

INDEPENDENT CONTRACTOR AGREEMENT

This Contract (“Agreement” or “Contract”) is dated for convenience as of **AUGUST 15, 2024**, between the **Mt. Diablo Unified School District** (“District” or “MDUSD”) and **YMCA OF THE EAST BAY** (“Contractor”). The District and Contractor may be individually referred to herein as a “Party,” or collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, absent an exception or exclusion, competitive solicitation is required when contracting for goods and services in excess of the State of California bid limit, adjusted annually for inflation;

WHEREAS, California Public Contract Code §§ 20111 *et seq.*, authorizes the District to purchase equipment, materials, or supplies up to the annually adjusted bid threshold amount (currently, \$114,500) without formal bidding;

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of professional services and/or special services or advice in financial, economic, accounting, engineering, legal, or administrative matter if those persons are specially trained and experienced and competent to perform the services required (California Government Code § 53060 and Public Contract Code §§ 20111);

WHEREAS, the District desires Contractor to provide after school programming, as detailed herein; and

WHEREAS, Contractor represents itself able and, for a consideration, willing to perform the services for the **District’s Collaborative of Academics Recreation Enrichment for Students (“CARES”) Program**.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **SERVICES:** Contractor agrees to perform the services set forth in the attached **APPENDIX A** (“Scope of Work” or “Services”). If closure of schools or other impediments arise to preclude Contractor from performing in-person Services, Contractor agrees to perform Services remotely, when possible and when the performance of such services remotely is comparable to the in-person provision of such services. In the alternative, Contractor agrees that its obligation to perform Services and right to receive compensation for those Services will be suspended for the duration of the school closures or interruption to in-person Services.
 - a. **Standard of Care.** 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's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

- b. **Certificates/Permits/Licenses/Registration.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

2. **TERM & EFFECTIVE DATE:** The term for these Services shall commence on [8/15/24] and shall expire on [6/30/25] (the "Term"), unless terminated earlier pursuant to the terms of this Agreement. The District, in its sole discretion, shall have two (2) options to extend the Term of this Agreement for a period or periods of up to one (1) year each. The maximum term of this Agreement shall not exceed three (3) years. This Agreement shall become effective only upon proper execution by the Parties; certification as to the availability of funds; and approval or ratification by the District's Board of Education in an open, noticed meeting. The District has no obligation to renew or extend this Agreement after expiration of its Term.

3. **COMPENSATION:**

- a. Compensation to the Contractor shall not exceed \$ 4,549,600.00 (FIVE MILLION, FIVE HUNDRED FORTY NINE THOUSAND, SIX HUNDRED). **The not to exceed amount is the maximum amount of compensation due to Contractor and not a guarantee of total payment to Contractor, as Contractor is paid in arrears for Services rendered.** The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached APPENDIX B ("Schedule of Fees").
- b. Prices/quotations must be firm. Prices will be in effect for the term of the Contract, including any extensions hereto, unless otherwise provided for herein. Prices/quotations can be modified only with written approval from the District.
- c. The not-to exceed amount of this Agreement may be increased or decreased after the initial term of this Agreement and any extension this Agreement pursuant to Section 2, provided that any such increase or decrease is executed, approved, and certified pursuant to the terms of this Agreement. Any requested price increase or decrease must be properly documented and submitted in writing by Contractor to the District's Director of Procurement by February 15th. The percentage increase shall not exceed the All Consumer Price Index (CPI) of the San Francisco Metropolitan Area, as reported by the U.S. Department of Labor for the June-to-June period immediately preceding the adjustment date. In no event shall the increase exceed three percent (3%). Contractor will be required to present documentation sufficient to justify any proposed percentage price increase.
- d. W-9: Consultant acknowledges and agrees that it must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement and that the District will report payment information to the

Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

4. **AVAILABILITY OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION:**

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement.
- b. The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated or stated in any approved amendment.
- c. If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the period for which funds are appropriated.
- d. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

5. **DISALLOWANCE**

- a. If Contractor claims or receives payment from the District for a service that is later disallowed by the United States Government, State of California or any other grantors, Contractor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement.
- b. Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal, state or local governmental programs. Contractor acknowledges that this certification of eligibility to receive federal or state funds is a material term of this Agreement.

6. **SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Contractor agrees to comply with and is subject to the California False Claims Act (Government Code §§ 12650 *et seq.*), including treble damages and penalties as set forth in the operative statutory provision at the time of any violation.

7. **PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District.

8. **RESPONSIBILITY FOR EQUIPMENT:** The District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, even though such equipment be furnished, rented or loaned to Contractor by the District.

9. **TAXES:** Contractor shall pay all taxes levied in connection with this Agreement, or the services delivered pursuant hereto.

10. **INDEPENDENT CONTRACTOR:** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or its agents and employees. Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as the means by which such a result is obtained. The District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

11. **INDEMNIFICATION:** Contractor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Contractor and/or Contractor's agents, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of California Education Code § 45125.1 and/or disclosure of confidential information which might be obtained by Contractor or Contractor's agents in the performance of this Agreement. Notwithstanding the foregoing, Contractor shall have no obligation under this section with respect to any Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or Contractor's agents.

12. **INSURANCE:** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his or her agents, representatives or subcontractors. Specifics regarding the amount and type of insurance are set-forth in the attached **APPENDIX C** ("Insurance Requirements").

13. **LIABILITY OF DISTRICT:** DISTRICT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED TO CONTRACTOR UNDER THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.

