under this Master Contract, possessed by PROVIDER or under its control at the time of termination.
- c. An individual agreement for supplementary services may be terminated by PROVIDER only upon consent of the District. An ISSA shall terminate if the student ceases to be enrolled in the District, if the student moves to a school not required to participate in SES, or if the PROVIDER is unable to meet the goals and timetables set forth in the ISSA. Upon termination under this paragraph, final payment from the District will be calculated based upon a pro-rata calculation of total services for which the District is responsible for payment, offset by that portion of services actually rendered.

### **34. Compliance with Laws**

During the term of this Agreement, PROVIDER shall comply with all applicable federal, State Board of Education, and local statutes, laws, ordinances, rules and regulations relating, to the provision of supplementary services, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Contract. PROVIDER must continue to meet the qualifications to be certified as a supplementary service provider during the term of this contract.

### **35. Entire Agreement**

This Master Contract and all Exhibits, attachments and amendments thereto including the ISSA and Exhibit A constitute the entire agreement between the District and PROVIDER and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated. This agreement supersedes any prior or contemporaneous written or oral understanding or agreement. This Master contract may be amended only by written amendment executed by both parties.

Notwithstanding the foregoing sentence, the District may modify or amend this Master Contract with PROVIDER'S consent to conform to federal and state laws and regulations.

### **36. Successors in Interest**

This Master Contract binds PROVIDER'S successors and assignees.

### **37. Governing Law**

The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Contra Costa County, California.

### **38. Certification Regarding Debarment, Suspension or Ineligibility for Award (34 CFR 85)**

The following certification is applicable only to contracts for \$25,000 or more that are funded in whole or in part with Federal funds.

By signing this document, the PROVIDER certifies that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.
- b. Have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with, commission of any of the offenses enumerated in paragraph b. (above) of this section; and
- d. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

### **39. Severability Clause**

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

**40. Notices**

Notices required under this Contract shall be valid when mailed first class postage or personally delivered to the following representatives, as indicated below.

For the District: Jennifer Sachs, Assistant Director  
Categoricals & School Support  
Mt. Diablo Unified School District  
1936 Carlotta Drive, Concord, CA 94519  
Tel: (925) 682-8000  
Fax: (925) 689-0597

For PROVIDER:

Robert Harraka, Director of Operations  
Professional Tutors of America Inc.  
3350 E. Birch Street, Suite 108  
Brea, CA 92821  
1-800-832-2487  
Fax 714-671-1887

**41. Term**

This Contract is effective upon the date of execution and shall remain in full force and effect until May 31, 2011, at which time it shall terminate unless extended in writing by the parties hereto and authorized by the appropriate legislation.

**42. Authorized Representative**

The persons signing this Contract certify they are the authorized representatives of the respective parties, are authorized to sign this document and have the full authority to bind the PROVIDER/District to the terms and conditions of this Contract.

PROVIDER:

BY: Robert Harraka

Robert Harraka, Director of Operations  
(TYPE /PRINT NAME AND TITLE)

MT. DIABLO UNIFIED SCHOOL DISTRICT:

Rose C. Lock  
Rose Lock, Assistant Superintendent  
Student Achievement & School Support  
Mt. Diablo Unified School District

**BUDGET CODE:**

Fed ID #: 33-0015574

000.3066.10.5800 \$ 25,000.00  
000.3066.10.5100 \$ ~~53,401.00~~ \$123,731.00

Purchase Requisition # R62469

MT. DIABLO UNIFIED SCHOOL DISTRICT:

By: Susan J. Hukkanen 12/11/10  
Budget Administrator Date  
Susan J. Hukkanen  
School Support Administrator-Title I

Approved by: Julie Braun-Martin 12-12-10  
Julie Braun-Martin Date  
Assistant Superintendent of Personnel

## **EXHIBIT A**

### **Description of Services**

To be completed in detail by PROVIDER subject to the express approval of the District and to cover the following areas:

