

SEP 04 2014

MDUSD RECEIVED

SEP 05 2014

Budget & Fiscal Services



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 2nd day of August, by and between the Mt. Diablo Unified School District (hereinafter "District") and Mary Phalon (hereinafter "Contractor").

District hereby engages Contractor to render 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 and transportation 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 only with the written approval of the District.
- (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:

Not to exceed \$ 40,000 for Services 235 - 3935 - 40 - 5800 \$ 20,000 <sup>5,000.00</sup>

The basis of the fee for Services shall be as follow 235 - 3665 - 40 - 5800 \$ 20,000

a. \$ \_\_\_\_\_ per hour, 235 - 3935 - 40 - 5100 \$ 15,000.00

b. \$ \_\_\_\_\_ per day, or

c. \$ \_\_\_\_\_ per engagement.

BUDGET CODE(S)

Check One:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- 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 8/28/2014. 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, 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.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of California 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. To the extent Education Code §45125.1 is applicable, 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. Contractor shall provide the certification document attached hereto as Exhibit \_\_\_\_ prior to commencing work under this Agreement.
6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District 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 hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
8. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. **EXCEPTION:** Contracts of less than \$5,000 need only provide general liability insurance of \$1,000,000 per occurrence.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability/Errors & Omissions Liability,** if applicable: \$1,000,000 per occurrence.

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Purchase Requisition # R81535

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status**

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

**Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

**INSURANCE REQUIREMENTS**

No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance section 8 are hereby waived or modified as follows:

Limits: Waiver of Comm. Auto Ins  
Other: \_\_\_\_\_

The initials of the Superintendent, or his/her designee, and the General Counsel, are **required** to waive or modify any Insurance requirements in this Agreement:

RL Superintendent      JMS General Counsel

- 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:

DISTRICT

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

CONTRACTOR

Name: Mary Phalon  
Attn: \_\_\_\_\_  
Address: PO Box 3464  
walnut creek, CA 94598  
Phone: 925-876-9407  
Fax: \_\_\_\_\_  
Tax ID #: 032-46-2715

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 next business day 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 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 as awarded by a court of competent jurisdiction, 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

By: [Signature] 8/28/14  
 Signature of Principal/Budget Administrator Date

Title: April Bush  
 Print Name and Title

Name of Company/Organization or Independent Contractor/Consultant

By: Mary Phalon 8/22/14  
 Signature of Contractor/Consultant Date

Title: Mary Phalon support counselor  
 Print Name and Title

Authorized and Approved by:

[Signature] 9/8/14  
 Superintendent or Designee Date

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

Originator's Signature 8/28/14  
 Date

April Bush Principal  
 Print Name of Originator and Title

Foothill Middle  
 Site/Department Originating this Contract

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

Foothill PFA City of Walnut Creek  
2775 Cedro Lane and 1666 N. Main St.  
Walnut Creek 94598 Walnut Creek 94594

\*ATT: Margot Ernst

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

## EXHIBIT B

### *Contractor REQUIRED to Complete*

## CRIMINAL BACKGROUND CHECK CERTIFICATION

**Mt. Diablo Unified School District**  
**Consultant/Independent Contractor Agreement - Criminal Background Check**

Name of Independent Consultant/Contractor:	Mary Phalon
Services to be performed under the Agreement:	Counseling Services
Schools/Locations where services will be performed:	Foothill Middle
Total amount to be paid by the District under this Agreement:	\$ 20,000
Term of Agreement:	8/28/2014 6/11/2015
<b><i>Check the applicable box(es) and fill in any blanks.</i></b>	
1	I certify that none of my employees, nor myself, will have more than limited contact (as defined by the District) with District students during the term of the Agreement. Therefore, we have not been fingerprinted.
2A	<input checked="" type="checkbox"/> If this box is checked, then Box 2B also applies and must be checked to indicate these employees have been fingerprinted. The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed):
2B	<input checked="" type="checkbox"/> I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of these employees have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Certification by Contractor/Consultant

"I certify that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately."