14. **DEFAULT:** Contractor shall be in default if Contractor: (a) fails to perform any term, covenant, or condition contained in this Agreement; (b) files or is the subject of a petition for bankruptcy or insolvency; or (c) has a court-ordered receiver or trustee appointed with respect to Contractor's assets.
15. **REMEDIES:** If a default has occurred and is continuing, the District may, in its sole discretion, and individually or in combination with any other remedy:
- a. Terminate this Agreement upon ten (10) days written notice at the discretion of the District. District shall specify the date of termination in its written notice of termination for default. Contractor shall be paid for services satisfactorily rendered through the date of termination;
 - b. Offset the amount of any outstanding liability of Contractor against funds otherwise due and owing hereunder or any other agreement with Contractor;
 - c. Withhold funds due hereunder;
 - d. Cure the default, in which event all amounts expended by the District in effecting such cure shall be payable upon demand, with interest from the date of incurrence at the maximum rate permitted by law; and/or
 - e. Exercise any other remedy available by law.
16. **TERMINATION:**
- a. Contractor expressly understands and agrees that in an event of default by the Contractor under this Agreement, this Agreement may be terminated for cause by the District and all of the Contractor's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice, and no work will be undertaken by Contractor after receipt of the notice of termination for cause, with the exception of actions necessary to effectuate the termination.
 - b. Contractor further understands and agrees that the District may terminate this Agreement for the District's convenience and without cause at any time by giving the Contractor thirty (30) days written notice of such termination.
 - c. Upon receipt of any notice of termination of this Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by District in a manner that minimizes the liability of Contractor and District to third parties as a result of termination. All such actions shall be subject to prior approval by District and shall include, without limitation: canceling orders, assigning interests to the District, settling outstanding liabilities and claims, securing and safe-guarding District property, and halting or completing services in the manner specified by the District.
 - d. In no event shall District be liable for costs incurred by Contractor or any of its subcontractors after the effective date of termination, except for those costs specifically approved by the District as necessary to effect the termination in a manner acceptable to the District. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest.

- e. Within thirty (30) days of the effective date of termination, the Contractor will submit an itemized invoice detailing the unpaid costs incurred for the services rendered pursuant to this Agreement up to the effective date of termination. The District's payment obligation under this Section shall survive termination of this Agreement. Upon payment of approved charges under such invoice by the District, the District shall be under no further obligation to the Contractor, monetarily or otherwise.

17. **NOTICES:** Any notices or communications required or permitted to be given by this Agreement must be 1) given in writing; 2) personally delivered or mailed, by prepaid, certified mail, overnight courier; or 3) electronic mail transmission (including portal document format) with "read receipt" requested to the Party to whom such notice or communication is directed, to the email address or regularly-monitored electronic mail address of such Party as follows:

a. NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	Mt. Diablo Unified School District
GENERAL COUNSEL	Susanne Starecki Kim
CONTACT PERSON	STEPHANIE ROBERTS
STREET ADDRESS	1936 CARLOTTA DRIVE
CITY, STATE, ZIP	CONCORD, CALIFORNIA 94521
TELEPHONE	925-682-8000 x6201
EMAIL ADDRESS	ROBERTSS@MDUSD.ORG

b. NOTICE TO THE CONTRACTOR (PO Box not acceptable):

CONTRACTOR NAME	YMCA OF THE EAST BAY
CONTACT PERSON	Fran Gallati
STREET ADDRESS	4300 Lakeside Drive
CITY, STATE, ZIP	Richmond, CA 94806
TELEPHONE	(510) 333-3208
EMAIL ADDRESS	fgallati@ymcaeastbay.org

- c. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after

such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A Party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party pursuant to this Section.

- 18. HEALTH & SAFETY REQUIREMENTS FOR A CONTRACTOR:** If Contractor, its employees and/or subcontractors will enter a District school site or facility in connection with performance of services under this Agreement or if the Contractor, its employees and/or sub-Contractors, will be in contact with District staff, contractors, or students, then the Contractor, its employees and/or sub-Contractors, shall maintain compliance with all local and state laws, health directives, orders, guidelines and policies, including but not limited to those related to COVID-19, and District policies, as updated from time to time. All costs to comply such requirements are the Contractor's responsibility. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit. Contractor agrees that it is the Contractor's responsibility to be informed on the latest public health guidance on public health emergencies and to comply with that guidance accordingly. Where a conflict exists between this Agreement and any local or state public health order related to a current Public Health Emergency, the more restrictive guidance controls.

19. CRIMINAL BACKGROUND CHECK/SUBSEQUENT ARREST NOTIFICATION REQUIREMENTS:

- a. Criminal Background Check
- 1) Prior to the commencement of services and throughout the Term of this Agreement, if Contractor or any of its employees, agents or volunteers that Contractor hires or assigns, will have more than limited contact with MDUSD students, or interact with District students outside of the immediate supervision and control of the student's parents or District staff, then Contractor is required to comply with the criminal background check provisions of California Education Code § 45125.1. Contractor must conduct criminal background checks through the California Department of Justice ("CDOJ"), including both CDOJ and Federal Bureau of Investigation ("FBI") background checks, and must obtain subsequent arrest notification (as below), for all Contractor employees, agents, and volunteers who will have more than limited contact with District students or will interact with District students outside of the immediate supervision and control of the student's parents or District staff in the performance of this Agreement.
 - 2) Contractor certifies that no Contractor employee, agent or volunteer who has been convicted of a serious or violent felony as defined by California Education Code § 45125.1 (*citing* California Education Code § 45122.1),

a sexual offense as defined by California Education Code § 44010, a controlled substance offense as defined by California Education Code § 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code § 4852.01 *et seq.* for a serious or violent felony listed under California Education Code § 45122.1.

