

MT. DIABLO UNIFIED SCHOOL DISTRICT

1936 Carlotta Drive
Concord, CA 94519

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

THIS AGREEMENT is made this 12 day of May, by and between the Mt. Diablo Unified School District (hereinafter "District") and DataWORKS Educational Research (hereinafter "Contractor").

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

1. Performance of Services

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

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

\$ 47,131.75 total fee for Services

115 - 3082 - 10 - 5800 (~~25,000~~)
 BUDGET CODE
 115 . 3082 . 10 . 5100 (\$22,131.75)

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

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

Check one:

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

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

3. Term and Termination. This Agreement will become effective on 5/11/2011. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

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

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

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

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

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

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>DataWORKS Educational Research</u>
1936 Carlotta Drive	Address: <u>116 S. 7th Street</u>
Concord, CA 94519-1397	<u>Fowler, CA 93625</u>
Attn: Superintendent	Phone: <u>800-485-1550</u>
	Fax: <u>email: info@datatworks-ed.com</u>
	Tax ID #: <u>77-0584790</u>

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

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

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

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

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

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By: _____
Budget Administrator Date

By: _____
Date

Title: Lisa Boje, School Support Administrator

Title: _____

Authorized by: _____
Assistant or Associate Superintendent Date

Approved: _____
Assistant Superintendent of Personnel Date

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR

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

OR

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

Administrator's Signature Date

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

Originator's Signature

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

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

Purchase Requisition # _____
EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

DataWORKS Educational Research will provide Bel Air Elementary with the following services: Two days (5/10 and 5/11) Explicit Direct Instruction (EDI) workshop, two days (5/12 and 5/13) EDI Lesson Demonstration, one day (7/22) StepUP Academy Teacher Training, twelve days (7/25-7/27; 8/1-8/3; 8/10-8/12; 8/15, 16, & 19) StepUP Academy Classroom Coaching.

Services of Contractor arranged by

Signature

Department / School

Bel Air Elementary School
2011 StepUP Academy Contract

Date of Contract: April 21, 2011	P.O#
Name of School: Bel Air Elementary	Name of District: Mt. Diablo Unified
Address: 663 Canal Road Bay Point, CA 94565	Address: 1936 Carlotta Dr. Concord, CA 94519
Telephone #: 925-458-2606 Cell:	Tel: 925-682-8000 ext. 4023 Cell: 925-890-4387
Fax #:	Fax #:
Principal: Nancy Klinkner	Contact Person: Susan Petersen, Dir of Elem Support Lisa M. Bojé, Support Administrator 925-682-8000 Ext. 4040 bojel@mdusd.k12.ca.us
Email: KlinknerN@mdusd.k12.ca.us	Email: petersens@mdusd.k12.ca.us

Send Contract to School

Send Contract to District

This is a Contract between **Bel Air Elementary School** and **DataWORKS Educational Research** for the following services:

Contract #3515

Training	Purpose	Comments	Presenter subject to change Job #	Cost
Explicit Direct Instruction (EDI) Workshop	Administrators and teachers are taught a strategic collection of instructional practices combined together to design and deliver well-crafted lessons that explicitly teach content, especially grade-level content, to all students.	Dates: May 10 & 11, 2011 Audience Qty: 9 teachers, 1 Admin Location: Bel Air School Library 663 Canal Rd Bay Point, CA 94565 Time: 8:00AM-3:00PM	Silvia Ybarra #12909	\$4,500/day (split cost w Shore Acres) Teachers to attend the EDI Wkshop with Shore Acres.
EDI Lesson Demonstration (This services must be completed before school ends)	Consultant will work with teachers and/or administrators to demonstrate in a classroom setting how an EDI lesson should be taught. Consultant will teacher first then teacher volunteers will present the same lesson. Pre-brief and debrief sessions should be built into the agenda. An instruction package and sample agenda will be sent to the principal or contact for completion. **Changes made to lessons, or	Date(s): May 12 & 13, 2011 First day: K-2 a.m. ELA p.m. Math Location: Bel Air ES 663 Canal Rd Bay Point, CA 94565 Second day: 3-5 a.m. ELA p.m. Math Location: Shore Acres	Silvia Ybarra #12911	\$3,500/day (split cost with Shore Acres) Teachers to observe/teach Lesson Demos at Bel Air May 12th and at Shore Acres on May 13th, 2011.