<p style="font-size: 1.2em; font-family: cursive;">Mary Phalon 8/22/14</p> <p>_____ Independent Contractor/Consultant Signature</p> <p style="font-size: 1.2em; font-family: cursive;">Mary Phalon 8/22/14</p> <p>_____ Print Name Date Independent Contractor/Consultant</p>	<p style="font-size: 1.2em; font-family: cursive;">Rose Lock 9/8/14</p> <p>_____ Superintendent or Designee's Signature</p> <p style="font-size: 1.2em; font-family: cursive;">Rose Lock 9/8/14</p> <p>_____ Print Name Date Superintendent or Designee's Signature</p>
---	---

## **EXHIBIT A**

### **LIST OF SERVICES, INCLUDING DATE(S), TO BE PERFORMED BY CONTRACTOR**

**IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE  
AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE**

Mary will work with administrators, teachers and other professional staff to support student academic success. Students can be referred to Mary by administrators teachers, staff or the students may request to see her. Mary will also be available for Parent Ed. nights as needed.

Quarterly invoices are to be sent to the City of Walnut Creek, not to exceed \$20,000.00

The Foothill PFA will reimburse the district monthly.

**Certificate of Insurance (Proof of Coverage) Date Issued: 9/3/2014**

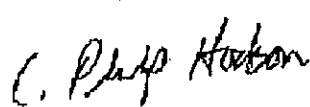
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

<b>Insured Name and Mailing Address*</b>	<b>Program Administrator</b>
Mary Ellen Phalon  P.O. Box 3464 Walnut Creek, CA 94598	Administered By: CPH and Associates 711 S. Dearborn, Suite 205 Chicago, IL 60605 P. 312-987-9823 F. 312-987-0902 info@ephins.com
<i>*Additional insured locations are often requested by individual business owners who have more than one office. Your coverage is portable, meaning that you are covered at any location for practice under the occupation(s) listed on your policy.</i>	Underwritten By: Philadelphia Indemnity Insurance Company

Coverage		
Policy #: PHCPE105362	Effective Date: 05/20/2014	Expiration Date: 05/20/2015
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.		

Limits of Liability		Coverage Part
EACH OCCURRENCE <i>(Per individual claim)</i>	AGGREGATE <i>(Total amount per policy year)</i>	
\$1 million	\$5 million	Professional Liability
\$1,000,000	\$3,000,000	Commercial General Liability Includes: General Liability, Fire & Water Legal Liability, and Personal Liability
N/A	N/A	Property Coverage
\$1 million	\$5 million	Supplemental Liability
Unlimited	Unlimited	Defense Expense Coverage
\$35,000	\$35,000	State Licensing Board Investigation Defense Coverage
\$15,000	\$15,000	Assault Coverage
\$10,000	\$35,000	Deposition Expense Benefit
\$5,000/person	\$50,000	Medical Expense Coverage
\$15,000	\$15,000	First Aid Coverage

Description/Special Provisions:

Certificate Holder	
MDUSD 1936 Carlotta Drive Concord, CA 94515	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
Holder has also been added to the policy as an additional insured:** <u>  X  </u> Yes/ <u>  </u> No  **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).	Authorized Representative    C. Philip Hodson

**DISCLAIMER:** The 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.



September 9, 2014

Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519

Attention: Rose Lock, Assistant Superintendent

RE: Independent Contractor - Auto Insurance Waiver

Dear Mrs. Lock,

This letter is a request for a waiver for the Auto Liability requirements for independent contractors. I am currently a support counselor at Foothill Middle School as an independent contractor. I understand the auto liability requirements for contractors and I am requesting this waiver as I live less than one-half of a mile from school and, as a result, there is no need for me to drive to the site.

Thank you for your consideration and bringing this to general counsel on my behalf.

Sincerely,

A handwritten signature in cursive script that reads "Mary Phalon".

Mary Phalon, LMFT

925 322 9305