- 3) Contractor has the sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement.
- 4) The District will not be responsible for the costs of the criminal background checks.
- 5) Contractor's employees, agents or volunteers who will have no contact or will have limited contact and will not interact with District students outside of the supervision and control of student's parents or District staff, are not required to meet criminal background check and subsequent arrest notification requirements.
- 6) If Contractor asserts that all of its employees, agents or volunteers will have no contact or will have limited contact and will not interact with District students outside of the supervision and control of student's parents or District staff, the District administrator supervising this Agreement will be required to affirm that Contractor has correctly disclosed the level of student interaction/contact associated with the services provided under this Agreement. The District's determination shall control.

b. Subsequent Arrest Notification

- 1) In addition to the initial criminal background check, Contractor will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students or interact with District students outside of the immediate supervision and control of the student's parents or District staff in the performance of this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.
- 2) Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students or will interact with District students outside of the immediate supervision and control of the student's parents or District staff in the performance of this Agreement has been arrested or convicted of a serious or violent felony as defined by California Education Code § 45125.1 (*citing* Education Code § 45122.1), a sexual offense as defined by California Education Code § 44010, or a controlled substance offense as defined by California Education Code § 44011, or any other offense that renders Contractor's proximity to children or services to the District inappropriate Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with

- District students pursuant to this Agreement, and Contractor will immediately notify the District of such arrest.
- 3) Without limiting any other available legal remedies, failure by Contractor to comply with this Section may result in termination of this Agreement at the District's sole discretion.
 - c. Contractor certifies that it will comply with all CDOJ fingerprint and criminal background investigation requirements of California Education Code §§ 45125.1 *et seq.*, and maintain compliance throughout the duration of this Agreement with the District.
 - d. Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.

20. **TUBERCULOSIS SCREENING REQUIREMENTS:**

- a. California law requires that school consultants working with students be free of infectious tuberculosis ("TB").
- b. If Contractor, its employees and/or sub-Contractors ("Contractor Parties") shall or may be on a District school site and have contact with District students three or more times per month during the Term of this Agreement, then Contractor shall at all times during the duration of the Agreement maintain compliance with the TB certification requirements as set forth herein.
- c. Contractor shall maintain on file documents confirming that Contractor Parties received a TB test or TB assessment that complies with the requirements of California Education Code § 49406. These documents shall be regularly maintained and updated by Contractor and shall be available to the District upon request or audit. Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied.
- d. All costs to comply with the TB certification requirements are the Contractor's responsibility.
- e. Contractor shall indemnify, defend and hold harmless the District and its Board, officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these TB certification requirements.
- f. Evidence of compliance with these requirements shall be immediately made available to the District upon request or audit.

21. **CALIFORNIA STATE TEACHERS RETIREMENT SERVICES - POSTRETIREMENT EARNINGS LIMIT:**

- a. A school district is required to report post-retirement earnings to California State Teachers Retirement Services ("CalSTRS") for retired members who perform creditable service whether the retired member was compensated as an employee of the district, independent contractor or employee of a third party.
- b. When a retired member's earnings exceed the fiscal year limitation, their retirement benefit will be reduced by the amount earned over the annual limit.

- c. The amount reduced may be equal to their monthly retirement benefit payable but shall not exceed the annual retirement benefit payable to the member.
- d. Contractor certifies that it is cognizant and fully informed of regulations regarding postretirement earnings limits applicable to retirees from CalSTRS. (California Education Code §§ 22714, 24114, 24116, 24214, 24214.5 and 24215.)
- e. **Contractor shall inform the District if owner and/or their employees is a retired member of CalSTRS before receiving payment for services under this Agreement, and all post-retirement earnings shall be reported to CalSTRS.**
- f. Contractor shall indemnify, defend (by counsel reasonably acceptable to the District) and hold harmless the District and its Board, officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to adhere to CalSTRS regulations applicable to retirees Postretirement Earnings Limit.

22. **CONFLICT OF FINANCIAL INTEREST:**

- a. Contractor shall comply with all requirements of California law pertaining to conflicts of financial interest in contracting with public agencies. Contractor shall determine whether or not participation in a contract may constitute a conflict of interest. While the District maintains records regarding contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Contractor. Contractor shall notify the District immediately if it finds that a potential conflict may exist.
- b. Contractor certifies that it has read, understood and shall comply with conflict of interest laws and regulations, including those set forth in Board Rule and Procedure 9270: Conflict of Interest and the Appendix to Board Rule and Procedure 9270: Conflict of Interest. Contractor further certifies that it that it does not know of any facts that constitute a violation of such provisions and agrees to promptly notify the District if it becomes aware of any such facts during the Term of this Agreement

23. **NONDISCRIMINATION:** The District is committed to providing equal opportunity for all individuals in education. Contractor understands and agrees that in providing services to the District, Contractor shall comply with Board Policy 0410: Nondiscrimination in District Programs and Activities, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Contractor will provide to the District under this Agreement include the provision of services to students, Contractor shall comply with Board Policy 6141: Curriculum Development and Evaluation, which recognizes that the District's

curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Contractor shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Agreement, Contractor certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies.

24. PROPRIETARY INFORMATION OF DISTRICT; STUDENT INFORMATION:

- a. Contractor agrees that, in connection with this Agreement, the Contractor may have access to proprietary and confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its Board, employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor or in which such information is collected or received by Contractor on District's behalf shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.
- b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code §§ 49073 *et seq.* Contractor is prohibited from accessing or using confidential student information under this Agreement unless it first obtains prior written parental consent, or an exception to federal and state privacy laws that permit access to confidential student information applies. Even if access is permitted, Contractor shall not use confidential student data for any purpose other than providing services to the District pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with state and federal law.
- c. Use of Confidential Student Data for Program Evaluation/Studies. Contractor's access to and use of confidential student data for purposes other than provided for under this Agreement requires prior written approval from the District's Office of Research, Planning and Accountability ("RPA"). Contractor must complete and submit a Research Application to RPA and if RPA approves the Research Application, Contractor must also execute a Data Use and Confidentiality Agreement ("DUA") with RPA.
- d. Within thirty (30) days of the termination or expiration of this Agreement, if no subsequent agreement between the Parties is in place to allow Contractor to have

access to the District's confidential student data, then any such data that is in the possession of Contractor shall be confidentially and securely returned to District in all forms in which the Contractor is holding such data, including, if applicable, in a computer-readable format. Once such data is received by District, and, if applicable, District confirms that the computer-readable format is indeed readable, Contractor shall securely destroy any remaining copies of the data that it holds in any form or media within fourteen (14) days of such confirmation from District. Contractor shall destroy all such data utilizing a method of secure destruction that renders such information unreadable, such as shredding or burning, erasure of magnetic media, electronic deletion using file shredding software, or other industry-standard method of secure destruction. Upon request, Contractor shall provide the District with written certification that such destruction has occurred.


