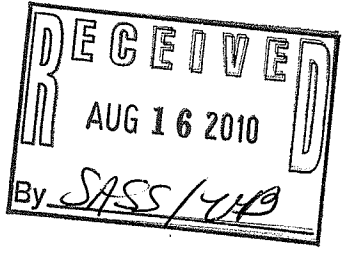


Purchase Requisition # R61065

**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 20 day of July, 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.

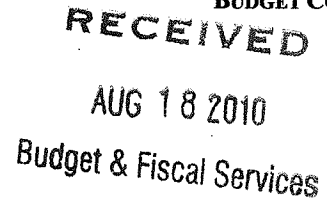
2. Compensation. District agrees to compensate Contractor for the performance of the Services on the following basis:

\$ 22,000.00 total fee for Services

000 - 3064 - 10 - 5800 = 9,009.08  
 000 - 3695 - 36 - 5800 = 14,990.92  
 BUDGET CODE = 22,000.00

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 7/20/2010. 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,

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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:

DataWorks  
Intellectual  
Property  
No

DISTRICT  
Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519-1397  
Attn: Superintendent

CONTRACTOR  
Name: DataWORKS Educational Research  
Address: 116 S. 7th Street  
Fowler, CA 93625  
Phone: 1 (800) 485-1550  
Fax: email: info@dataworks-ed.com  
Tax ID #: 77-0584790

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 # R61065

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: Melinda Hall 8/9/2010  
Budget Administrator Date

By: [Signature] 8/2/2010  
Date

Title: Director Personnel

Title: General Manager

Authorized by: [Signature] 8/16/10  
Assistant or Associate Superintendent Date

Approved: [Signature]  
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.

Melinda Hall 8/17/2010  
Administrator's Signature Date

OK

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

Melinda Hall  
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>

**LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR**

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DataWORKS will provide Sun Terrace Elementary with the following services: two days Explicit Direct Instruction Workshop on August 20, 2010 and second day to be determined. Two days of Demonstration Lessons and Interactive Classroom Coaching-dates to be determined and three days of Lesson Design and Lesson Coaching-dates to be determined.

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Services of Contractor arranged by

Melinda Hall  
Signature

\_\_\_\_\_  
Department / School

**Mount Diablo Unified School District**  
2010-2011 School Year Contract

Date of Contract: August 2, 2010	P.O.#
Name of School: Sun Terrace Elementary	Name of District: Mount Diablo USD
Address: 2448 Floyd Lane Concord, CA 94520	Address: 1936 Carlotta Dr. Concord, CA 94519
Telephone #: 925-682-4861	Telephone: 925-682-8000
Fax #:	Fax #:
Principal: Felicia Stuckey-Smith Contact:	Contact Person: Jennifer Sachs-Assist. Director of Curriculum and Instruction Melinda Hall-Director Curriculum and Instruction
Email: <a href="mailto:smithf@mdusd.k12.ca.us">smithf@mdusd.k12.ca.us</a>	Email: <a href="mailto:sachsji@mdusd.k12.ca.us">sachsji@mdusd.k12.ca.us</a> <a href="mailto:hallm@mdusd.k12.ca.us">hallm@mdusd.k12.ca.us</a>

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 #3256**

Training:	Purpose:	Comments:	Job#:	Presenter: <small>(subject to change)</small>	Cost:
<b>Explicit Direct Instruction Workshop</b>	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.	Dates: 8/20/10 Second date TBD  Audience Qty: 25 teachers  Location: Sun Terrace ES  Time: 8:00 a.m.-3:00 p.m.	11945	TBD	<b>1 day \$4,500/day</b>  <b>2<sup>nd</sup> day will be done as two afternoon sessions on shortened days.</b>  <b>If the 2 afternoon sessions are done currently with a site coaching day, then there is no cost.</b>  <b>Total cost for 1 day is: \$4,500</b>

<p><b>Demonstration Lessons and Interactive Classroom Coaching</b></p>	<p><b>Demonstration Lessons.</b> DataWORKS consultants teach sample EDI lessons with students while teachers observe. <b>Interactive Coaching.</b> Teachers then teach the same lesson to their students while receiving interactive, real-time coaching. Each session includes pre-briefing and debriefing collaboration to discuss the lesson and the student interaction. Teachers not scheduled to teach are scheduled to observe so all teachers participate.</p>	<p>Dates: 2 days TBD Audience Qty: TBD Time: 8:00 a.m.-1:00 p.m. Demo lessons in the morning. (EDI training in the afternoon after school on a shortened day.)</p>	<p>11946</p>	<p>TBD</p>	<p><b>2 days</b> <b>\$3,500/day</b>          <b>Total cost for 2 days is: \$7,000</b></p>
<p><b>Lesson Design and Lesson Coaching</b></p>	<p><b>Lesson Design Feedback.</b> DataWORKS trains teachers to write EDI lessons. (Teachers are scheduled using roving subs.) <b>Interactive Classroom Coaching.</b> DataWORKS provides Interactive Coaching while teachers teach their EDI lessons. <b>Implementation:</b> Teachers develop their own collaboration time to practice developing lessons and providing interactive coaching including peer coaching.</p>	<p>Date: 3 days TBD Audience Qty: TBD Time: 8:00 am- 3:00 pm</p>	<p>11947</p>	<p>TBD</p>	<p><b>3 days</b> <b>\$3,500/day</b>          <b>Total cost for 3 days is: \$10,500</b></p>

**Total: \$22,000.00**

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 MLH
- 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 **\$22,000.00 (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: August 2, 2010

Mario J Cuadra-General Manager  
\_\_\_\_\_  
Print Name and Title

  
\_\_\_\_\_  
School/District Authorized Signature: Date: 8/10/2010

Melinda Hall - Director Personnel  
\_\_\_\_\_  
Print Name and Title