

JUL 17 2013

Purchase Requisition # R74934

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 2 day of July, by and between the Mt. Diablo Unified School District (hereinafter "District") and Marzano Research Lab/Solution Tree (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:

\$ 52,000.00 total fee for Services 000 - 3065 - 36 - 5800
 BUDGET CODE

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

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

Check one:

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

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

3. Term and Termination. This Agreement will become effective on 7/2/13. 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,

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.~~ *GA*
- 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>Marzano Research Laboratory, Inc.</u>
1936 Carlotta Drive	Address: <u>555 N. Morton Street</u>
Concord, CA 94519-1397	<u>Bloomington, Indiana 47404</u>
Attn: Superintendent	Phone: <u>800-733-6783x263</u>
	Fax: <u>866-308-3135</u>
	Tax ID #: <u>26-2730032</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. *and the Marzano Research Laboratory host contract GA*
- 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: [Signature] 7/16/13
Budget Administrator Date

By: [Signature] 7/11/13
Date

Title: Assistant Director, SASS

Title: Director of Professional Development

Authorized by: [Signature] 7/16/13
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.

[Signature]
Originator's Signature

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

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

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EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

See attached Host Contract, Exhibit A Description of Services, Instructional Strategy Trainer Series for detail of services.

Services of Contractor arranged by



Signature

Student Achievement and School Support

Department / School



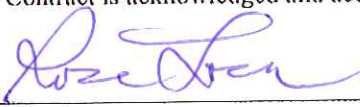
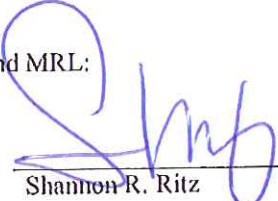
HOST CONTRACT

Effective July 2, 2013, Mt. Diablo Unified School District ("Host") and Marzano Research Laboratory LLC ("MRL") agree that MRL will provide an Associate to disseminate information to Host in exchange for \$52,000.00 (USD). The parties agree as follows:

1. **Services:** MRL agrees to provide the services described in Exhibit A—Description of Services.
2. **Compensation:** Host will pay MRL a total contract amount of \$52,000.00 (USD). The contract balance of will be invoiced upon completion of the services (See Exhibit B--Schedule of Payments). Host will provide a purchase order for the total contract amount immediately upon entering the contract. Host agrees to reimburse any expenses incurred by MRL that result from Host's delay in providing a purchase order. All payments are due net 30 days from date of invoice. All late payments are subject to a Finance Charge of 1.5% monthly.
3. **Travel Arrangements and Expenses:** The total contract amount includes all travel, lodging, and other incidental expenses incurred by Associate.
4. **Intellectual Property:** Host acknowledges that MRL or Associate owns the copyrights to all tangible or electronic presentation materials, handouts, and/or program books used in conjunction with the services performed under this Agreement, and that no materials will be developed specifically for Host. MRL or Associate shall retain all copyrights owned prior to entering this Agreement, and Host may not reproduce any materials not designated reproducible without the express written permission of MRL. Host is responsible for the reproduction of all handouts and other print materials related to the services, and Host will notify the Associate directly of any deadlines for reproduction.
5. **Audio/Video Equipment:** Host will provide audio/video equipment and technical support for the sessions.
6. **Recording of Presentation:** All audio and video recording is prohibited.
7. **Confidentiality:** MRL will keep confidential any information or data not generally known to the public it encounters in performing under this Contract. MRL will require any subcontractors it may hire to keep such data confidential, and proof thereof will be made available upon Host's request.
8. **Termination:** If Host terminates this Contract within 90 days of the workshop for any reason but Force Majeure, Host shall reimburse MRL for any reasonable business expenses incurred in anticipation of performance of this Contract that exceed the amount of the deposit. MRL may terminate this Contract if MRL has not received a purchase order within 30 days of the effective date of this Contract.
9. **Force Majeure:** If events beyond the parties' control, such as acts of God, disaster, war, curtailment or interruption of transportation facilities, acts of terrorism, State Department or other governmental or international agency travel advisory, civil disturbance, interruption or cessation of electrical power, strikes, disease, epidemic, or any other cause beyond the parties' control which makes it impossible for to perform under this Contract, then MRL agrees to offer services at a later date, provided such can be rescheduled with Host. MRL shall have an affirmative duty to notify Host immediately of any circumstance or event that will prevent MRL from performing under this Contract.