- e. The confidentiality provisions of this Section shall survive the termination or expiration of this Agreement.

- 25. **COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT:** Contractor acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, must be similarly accessible to the general public regardless of disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation including without limitation Section 504 of the Rehabilitation Act. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any breach of this prohibition on the part of Contractor, its agents or assigns will constitute a material breach of this Agreement.
- 26. **MANDATED REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT:** If Contractor will provide services at a school site and works with District students pursuant to this Agreement, Contractor is a mandated reporter of suspected child abuse or neglect under California Penal Code § 11165.7, and Contractor will submit reports of suspected child abuse or neglect to Child Protective Services ("CPS") as required by law. (California Penal Code § 11165.7; California Penal Code §§ 11164 *et seq.*) Contractor shall maintain copies of such reports. Contractor is requested, but is not required, to notify the District school site administrator when a CPS report has been filed.
- 27. **OWNERSHIP OF RESULTS:** Any newly-developed plans, specifications, studies, reports, memoranda, computation sheets, computer data files or other materials in any form or media prepared by Contractor in connection with services performed under this Agreement ("Results") shall be the property of and be promptly transmitted to the District. The District hereby grants to Contractor a non-exclusive, irrevocable, royalty-free license to reproduce, modify, edit, create derivative works based on, and otherwise use the Results. The Parties acknowledge and agree that the Contractor retains and exclusively owns all rights, title and interest in and to the intellectual property rights owned or developed by the Contractor prior to the date of this Agreement or outside of the scope of the services provided pursuant to this Agreement.

28. **AUDIT AND INSPECTION OF RECORDS:** Contractor agrees to maintain and to permit the District to audit, examine and make copies of excerpts and transcripts of all records, including without limitation accurate accounting books and records, invoices, timesheets, documents, reports, student records, payroll and personnel records and other materials and data related to Contractor's performance of this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.
29. **SUBCONTRACTING:** Contractor is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement without the prior written consent of the District. If Contractor subcontracts any portion of its obligations under this Agreement, it is required to ensure the Insurance Requirements of Section 12, above, apply to any and all such subcontractors. Contractor shall be liable to the District for all such subcontractors' acts or omissions relating to this Agreement, whether provided with or without the District's permission.
30. **ASSIGNMENT:** Contractor understands and agrees that the services to be performed by the Contractor under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Contractor without the prior written consent of the District.
31. **FORCE MAJEURE:** The Parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event, (2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party's reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any work stoppage, strike or labor dispute at a District or Contractor site, or by District or Contractor personnel, constitute a Force Majeure Event under this Agreement. In no event shall the District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event. **In no event shall the District be liable to Contractor for payment for services that cannot be and are not provided as a result of a Force Majeure Event.**

32. **WAIVER:** Either Party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.
33. **DISPUTE RESOLUTION:** Prior to any action or resort to any other legal remedy, District and Contractor agree to exercise reasonable efforts and to negotiate in good faith to resolve to the satisfaction of the Parties any dispute that may arise concerning the performance by either Party of its obligations under this Agreement.
34. **COMPLIANCE WITH LAWS AND BOARD POLICIES:** Contractor shall keep itself fully informed of applicable federal, state and local laws, regulations, orders, and District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such laws, regulations, orders, District Board Policies, and Administrative Regulations as they may be amended from time to time.
35. **MODIFICATION OF AGREEMENT:** Any amendment or modification to this Agreement shall be by written instrument and shall only be effective upon execution by the duly authorized representatives of the Parties and approval or ratification by the Board of Education in an open, noticed meeting.
36. **USE OF NAME; MARKETING:** Excluding a simple statement or acknowledgement that Contractor has a written agreement with the District, Contractor will not use the name, marks or logos of the District in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either Party.
37. **GOVERNING LAW; VENUE:** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. The venue for all litigation relative to this Agreement shall be Concord, California.
38. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** 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 this Agreement shall be read and enforced as though it were included therein.
39. **SECTION HEADINGS:** The section headings contained herein are for convenience of reference only and are not intended to define the scope of any provision of this Agreement. In the event of any inconsistency between the terms of this Agreement and language set forth in any Appendices to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms

40. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by the Parties to this Agreement. In the event of any inconsistency between the terms of this Agreement and language set forth in any Appendices to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms.
41. **EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS:** Original copies of this Agreement shall be executed by the respective Party's authorized signatories. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other. Electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the facsimile or electronic document, is aware that the other party will rely on the facsimile or electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile or electronic signature.
42. **SEVERABILITY:** If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
43. **No Third Party Beneficiaries.** District and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third parties unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.
44. **APPENDICES:** The Appendices set-forth below and attached hereto are an integral and definitive part of this Agreement and are incorporated herein by this reference. In signing this Agreement, Contractor certifies that it will comply with all laws, regulations, and MDUSD Board Policies; affirms that it is familiar with the laws, regulations, and MDUSD Board Policies; certifies that it does not know of any facts that constitute a violation of any such laws, regulations, and MDUSD Board Policies contained herein. The Appendices are:
- a. Appendix A: Scope of Work or Services;
 - b. Appendix B: Schedule of Fees;
 - c. Appendix C: Insurance Requirements;
 - d. Appendix D: Fingerprinting & Criminal Background Check Certification;
 - e. Appendix E: Workers' Compensation Certification;and
 - f. Appendix F: Data Privacy.
45. **STUDENT CONTACT DISCLOSURE:**

