

Purchase Requisition # R60461

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 9th day of June, 2010, 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:

\$ 44,000.00 total fee for Services 355 - 3011 - 10 - 5800
BUDGET CODE

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

- a. \$ _____ per hour,
- b. \$ _____ per day, or
- c. \$ 44,000.00 per engagement.

The fee per day is dependent on the type of workshop. See the attached Workshop schedule, contract # 3206

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 8/1/2010. 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 # R60461

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 So, 7th Street</u>
Concord, CA 94519-1397	<u>Fowler, CA 93625</u>
Attn: Superintendent	<u>559</u>
	Phone: <u>(595) 834-2449</u>
	Fax: <u>559-834-4500</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

Purchase Requisition # R60461

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: Cheryl AkBerry 6-15-10
Budget Administrator Date

By: [Signature] 6/9/2010
Date

Title: _____
Principal

Title: General Manager

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.

[Signature] 6/17/10
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:</i>	<i>Fiscal Services for payment</i>
<i>copy:</i>	<i>Contractor</i>
<i>copy:</i>	<i>Originator/Budget Administrator</i>

Purchase Requisition # R60461
EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

see attached Workshop Training Schedule

Services of Contractor arranged by

Cheryl A. Beau
Signature

Mt Diablo High School
Department / School

Request for Taxpayer Identification Number and Certification

Give form to the
 requester. Do not
 send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) DW Educational Research Inc.	
Business name, if different from above DataWORKS Educational Research	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	
<input type="checkbox"/> Exempt from backup withholding	
Address (number, street, and apt. or suite no.) 116 S. 7th Street	Requester's name and address (optional)
City, state, and ZIP code Fowler, CA 93625	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
or								
Employer identification number								
7	7	0	5	8	4	7	9	0

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶ 	Date ▶ 02/07/09
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Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



CERTIFICATE OF LIABILITY INSURANCE

OP ID DC
DWEDU-1

DATE (MM/DD/YYYY)

04/05/10

PRODUCER C.D. Simonian Insurance Agency P. O. Box 370 Fowler CA 93625-0370 Phone: 559-834-5333 Fax: 559-834-2626	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED DW Educational Research Inc. 116 S. 7th Street Fowler CA 93625	INSURER A: CNA - Commercial	12890
	INSURER D: Eagle West Insurance Company	
	INSURER C: Oak River Insurance Company	
	INSURER E:	
	INSURER F:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDITIONAL INSURED	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	B 2084534444	11/25/09	11/25/10	EACH OCCURRENCE	\$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 4,000,000
						PRODUCTS - COMP/OP AGG	\$ 4,000,000
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	81 BAP 2 1238690	01/04/10	01/04/11	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY - EA ACC	\$
						AGG	\$
A		EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	B 2095920642	11/25/09	11/25/10	EACH OCCURRENCE	\$ 4,000,000
						AGGREGATE	\$ 4,000,000
							\$
							\$
		DEDUCTIBLE RETENTION \$10,000					\$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	2200017685-101	01/01/10	01/01/11	W/ STATUTORY LIMITS E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						F.I. DISEASE - POLICY LIMIT	\$ 1,000,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Certificate holder named as "Additional Insured" on the General Liability Policy as per form SB-300120A attached.

CERTIFICATE HOLDER MTDA-1 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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE:
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SB-300120-A
(Ed. 01/06)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

SCHEDULE*

Name Of Person Or Organization:	MT. DIABLO UNIFIED SCHOOL DISTRICT 1936 CARLOTTA DRIVE CONCORD, CA 94519
* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.	

The following is added to Paragraph C. Who Is An Insured:

- 4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations performed for that insured.

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Mount Diablo Unified School District 2010-2011 School Year Contract

Date of Contract: June 9, 2010	P.O#
Name of School: Mount Diablo High	Name of District: Mount Diablo USD
Address: 2450 Grant St. Concord, CA 94520	Address: 1936 Carlotta Dr. Concord, CA 94519
Telephone #: 925-682-4030	Telephone: 925-682-8000
Fax #: 925-687-9658	Fax #:
Principal: Cheryl LeBeouf Contact:	Contact Person: Jennifer Sachs Assistant Director of Curriculum and Instruction Spooqmai Habibi-Curriculum Specialist
Email: lebeoufc@mdusd.k12.ca.us	Email: sachsj@mdusd.k12.ca.us habibis@mdusd.k12.ca.us

Send of contract to School

Send contract to District

This is a contract between **Mount Diablo Unified School District** and **DataWORKS Educational Research** for the following services:

Contract #3206

Training:	Purpose:	Comments:	Job#:	Presenter: <small>(subject to change)</small>	Cost:
1. Explicit Direct Instruction Workshop	The Explicit Direct Instruction workshop is a two day staff development in effective lesson design and delivery that have imbedded English Learner strategies. Administrators must attend to learn what the teachers are learning and to support effective and ongoing implementation.	Date: 8/23/10 Audience Qty: approx. 100 teachers and 10 administrators. Location: Mt. Diablo High School Time: 8:00 a.m.-3:00 p.m.	11731	Silvia Ybarra	\$4,500/day Total cost for 1 day is: \$4,500
2. EDI Lesson Plan Feedback	After EDI training, a DataWORKS researcher meets with teachers to write EDI lessons. Subs will be required so teachers can be pulled out work in groups by content area.	Date: Six days TBD Audience Qty: TBD Time: 8:00 a.m.-3:00 p.m.	11732	TBD	\$3,500/day Management approved \$500 discount per day Total cost for 6 days x \$3,000 is: \$18,000

When students learn more, test scores *SOAR!*

<p>3. EDI Classroom Coaching</p>	<p>After lessons have been written, a DataWORKS Researcher will:</p> <ul style="list-style-type: none"> • Provide in-situational coaching while teachers teach their EDI lessons. • Train principals and coaches in coaching techniques. 	<p>Date: TBD Six days TBD Audience Qty: TBD Time: 8:00 am- 3:00 pm</p>	<p>11733</p>	<p>TBD</p>	<p>\$3,500/day Management approved \$500 discount per day Total cost for 6 days x \$3,000 is: \$18,000</p>
<p>4. Instructional Effectiveness Classroom Walks</p>	<p>A DataWORKS consultant trains Administrators and coaches how to make 5-minute Instructional Effectiveness classroom walks. The visitations collect information on implementation of researched-based EDI practices and are used to provide in-situational feedback to teachers.</p>	<p>Date: One day TBD Audience Qty: Administrators, Coaches, and Leadership Team Location: Classrooms Time: 8:00 am- 3:00 pm</p>	<p>11734</p>	<p>TBD</p>	<p>\$4,500/day Management approved \$1000 discount per day Total cost for day is: \$3,500</p>

Total: \$44,000.00

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 MSB
- 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 _____

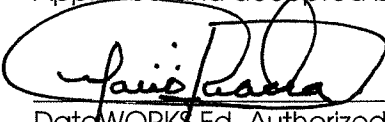
For the most effective group setting, DataWORKS has found that workshops with less than 50 attendees internalize and implement a greater amount of information over larger group settings.

The cost for these services will be **\$44,000.00 (expenses included)**. 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. Within 30 days of the presentation, 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: 6-09-10

Mario J Cuadra-General Manager

Print Name and Title

 6-15-10

School/District Authorized Signature: Date:

Cheryl A. LeBeauf

Print Name and Title