10. **Indemnity:** MRL shall indemnify and hold harmless Host from any and all claims, actions, costs, or liabilities arising from MRL's negligent acts or omissions during the course of performance under this Contract, except those resulting from Host's negligence.
11. **Notices:** All notices to be given under this Contract shall be sent by certified mail to Marzano Research Laboratory LLC, 555 N. Morton St., Bloomington, Indiana 47404, and to Mt. Diablo Unified School District, 1936 Carlotta Drive, Concord, CA 94519, or to such address as may be given by either party in writing. Notice shall be deemed given on the date of mailing.
12. **Governing Law/Venue:** This Contract shall be deemed to have been made in the State of Indiana and shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Indiana, without regard to conflict of laws principles. Judicial proceedings regarding any matter arising under the terms of this Contract shall be brought solely in the federal or local courts of the State of Indiana.
13. **Nature of Contract:** Host is engaging MRL's services as an independent contractor, and nothing in this Contract shall be construed as an agreement for employment. This Contract is non-exclusive, and MRL may enter into contracts with other parties for professional services similar to those set forth in this Contract.
14. **Entire Contract:** This Contract and any exhibits attached hereto constitute the entire agreement of the parties and supersede any prior or contemporaneous written or oral understanding or agreement. No waiver or modification of any of the terms of the Contract shall be effective unless made in writing and signed by both parties, and the unenforceability, invalidity, or illegality of any provision of this Contract shall not render the other provisions unenforceable, invalid, or illegal. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Contract or of any subsequent default or breach of the same or a different kind.

This Contract is acknowledged and accepted by Host and MRL:

 <hr/> Rose Lock Mt. Diablo Unified School District	7/17/13 <hr/> Date	 <hr/> Shannon R. Ritz Director of Professional Development Marzano Research Laboratory LLC	7/11/13 <hr/> Date
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**EXHIBIT A
DESCRIPTION OF SERVICES**

Title of Service: Instructional Strategy Trainer Series

Proposed Date(s) of Service: October 21-22, 2013
November 18-19, 2013
January 13-14, 2014
February 24-25, 2014

Associate: Phil Warrick

Workshop Location: Concord, CA **Proposed Start Time:** 8:00 am

Participant #'s: Approximately 60 per group **Proposed End Time:** 4:00 pm

Audience: Instructional Coaches, Principals, Teacher Leaders

Description of Service:

Training for school vanguard teams in the Art and Science of Teaching Framework as a common language for instruction district wide with an emphasis on Routine Lesson Segments to include DQ 1 and DQ 6 from the Art and Science. Key points of emphasis will include: How the common language of ASOT guides PLC teams to collaborate around instruction and assessment, Reflective Teacher practices and understanding the concept of reflective teaching using the Marzano model, How ASOT helps inform and strengthen the RTI process.

Each lead team will include key core content lead teacher, a special education teacher, and an administrator.

The training will work in two day combinations with one day for mostly high school teams and the other day for mostly middle school teams. There will be a few elementary school teams in attendance on both days of the training. The days will include guided planning time for schools to develop their strategies to take content and training back to their campuses and begin to use and model the concepts of the training for their respective faculties.

**EXHIBIT B
SCHEDULE OF PAYMENT**

Description	Payments	Expected Invoice Date
Payment 1	\$13,000.00	October 21, 2013
Payment 2	\$13,000.00	November 18, 2013
Payment 3	\$13,000.00	January 13, 2014
Payment 3	\$13,000.00	February 24, 2014

CONTACT INFORMATION

Please provide the following information in both sections:

Who will be the contact person for the work?

Contact: Rose Lock
Title: Assistant Superintendent
Phone: (925) 682-8000 X 4015
E-mail: lockr2@mdusd.org
Fax: (925) 689-1466

Who will receive and pay the invoices?

Contact: Beverly Heppler
Title: Admin. Asst.
Phone: (925) 682-8000 X 4016
E-mail: hepplerb@mdusd.org
Fax: (925) 689-1466