<p>Will Contractor have MORE THAN LIMITED CONTACT or FREQUENT or PROLONGED CONTACT with District Students or will interact with District students outside of the supervision and control of student's parents or District staff in the performance of the Agreement? Check one:</p> <p><input checked="" type="checkbox"/> YES</p> <p><input type="checkbox"/> NO</p> <p>If YES, Contractor must comply with the requirements of Sections 19 & 20 prior to Board ratification or approval.</p>	<p><i>I have reviewed and affirm that the Contractor has correctly disclosed the level of student contact and interaction associated with the services provided under this Agreement.</i></p> <p> Digitally signed by Fran Gallati Date: 2024.08.08 09:47:28 -0700</p> <hr/> <p>YMCA OF THE EAST BAY</p> <hr/> <p>8 August 2024</p> <hr/> <p>Date</p>
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IN WITNESS WHEREOF the Parties hereto have executed this Agreement, to be effective upon approval or ratification by the District's Board of Education on 8/14/2024

YMCA of the EAST BAY

APPROVED:

By:  Digitally signed by Fran Gallati
Date: 2024.08.08 09:47:46 -0700

DATE:
8 August 2024

MT DIABLO UNIFIED SCHOOL DISTRICT

APPROVED:

By: 
SUPERINTENDENT

DATE:
8/8/24

RECOMMENDED:

By: 
DIRECTOR OF PARTNERSHIP

DATE:
8/8/24

REVIEWED:

By: 
PURCHASING DEPARTMENT

DATE:
8/8/24

APPENDIX A: SCOPE OF WORK/SERVICES

For services directly related to lessons (e.g., music, art, dance, garden, ecology, sex education or poetry) at schools, Contractor agrees to provide the following services to the District under the supervision of and in collaboration with classroom teacher(s): Describe how services will be provided remotely if in-person Services are not possible or practical.

I. Description of the services and deliverables (in detail), which will be provided:

YMCA staff will hire: *indicate job title and # of staff in ()*

- a. (1) Area Manager
- b. (7) appropriate levels of Site Director (based on enrollment/attendance/need)
- c. (7) appropriate levels of Assistant Site Directors (based on enrollment/attendance/need)
- d. (40+) appropriate levels of Teachers (based on enrollment/attendance/need)

These staff members will work in partnership with the Mt. Diablo Unified School District (MDUSD) Expanded Learning Program Administrator to develop, implement, and supervise the YMCA Expanded Learning Program (ELP) in MDUSD. YMCA will send monthly invoices to MDUSD for the 2024-2025 school year (July 1, 2024 to June 30, 2025).

Program Description: Implement YMCA Expanded Learning Programs at 7 schools in the Concord, Martinez, and Pleasant Hill communities. Provide expanded learning opportunities (school year, summer, and intersession programs) aligned to the [MDUSD Expanded Learning Plan](#) that include but are not limited to; enrichment classes, Science/Technology/Engineering/Mathematics (STEM), academic support activities, youth development, tutoring, life skills, sports, gardening, nutrition education, snack/meal distribution, leadership and service projects, work based learning, mentoring programs, ongoing staff development and technical assistance.

YMCA will operate at a ratio no greater than 10:1 ratio TK/K grade students and 20:1 for 1st-8th grade students. The hours of operation will be from the ending bell time until 6:00 pm during regular school hours and for 9 total hours per day for all intersession days.

II. Description of project plan for provision of services (include specific dates of when tasks will be completed):

YMCA shall perform only the services indicated by a X 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 X under its column below ("Excluded Services"):

<i>Program employment</i>	YMCA	District
Recruiting and selecting YMCA Employees for hire	X	
Screening YMCA Employees (as defined below), including, without limitations, performing criminal background checks, and fingerprinting	X	
Supervising and training Leased YMCA Employees in Program activities	X	
Maintaining YMCA Employees' personnel records	X	
Payroll administration for YMCA Employees	X	
Recruitment, screening, supervising, training, personal records, and payroll administration of Expanded Learning Program MDUSD employees		X
<i>Program and student activities</i>	YMCA	District
Conducting Program announcements and promotions	X	
Maintaining files and records of Program students		X
Maintain student enrollment and participation in YMCA Expanded Learning Programs on site	X	
YMCA Expanded Learning Programs will submit sample program schedules and student enrollment and daily attendance reports to the Expanded Learning Office monthly by student, grade, and school July 1, 2024 - June 30, 2025	X	
Approving Program curriculum aligned with MDUSD ELOP plan		X
Implement Program curriculum aligned with MDUSD ELOP plan	X	
Addressing student disciplinary concerns at the school based expanded learning program per MDUSD protocols	X	
Addressing program student disciplinary concerns beyond the school-based program		X
Selecting, hiring, and supervising Independent contractor(s)		X

Overseeing accounting/bookkeeping for Expanded Learning Program grants and funds		X
Providing non-transportation equipment and supplies for use in the Program		X
Providing facilities for the Program		X
Providing transportation (buses, etc.) for the Program activities (if applicable)	X	
Ensuring YMCA Expanded Learning Program compliance with local, state, and federal law (including, without limitation, the Americans with Disabilities Act)	X	
Ensuring district compliance with local, state, and federal law (including, without limitation, the Americans with Disabilities Act)		X
<i>Program reporting</i>	YMCA	District
Responsible for reports for grant and expanded learning program funds		X
Provide input, student enrollment and participation, and staffing data to assist district staff in completion of expanded learning program reports	X	
<i>Fiscal expenses, invoicing, and reporting</i>	YMCA	District
Provide a monthly detailed account with back up documents (invoice orders, salary calculations, etc.) of all expenses to MDUSD for reimbursement which includes: staffing, supplies, materials, and conferences. All dollars must be accounted for in each monthly invoice. No technology will be purchased as part of this contract.	X	
Quarterly meet with the Director of Partnerships & MTSS, Expanded Learning Administrator, to review contract agreement and expenses.		X
MDUSD will approve all invoices and payments to YMCA after review of expenses aligned to the Expanded Learning Opportunity Program (ELOP) Plan and MDUSD Board approved YMCA independent service contract.		X