	the request of a different lesson, within five (5) business days of your scheduled Lesson Demonstration date, will result in the rescheduling of the service to a later date.	351 Marina Road Bay Point, CA 94565 Time: 8:00AM-3:00PM		
StepUP Academy Teacher Training	Teachers will be trained in the StepUP Academy procedures including establishing classroom norms, fluency development, integrated math and vocabulary development skills, lesson presentation considerations, and interactive and post lesson coaching techniques. The number of lessons to be provided is dependent on the length of the Academy.	Date: July 22, 2011 Audience Qty: 9 Teachers (plus 8 teachers at Shore Acres) Location: Bel Air School Library 663 Canal Rd Bay Point, CA 94565 Time: 8:00AM-3:00PM	Cynthia Kampf #12923	\$2,250/for 1/2day Teachers to attend this training with Shore Acres teachers.
StepUP Academy Classroom Coaching	Interactive Classroom Coaching. DataWORKS provides Interactive Coaching while teachers teach their EDI lessons. This is a 4 week academy with 5 teachers participating (ELA/MATH) Academy focus: ELA: 3 hours/day MATH: 1 hour/day Academy to run from: July 25, 2011 to August 19, 2011 <u>This is a 4 week Academy: (20 days)-</u> <u>Incoming 1st-5th Grade MATH/ and ELA</u>	Dates: July 25,26,27, 2011 Aug 1,2,3, 2011 Aug 10,11,12, 2011 Aug 15,16 & 19 th , 2011 Audience Qty: 9 Teachers Location: Bel Air ES 663 Canal Road Bay Point, CA 94565 Time: 8:00AM-3:00PM 3 coaching days per week	Dana Griggs #12924	\$2,500/ day Total cost for 12 consultant days is: \$30,000
Explicit Direct Instruction (EDI) Workshop Handouts	Handouts will be prepared by DataWORKS production department personnel and sent to the appropriate contact.	Est. 10 Bel Air attendees	Dataworks Production Department #12922	\$18.00/ ea Accounted for on Shore Acres contract since training is one location.

<p>StepUP Academy Lesson Development</p>	<p>DataWORKS will develop EDI lessons modified for English learners. The number of lessons is determined by the length of the StepUP Academy and will include periodic review.</p> <p><u>Incoming 1st-5th Grade MATH/ ELA</u></p>	<p>All lessons will be written by DataWORKS then delivered to the school prior to the first scheduled student day.</p>	<p>Research department #12928</p>	<p>\$1,000 per 5 lessons including periodic review.</p> <p><u>No charge to the school for lessons as a part of the StepUP Academy</u></p>
<p>Student Materials (Incoming 1st-5th)</p>	<p>A student handbook with lessons will be provided for each student participating in the "StepUP Academy"</p> <p>Student support materials included:</p> <ul style="list-style-type: none"> • Lessons • Whiteboard-1 • Dry-erase Marker-1 • Pencil-1 • Eraser Cloth-1 • Highlighter-1 • Scratch paper note pad-1 	<p>Academy Location: Bel Air ES 663 Canal Rd Bay Point, CA 94565</p>	<p>Dataworks Production Department</p>	<p>\$18 each for ELA and Math x 150 students (estimated):</p> <p>is: \$5,400 + \$ 583.78 (9.25 sales tax) + \$150.00 shipping = \$6,133.78</p>
<p>Teacher Manuals on Power Point Presentation CD</p>	<p>DataWORKS to provide one (1) Power Point presentation CD for each one of the teachers participating as opposed to hard copies of Teacher Manuals. School/District to ensure that the proper equipment and technology is available at the site of presentation including a technician to supervise that the equipment functions properly at all times.</p>	<p>Estimated teacher count: 9</p> <p>School to confirm all counts.</p>	<p>Production Department</p>	<p>\$75/teacher</p> <p>Number of teachers: 9</p> <p>= \$675 + \$72.97 (9.25 sales tax) = \$747.97</p>

<p>Assessments</p>	<p>Pre and post assessments will be administered to students to determine improvement in academic achievement.</p> <p>District/school to send the following information to pre-</p>	<p>Date:</p> <p>Total number of students by grade to be provided by</p>	<p>Programming department</p> <p>#12926 Pre #12927 Post</p>	<p>\$35/student from K-2, \$18 3-5th grade.</p> <p>Estimated student count</p>
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All Students Successfully Taught Grade-Level Work Every Day.

	populate the assessments at least two weeks in advance: Student ID# Student First Name Student Last Name Teacher Name Grade Period (if Middle or High School)	District no later than 2 weeks prior to 1 st day of Academy.		is: TBD Total cost for this service is: TBD
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Total for EDI Training and StepUP Academy (not including Assessments Charge yet to be determined) is: **\$47,131.75**

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

Please check one and initial your selection:

- Yes, I want DataWORKS to provide the workshop material for all participants. I understand I will be invoiced \$18.00 for each handout (shipping, handling, and tax additional) and the cost would be in addition to the grand total listed below. Here are the number of handouts I am requesting _____ Initials _____
- No, I do not want DataWORKS to prepare the material for all participants. I understand my district/school will be responsible to copy and assemble all the DataWORKS provided master material for all participants. Initials _____

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

The cost for these services will be **\$47,131.75 (plus Assessment Fees yet to be determined)**. Please send your purchase order for billing purposes and reference the Contract ID on the purchase order.

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

Please sign both originals and return one to DataWORKS.

Approved and accepted by:

DataWORKS Ed. Authorized Signature: Date:

School/District Authorized Signature: Date:

Mario Cuadra, General Manager

Print Name and Title