- a. Description of academic program:
- b. Description of program materials:
- c. Technology requirements (if applicable):
- d. Total program hours, hours per day, days of the week and number of weeks:
- e. Location, including identification of specific school sites if applicable:
- f. Instructor/student ratio:
- g. Number of hours of training for staff:
- h. Minimum qualifications of staff:
- i. Student attendance policy (include absenteeism prevention plan):
- j. Description of "incentives," if applicable:
- k. Description of substitute teacher policy:
- l. Parent and teacher communication plan, including communication to teachers:
- m. Description of complaint procedures:
- n. Policy for maintenance of records for purpose of evaluating compliance with the provisions set forth in Paragraph 1 of the Contract and items (c), (j) and (l) set forth herein in Exhibit A:
- o. Invoicing/Terms of Payment, including the expected number of students to receive services for the total fee to be paid or, in the alternative, the expected cost per student served, the hourly rate, the number of session hours expected to be delivered to each student based on PROVIDER'S hourly rate (based on District's Per Pupil Allocation for SES):
- p. Description of the format/content of Program Summary Final Report of student progress (including pre/post assessment tools used):



## EXHIBIT A

### Description of Services

To be completed in detail by PROVIDER subject to the express approval of the District and to cover the following areas:

a. Description of academic program:

Our program is Always One-to-One, and direct to the student's home. We have Spanish-speaking tutors and staff available. We test each student to determine his/her strengths and weaknesses, and then develop a learning plan and objectives. The tutoring lessons focus on these objectives, providing maximum results.

b. Description of program materials:

Options Publishing – Best Practices for Reading or Just Right Reading– for English Learners

Houghton-Mifflin Reteach Series Workbooks for English-Proficient Students

Scantron Performance Series<sup>SM</sup> Skills Connection

Professional Tutors of America uses instructional materials and assessments that are aligned with California Academic Content Standards and K-12 curriculum frameworks. The instructional materials used are researched based and are on the List of Certified Supplemental Materials for English Learners and CDE Adopted Materials list.

c. Technology requirements (if applicable): None

d. Total program hours, hours per day, days of the week and number of weeks:

17.5 hours. The schedule is determined by the parent and tutor, and is typically 1 to 2 hours per session, 1 to 3 times per week.

e. Location, including identification of specific school sites if applicable:

Student's home or public library

f. Instructor/student ratio: Always One-to-One

g. Number of hours of training for staff: Approximately 3 hours

h. Minimum qualifications of staff:

All of our tutors are College Graduates, and many are Credentialed Teachers.

i. Student attendance policy (include absenteeism prevention plan):

Initially, we call all parents to verify their address, school of attendance, and contact information. We also mail an initial letter to parents describing our services and what to expect. After services begin, we also make follow up phone calls to parents to verify that tutoring lessons are occurring regularly, and to obtain any necessary feedback from the parents. If serious absences occur, we will notify the parents and the MDUSD representative. If parents are not reachable or do not respond after several phone attempts, we will mail a letter to the parents advising them to contact us to begin services, and we will contact the student's school to obtain any updated phone numbers or contact information.

j. Description of "incentives," if applicable: No incentives

k. Description of substitute teacher policy: None

l. Parent and teacher communication plan, including communication to teachers:

Student progress is evaluated by our tutors through worksheets/workbooks and tests developed on Skills Connection. Parents are given weekly progress reports through direct consultation with our tutors.

m. Description of complaint procedures:

Complaint/Grievance Procedures forms are provided to the parent.

n. Policy for maintenance of records for purpose of evaluating compliance with the provisions set forth in Paragraph 1 of the Contract and items (c), (j) and (l) set forth herein in Exhibit A:

Our records are stored at our corporate office in Brea, and a storage facility in Yorba Linda.

o. Invoicing/Terms of Payment, including the expected number of students to receive services for the total fee to be paid or, in the alternative, the expected cost per student served, the hourly rate, the number of session hours expected to be delivered to each student based on PROVIDER'S hourly rate (based on District's Per Pupil Allocation for SES):

Hourly Rate: \$65.00 per hour for One-to-One tutoring

p. Description of the format/content of Program Summary Final Report of student progress (including pre/post assessment tools used):

We administer a pre-test by Scantron's "Performance Series" to obtain the student's strengths and weaknesses. A student plan and learning objectives are developed, and the tutoring lessons are directed towards the learning objectives. Tutors utilize Skills Connection Online, in conjunction with "Performance Series", to develop study guides and sample tests. At the end of the program, a post-test is given to measure academic growth.