III. Description of where the services will be provided:

The schools that will be served include:

YMCA Program Mt. Diablo Unified School District TK-12 Schools	
<ul style="list-style-type: none">● Hidden Valley Elementary● Woodside Elementary	<ul style="list-style-type: none">● Gregory Gardens Elementary● Holbrook (TK - 8)● Silverwood Elementary● Sun Terrace Elementary● Wren Ave Elementary

IV. Description of who will provide the services (include applicable license information):

The YMCA of the East Bay Expanded Learning Program will provide a safe and engaging expanded learning program to participating schools for the 2024-25 school year. The Dianne Adair Expanded Learning Program will be aligned to the [MDUSD After School Education & Safety \(ASES\) aligned Expanded Learning Opportunity Program \(ELOP\) Plan Guide 2022/23](#) and meet the following components:

- Complete the [Expanded Learning Partner Alignment Form](#) annually prior to the start of program for the 2024/25 school year
- Operate an after school program from the end of the traditional school day at each site until 6:00 pm every school day for the 2024-25 academic year.
- Operate a nine hour program for 30 intersession/summer days which includes the week of 10/7/2024- 10/11/24.
- Align with [MDUSD After School Education & Safety \(ASES\) aligned Expanded Learning Opportunity Program \(ELOP\) Plan Guide 2022/23](#) to have and implement;
 - Attendance tracking, including sign-in and sign-out procedures,
 - Early release and late arrival policies and procedures (*EC* Section 8483(a)(1), and
 - [Priority enrollment and selection criteria process and procedures](#)

YMCA of the East Bay Employees will provide the services at the 7 sites. Each site will be staffed with a Director, Asst, Director and Teachers. Staff are trained in CPR/First Aid and curriculum development.

V. Description of proposed outcomes of services:

The MDUSD Expanded Learning Program (ELP) purpose is to provide engaging, inclusive, and safe expanded learning opportunities for students in MDUSD. Aligned with MDUSD Local Control Accountability Plan (LCAP), the ELP is committed to serving underserved communities to increase access and opportunities and close the achievement gap. All MDUSD Expanded Learning Programs (ELP) must be aligned with the [MDUSD After School Education & Safety \(ASES\) aligned Expanded Learning Opportunity Program \(ELOP\) Plan Guide 2022/23](#) and is built on the [Quality Standards for Expanded Learning](#) which includes quality standards and crosswalk, and will ensure a data-driven continuous quality improvement process to assess, plan and improve

program quality and delivery. MDUSD ELP partners will utilize the quality standards and crosswalk as a central component of the cycle of quality improvement (CQI) to plan and assess the quality of expanded learning programs for MDUSD students. Annually, the MDUSD ELP's site and district leadership and site staff will review participation, enrollment, attendance, survey, program evaluation, site visits and observation data to inform, reflect and determine upcoming school year goals based on strengths, gaps, and needs.

The ELOP programs daily activities will support academic skill-building and social-emotional learning and healthy eating and physical activity. Implementing programming in a safe and supportive environment for student's developmental, social-emotional and physical needs is a top priority for the YMCA of the East Bay. Our expanded learning programs' design and activities are rooted in a youth development framework that promotes interactions between students and staff so that both can collaborate and share responsibility for building community and developing a sense of belonging. It is the goal of the YMCA of the East Bay's expanded learning team to ensure all students feel safe, supported and prepared to learn and lead.

- VI. The following applies if Contractor is performing services on school or District property:
- Safety and Security:** Contractor shall perform all Services so as to avoid injury or damage to any person or property by exercising all necessary safety and security precautions as may be appropriate to the nature of the Services and the conditions under which the Services are to be performed. Contractor further agrees to comply with all of the following:
- a. **Identification:** When performing Services on District property, Contractor shall be in appropriate work attire (or uniform, if applicable) at all times. If Consultant does not have a specific uniform, then Consultant shall provide identification tags and/or any other mechanism the District in its sole discretion determines is required to easily identify Consultant, as opposed to faculty, staff, parents, students or other members of the public. Consultant and its employees shall (i) display on their clothes the above-mentioned identifying information and (ii) carry photo identification and present it to any District personnel upon request. If Consultant cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Consultant, costs to be borne by Consultant.
 - b. **Sign-in required:** As required by schools and other District locations, Consultant personnel must sign into the location's main office to receive an in-school identification/visitors tag. Such individuals must display this tag on their person at all times while on District property.
 - c. **No Smoking/Non-Prescription Drugs:** All District properties are tobacco-free and drug-free zones. Consultant personnel are prohibited from using any tobacco product on or immediately adjacent to District property. Consultant personnel are prohibited from using illegal drugs on District property.
 - d. **No Weapons or Firearms:** Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones. Consultant personnel are

strictly prohibited from possessing on their persons or in their vehicles any weapons or firearms while on District property.

- e. Employee Removal. At District's request, Consultant shall immediately remove any person from all District properties in cases where the District in its sole discretion determines that removal of any such person is in the District's best interests.
- f. District Property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential. Any removal or disclosure of any privileged and confidential materials by Consultant without express written consent of District shall be considered a material breach of this Agreement and shall be cause for immediate termination of this Agreement. IF CONSULTANT BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, CONSULTANT SHALL IMMEDIATELY NOTIFY DISTRICT.

If Contractor is providing services that involve contact with students or interaction with students, services must be performed under the direct supervision, line-of-sight and in collaboration with certificated staff member. Please affirm by checking the box below:

Services will be performed under direct supervision, line-of-sight and in collaboration with certificated staff

APPENDIX B: SCHEDULE OF FEES

Total Cost of the Agreement (Not to Exceed Amount): 4,549,600.00

24/25 SCHOOL YEAR ELOP PROGRAM
\$517/PER CHILD ENROLLED/PER MONTH

2025 Summer ELOP Program
\$360/Per Child Enrolled/Per Week

This Contract does not allow for Contractor to be reimbursed for expenses.

