

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 5 day of May, 2014 , by and between the Mt. Diablo Unified School District (hereinafter "District") and Marzano Research Laboratory LLC (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:

\$ 65,000.00 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 5/5/2014 . 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,

Purchase Requisition # R79806

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 Design 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. *fr*
- 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 LLC</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.

and the Marzano Research Laboratory host contract

- 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. *fr*
- 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

Purchase Requisition # R79806

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: Rose Lock 5/22/14
Budget Administrator Date

By: JMB 5/21/14
Date

Title: Rose Lock, Assistant Superintendent

Title: Director of Professional Development

Authorized by: Rose Lock 5/22/14
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.

Rose Lock 5/22/14
Administrator's Signature Date

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

Rose Lock
Originator's Signature

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

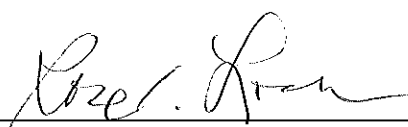
| | |
|--------------|---------------------------------|
| Distribution | |
| original: | Fiscal Services for payment |
| copy: | Contractor |
| copy: | Originator/Budget Administrator |

Purchase Requisition # R79806
EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

See attached Marzano Research Laboratory Host Contract, Exhibit A Description of Services, for detail of services.

Services of Contractor arranged by



Signature

Student Achievement and School Support

Department / School



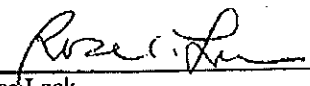
HOST CONTRACT

Effective May 5, 2014, (MRL) 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 \$65,000.00 (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 \$65,000.00 (USD). Please note that the 20% deposit have been waived. 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 Presentatton:** 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.

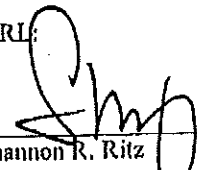
This Contract is acknowledged and accepted by Host and MRL:



 Rose Lock
 Mt. Diablo Unified School District

5/16/14

 Date



 Shannon R. Ritz
 Director of Professional Development
 Marzano Research Laboratory LLC

5/21/14

 Date

**EXHIBIT A
DESCRIPTION OF SERVICES**

Title of Service: Cohort One: The Art & Science of Teaching

Date(s) of Service: October 20-21, 2014
December 1-2, 2014
February 17-18, 2015

Cost: \$39,000.00 (\$6,500.00 per day, all inclusive)
Associate: Phil Warrick

Workshop Location: Concord, CA **Start Time:** 8:00 am
Participant #'s Approximately 50 **End Time:** 3:00 pm

Audience: K-12 teachers and administrators

Description of Service:

The Focus for Cohort One will include the following three instructional design questions:

1. What will I do to help students effectively interact with new knowledge?
2. What will I do to help students practice and deepen their understanding of new knowledge?
3. What will I do to engage students?

Title of Service: Cohort Two: The Art & Science of Teaching

Date(s) of Service: October 22, 2014
December 3, 2014
February 26, 2015
March 26, 2015

Cost: \$26,000.00 (\$6,500.00 per day, all inclusive)
Associate: Phil Warrick

Workshop Location: Concord, CA **Start Time:** 8:00 am
Participant #'s Approximately 50 **End Time:** 3:00 pm

Audience: K-12 teachers and administrators

Description of Service:

The Focus for Cohort One will include the following three instructional design questions:

1. What will I do to establish and maintain effective relationships with students?
2. What will I do to establish and maintain rules and procedures?
3. What will I do to establish and communicate learning goals, track student progress and celebrate success?

Title of Service: Co-Administrator Group: Professional Development Workshops on *The Art & Science of Teaching*

Date(s) of Service: October 20, 2014 (4:15 – 6:00 pm)
December 1, 2014 (4:15 – 6:00 pm)
February 17, 2015 (4:15 – 6:00 pm)
March 26, 2015 (4:15 – 6:00 pm)

Cost: (no additional charge for evening sessions)

Associate: Phil Warrick

Workshop Location: Concord, CA

Participant #'s Approximately 25

Audience: Administrators from schools determined by Mt. Diablo Administration

Description of Service: The Focus for Co-Administrators will include the following three instructional design questions:

1. What will I do to help students effectively interact with new knowledge?
2. What will I do to help students practice and deepen their understanding of new knowledge?
3. What will I do to engage students?

**EXHIBIT B
SCHEDULE OF PAYMENT**

| Description | Payments | Expected Invoice Date |
|-------------|-------------|-----------------------|
| Deposit | \$0.00 | Waived |
| Payment 1 | \$19,500.00 | October 20, 2014 |
| Payment 2 | \$19,500.00 | December 1, 2014 |
| Payment 3 | \$19,500.00 | February 17, 2015 |
| Payment 4 | \$6,500.00 | March 26, 2015 |

CONTACT INFORMATION

Please provide the following information in both sections:

Who will be the contact person for the work?

Contact: Rose Lock
Title: Asst. Superintendent
Phone: (925) 682-8000 x 4015
E-mail: lockr@mdusd.org
Fax: (925) 689-1466

Who will receive and pay the invoices?

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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/1/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|--|------------------------------------|--|
| PRODUCER Hylant Group Inc-Indianapolis 301 Pennsylvania Parkway, #201 Indianapolis IN 46280 | CONTACT NAME: Mariane Uban | FAX (A/C, No): 317-817-5151 |
| | PHONE (A/C, No, Ext): 317-817-5136 | E-MAIL ADDRESS: marianne.uban@hylant.com |
| INSURER(S) AFFORDING COVERAGE | | NAIC # |
| INSURER A: Chubb Indemnity Insurance Co. | | 12777 |
| INSURER B: Travelers Cas & Surety of Amer | | 31194 |
| INSURER C: Federal Insurance Company | | 20281 |
| INSURER D: | | |
| INSURER E: | | |
| INSURER F: | | |

INSURED: SOLUTION-6
Solution Tree Inc, Marzano Research Laboratory LLC
Triple Nickel Press LLC, Solution Tree
Education Canada Inc, Caley Avenue LLC
555 North Morton Street
Bloomington IN 47404

COVERAGES: CERTIFICATE NUMBER: 1289925375 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|---|
| C | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | Y | | 35905835 | 10/1/2013 | 10/1/2014 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$INCL GENL AGG \$ |
| C | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | 73557217 | 10/1/2013 | 10/1/2014 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| C | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> RETENTION \$ | | | 79849616 | 10/1/2013 | 10/1/2014 | EACH OCCURRENCE \$4,000,000 AGGREGATE \$ \$ |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | N/A | 71722150 | 10/1/2013 | 10/1/2014 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000 |
| B | Misc. Professional Liability | | | 105696639 | 10/1/2013 | 10/1/2014 | Each Claim \$1,000,000 All Claims \$1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Mt. Diablo Unified School District is named as an Additional Insured with respect to General Liability as required by written contract.

| | |
|--|---|
| CERTIFICATE HOLDER Mt. Diablo Unified School District 1936 Carlotta Drive Concord CA 94519 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE <i>Marianne Uban</i> |

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