Protocols:

- 1) **Invoices must include all of the following: invoice date, Purchase Request #, dates of service, detailed description of service, payment rate, total payment due, remit to address, Consultant name, and contact information.**
- 2) **Costs:** Must correlate payment to Contractor with provision of Services detailed in Appendix A. The breakdown should list separately and in detail the rates pay, charges and expenses. Indirect fees/charges, fringe benefits, administrative cost, overhead costs and reference to insurance costs are prohibited.
- 3) **Compensation.** The Contractor's fee set forth in this Agreement shall be full compensation for all of Contractor's Services incurred in its performance of the services set forth in **Appendix A. The fee is not to exceed the amount and is not a guarantee of total payment, as payment is owed only for Services rendered.** All reimbursements for supplies, materials, travel and/or mileage shall not exceed the amount set forth in the Agreement, and shall be listed separately and are subject to approval of the District. The fee shall be paid as indicated and the rate of pay shall not be changed for the Term of the Agreement. For any rates or pricing shall remain fixed for the Term of the Agreement.
- 4) **Method of Payment:** Contractor shall submit invoices in a format approved by the District. Invoices must include the purchase order number, District site name, name of individual(s) performing duties, date(s) worked, hours worked. Flat rate compensation is not permitted and will be rejected unless approved by the Procurement Department. Contractor shall submit invoices to the District via the District's authorized representative referenced in Section 17 (Notices).
 - a) Upon receipt and approval of Contractor's invoices, the District agrees to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.
- 4) **The Contractor agrees that the rates at which Contractor bills the District will be the lowest rate Contractor charges any other public entity for comparable services.**

APPENDIX C: INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his or her agents, representatives, employees or sub-providers.

I. MINIMUM SCOPE OF INSURANCE:

- a. **Commercial General Liability (“CGL”):** Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. Insurance shall be written on an “occurrence” basis and be at least as broad as Insurance Services Office (ISO) Form CG 00 01, covering products and completed operations, property damage, bodily injury, personal & advertising injury, independent contractors, and broad from contractual liability.
- b. **Sexual Abuse & Molestation Liability (“SAM”):** Insurance with limits not less than two million dollars (\$2,000,000.00) per occurrence and four million dollars (\$4,000,000.00) in the aggregate. This coverage may be waived, in the District’s sole discretion, if the Contractor has certified that it (i) will have no physical contact, or (ii) will have limited contact and will not interact with District Students outside of the immediate supervision and control of the student’s parents or MDUSD staff in the performance of this Agreement.
- c. **Automobile Liability (“AL”):** Insurance with limits not less than one million dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. The Parties understand and agree that the District shall rely upon the representations that the Contractor shall make in any such waiver.
- d. **Workers’ Compensation (“WC”):** As required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease.
- e. **Professional Liability (Errors and Omissions Insurance):** As appropriate to the Contractor’s profession, with limits no less than one million dollars (\$1,000,000.00) per claim, and two million dollars (\$2,000,000.00) aggregate.

II. REQUIRED ENDORSEMENTS

- a. **Additional Insured Status:** Mt. Diablo Unified School District (the “District”), its Board, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- b. **Primary and Noncontributory:** With the exception of Workers’ Compensation and Professional Liability insurance, for any claims related to this contract, the Contractor’s insurance coverage shall be primary and noncontributory and at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.
- c. **Notice of Cancellation:** The following requirement is only applicable for contracts in which the total compensation to the contractor is one million dollars (\$1,000,000.00) or more. No policy required to be maintained by Contractor shall be canceled, non-renewed, or materially altered without thirty (30) days prior written notice to the

District, except where cancellation is due to the nonpayment of premium(s) in which event, ten (10) days prior written notice to the District shall suffice.

- d. **Waiver of Subrogation**
- i. **The waiver of subrogation applies to CGL, SAM, AL, and WC.**
 - ii. Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

III. ADDITIONAL INSURANCE REQUIREMENTS

- a. **Claims Made Policies:** If any of the required policies provide claims-made coverage:
- i. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- b. **Verification of Coverage:** Prior to the commencement of services pursuant to this Agreement, Contractor shall furnish to the District, Certificates of Insurance and all applicable endorsements evidencing the insurance coverage and limits required herein. The District reserves the right to require complete copies of any required policy(ies) required hereunder at any time. Acceptance of the Certificates of Insurance by the District does not relieve Contractor of the insurance requirements, nor decrease the liability of Contractor under this Agreement. It is the Contractor's responsibility to ensure compliance with these insurance requirements. Any actual or alleged failure on the part of the District to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the District, in this or any regard.
- c. **Certificate(s) of Insurance** shall include the following: Certificate Holder: Mt. Diablo Unified School District, 1936 Carlotta Drive, Room 18, Concord, CA 94519.
- d. **Umbrella or Excess Policy:** Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and noncontributory, additional insured, Self-Insured Retentions ("SIRs"), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.
- e. **Acceptability of Insurers:** Unless otherwise reviewed and accepted by the District, all required insurance must be placed with insurers with a current A.M. Best rating of not less than A- VII and admitted to do business in California, or approved by the Surplus Lines Association.

- f. **Broader Coverage:** If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.
- g. **Severability of Interest:** A severability of interest provision must apply for the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limits.
- h. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the District. The District may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- i. **Subcontractor Insurance:** Should the Contractor use any subcontractor(s) to perform services under this Agreement, Contractor shall be responsible for ensuring that such subcontractor(s) procure and maintain insurance and limits appropriate to the nature and scope of services provided. Contractor shall collect Certificates of Insurance evidencing coverage(s) and limits of insurance, and with the exception of Workers' Compensation and Professional Liability policies, the Contractor and the District shall be included as additional insureds for all ongoing and completed operations of the subcontractor(s).
- j. **District's Right to Modify Insurance Requirements:** District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

--end--

**APPENDIX D: FINGERPRINTING & CRIMINAL BACKGROUND CHECK
CERTIFICATION**

(Contractor REQUIRED to complete.)

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”). Contractor certifies that:

- Contractor’s employees or subcontractors will have contact or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor’s services under this Agreement, and Contractor certifies its compliance with these provisions as follows: “Contractor certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents (“Employees”) regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils, outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee, in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of all Employees who may have unsupervised interaction with District pupils during the course and scope of the Agreement is attached hereto.”

- Contractor’s employees or subcontractors will have NO CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor’s services under this Agreement.

WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

Megan’s Law (Sex Offenders). Contractor shall verify and continue to verify that the employees of Contractor that will be on the project site and the employees of the subcontractor(s) that will be on the project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE: I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

CONTRACTOR

By:  Digitally signed by Fran Gallati
Date: 2024.08.08 09:46:48
-0700

Name: Fran Gallati

Title: CEO/President

Date: 8 August 2024

APPENDIX D: WORKERS' COMPENSATION CERTIFICATION
(Contractor REQUIRED to complete.)

Labor Code § 3700 (workers' compensation and insurance) in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. I certify I will comply with all California workers' compensation insurance requirements before commencing the performance of the Services of this Contract. Alternatively, I certify that I am a sole proprietor, have no employees, and am self-insured. I understand the District will not obtain workers' compensation insurance on my behalf or on behalf of my employees or subcontractors.

MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE: I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

CONTRACTOR

By:  Digitally signed by Fran Gallati
Date: 2024.08.08 09:46:08
-0700'

Name: Fran Gallati

Title: CEO/President

Date: 8 August 2024

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Contract.)

EXHIBIT D: DATA PRIVACY ADDENDUM
(Contractor REQUIRED to Complete.)

This Data Privacy Addendum (“**Data Privacy Addendum**”) to the Agreement Between Mt. Diablo Unified School District and Independent Contractor (“**Independent Contractor Agreement**”) is entered into by and between Contractor and Mt. Diablo Unified School District (“**District**”). To the extent that any term or condition set forth in this Addendum conflicts with the Independent Contractor Agreement, the provisions of this Addendum will control.

WHEREAS, in order to provide the services described in the Agreement, the Contractor may receive or create, and the District may provide documents or data related to students (“**Student Data**”) that are covered by several state and federal privacy laws, including: the Family Educational Rights and Privacy Act (“**FERPA**”), the Children’s Online Privacy Protection Act (“**COPPA**”), Education Code section 49073.1, and the Student Online Personal Information Protection Act (“**SOPIPA**”). The District and Contractor desire to ensure compliance with applicable state and federal laws, school policies, procedures and regulations.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Use.** Contractor shall not use any information in a Student Data^[1] for any purpose other than those required or specifically permitted by the Independent Contractor Agreement, and shall comply with all applicable state and federal laws pertaining to Student Data privacy and security. Contractor shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Data Privacy Addendum. Contractor shall not sell or otherwise derive a benefit from sharing information in a Student Data with a third party. Contractor shall enter into written agreements with all subcontractors performing functions pursuant to the Independent Contractor Agreement, whereby the subcontractors agree to protect Student Data in manner consistent with the terms of this Data Privacy Addendum.
2. **Ownership.** All Student Data obtained by Contractor from District continues to be the property of and under the control of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes.
3. **Export.** Contractor shall provide a means by which its employees, when so authorized, can search and export Student Data through reasonable procedures such that the District can respond to a parent, legal guardian or eligible student who seeks to review personally identifiable information on the pupil’s records or correct erroneous information.

¹“Student Data” includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Pupil Records do not include de-identified information (information that cannot be used to identify an individual pupil) used: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

4. **Disposition**. The Contractor agrees that upon expiration or termination of services under this Agreement, Contractor shall dispose or delete all Student Data obtained under the Independent Contractor Agreement. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Independent Contractor Agreement authorizes Contractor to maintain Student Data obtained under the Independent Contractor Agreement beyond the time period reasonably needed to complete the disposition.
5. **Security**. Contractor shall maintain adequate administrative, physical, and technical data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized access, disclosure or acquisition by unauthorized persons, and shall not copy, reproduce or transmit data obtained pursuant to the Agreement except as necessary to fulfill the purpose of the Agreement. Where applicable, the Contractor will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.
6. **Prohibited Use**. Contractor shall not use Student Data, or any data derived from Student Data, to perform or deliver targeted advertising to students, and is prohibited from selling or providing Student Data to third parties for any purpose without District's written consent.
7. **Breach Protocol**. Upon becoming aware of any unlawful or unauthorized access to Student Data stored on equipment used by Contractor or in facilities used by Contractor, Contractor will take the following measures:
 - a. promptly notify the District of the suspected or actual incident within a reasonable amount of time of the incident, not to exceed forty-eight hours, and shall present the information under the following headings: "What Happened," "What Information was Involved," "What We are Doing," "What You Can Do," and "Persons to Contact for More Information"; and
 - b. promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; and
 - c. assist the District in notifying affected users, affected parents, legal guardians of commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. Upon request from the District, Contractor shall notify affected parties or reimburse District for actual costs associated with notifying affected parties.
8. **Entire Agreement**. This Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter herein. It supersedes, and the terms of this Data Privacy Addendum govern, any and all previous oral and written communications between the parties, their Affiliates, and their respective employees and representatives regarding these matters.
9. **Successors Bound**. This Data Privacy Addendum is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition,

consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE:

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this Data Privacy Addendum on behalf of Contractor.

CONTRACTOR

By:  Digitally signed by Fran Gallati
Date: 2024.08.08 09:45:30
-07'00'

Name: Fran Gallati

Title: CEO/President

Date: 8 August 2024

