

HCBS COMPLIANCE AGREEMENT

Vendor #: HB0903/HB0960; Service Code 505

Mt. Diablo Adult Education (Adult Education Division of Mt. Diablo USD)

This HCBS Compliance Agreement (this “**Agreement**”), dated for reference purposes as of June 30, 2018, is entered into by and between Regional Center of the East Bay, Inc., a California nonprofit public benefit corporation (“**RCEB**”), and *Mt. Diablo Adult Education* (“**Contractor**”). RCEB and Contractor are sometimes collectively referred to herein as the “**Parties**”. The Parties enter into this Agreement with reference to the following facts:

A. RCEB provides services to individuals with developmental disabilities (the “**People Receiving Services**”). RCEB operates under a contract with the State of California Department of Developmental Services (“**DDS**”).

B. Contractor provides services and supports in home and community-based settings (“**Home and Community-Based Services**” or “**HCBS**”) to certain of the People Receiving Services from RCEB.

C. Effective March 17, 2014, the federal Centers for Medicare & Medicaid Services (“**CMS**”) adopted new HCBS rules and regulations (collectively, the “**Final Rule**”) for long-term services and supports provided by service providers to people with developmental disabilities in home and community-based settings, as recognized under the federal Medicaid Program. The Final Rule defines home and community-based settings, and requires homes and programs where HCBS are delivered to meet such new criteria to qualify for federal funding through the Medicaid Waiver Program.

D. Generally, HCBS settings must (i) be integrated in and facilitate an individual’s full access to the greater community; (ii) optimize an individual’s autonomy and independence in making life choices; (iii) be chosen by the individual from among residential and day options, including non-disability specific settings; (iv) ensure the right to the individual’s privacy, dignity, respect and freedom from coercion and restraint; (v) provide each individual an option to choose a private unit in a residential setting; and (vi) facilitate an individual’s choice of services and who provides them.

E. Contractor has submitted a proposal to RCEB to develop specified compliance training procedures, programs and/or activities, and/or to make other changes in its operations and programs, to meet the requirements of the Final Rule (collectively, the “**Project**”). Based on funding approval RCEB has received from DDS, RCEB desires to engage Contractor to implement the Project.

NOW THEREFORE, on the basis of the foregoing recitals and in consideration of the following mutual covenants, the Parties agree as follows:

1. TERM OF THE AGREEMENT. Subject to the provisions for earlier termination or rescission as provided herein, the term of this Agreement shall commence on June 30, 2018, and terminate on June 30, 2020. However, Contractor must complete all components of the Project, and submit requests for reimbursement of such costs, by not later than **March 31, 2020**.

2. SCOPE OF WORK; PROJECT MILESTONES; BUDGET.

2.1 Scope of Work. Contractor's detailed scope of work for the performance of the Project is attached hereto as Exhibit "A" (the "**Scope of Work**"). The Scope of Work contains and describes the following:

2.1.1 The specific procedures, programs and/or activities, and/or other changes in its operations and programs, Contractor intends to implement to complete the Project;

2.1.2 The methodology Contractor will use to expend the funds it receives under this Agreement to implement the Project and to otherwise increase its compliance with the Final Rule; and

2.1.3 The methodology Contractor will use to obtain and incorporate input from the People Receiving Services in the development and implementation of the Project.

2.2 The Project Milestones. Contractor shall perform the various components of the Scope of Work by the applicable deadlines noted on Exhibit "B" attached hereto (the "**Project Milestones**"). The Project Milestones are objective indicators to measure Contractor's progress toward compliance with the Final Rule. RCEB's payment of the Compensation (defined in Section 4.1 below) is conditioned on Contractor's timely completion of the Scope of Work by the deadlines in the Project Milestones, as well as Contractor's compliance with the other provisions in this Agreement.

2.3 The Budget. Contractor's detailed budget for the Project is attached hereto as Exhibit "C" (the "**Budget**"). Contractor shall use its best efforts to ensure its actual cost to perform each aspect of the Scope of Work, as noted on the Project Milestones, does not exceed such line item in the Budget. RCEB's approval of the Budget does not guarantee payment of the Compensation. Any changes to the approved Budget that are requested by Contractor requires prior approval from RCEB. RCEB may request or require changes to the Budget at any time during this Agreement. For projects involving the purchase of items or services, the Budget must include justification (e.g., multiple quotes) of the cost-effectiveness of the items/services.

3. DOCUMENTATION; PERIODIC AND FINAL REPORTS

3.1 Progress Reports. During the term of this Agreement, Contractor shall submit quarterly written progress reports to RCEB's HCBS Specialist, commencing on the third month of this Agreement). Each report shall contain the following information: projected time lines for the completion of the Project, including progress related to the Project Milestones; progress status for each component of the Scope of Work; any difficulties encountered during the reporting period; remedial action taken; requests for any additional time which will be needed to accomplish a task as a result of unforeseen events; and a statement of activity anticipated during the subsequent reporting period.

3.2 Meetings. Contractor shall meet with RCEB regularly, as well as any other time on three business days' notice from RCEB, to review development of the Project, in addition to the progress reports noted in Section 3.1 above.

3.3 Final Report. Contractor shall submit a final report to RCEB by the earlier of (i) the end of the month following the month of completion of the Project, (ii) or April 30, 2020.

4. COMPENSATION

4.1 RCEB agrees to remit funds to Contractor in consideration for the Contractor's completion of the Project, payable in installments as Contractor satisfies each Project Milestone. The total amount of funds payable by RCEB to Contractor under this Agreement shall not exceed **Twenty-eight thousand, five hundred twelve and 28 cents Dollars (\$ 28,511.28)** (the "Compensation"). Contractor acknowledges that the Compensation will not cover all of Contractor's expenses relating to the Project, and that any additional funds, if needed, must be provided by the Contractor in order for it to complete the Project. The Compensation is available for reimbursement to Contractor only through March 31, 2020; thereafter, RCEB must return all unused funds to the State of California.

4.2 RCEB's payment to Contractor of the Compensation shall be the sole compensation for all of Contractor's expenses incurred in the performance of the Project. The Compensation constitutes a one-time commitment by RCEB to assist Contractor with transitioning into compliance with the Final Rule. Thus, for example, RCEB will not provide any continuation funding to Contractor for hiring additional staff needed to comply with the Final Rule.

4.3 RCEB's payment to Contractor is conditioned on Contractor's compliance with the claim submission procedures in Section 5 below.

4.4 This is not a negotiated rate agreement. Rather, DDS has determined and set the approved maximum amount of the Compensation.

5. PAYMENT OF COMPENSATION; CONTRACTOR'S OBLIGATIONS

5.1 Payment of Compensation. Contractor may request and RCEB shall remit the Compensation to Contractor, up to the amount stated in Section 4.1 above, after RCEB's review and approval of Contractor's reports, receipts and other documentation supporting such expenditures, in the form and with content reasonably acceptable to RCEB. Further, RCEB's reimbursement of Project costs will only apply to actual expenditures that assist Contractor in transitioning into compliance with the Final Rule. RCEB will disburse all funds to Contractor in arrears; *provided, however*, on a case-by-case basis RCEB may elect in its sole discretion to remit certain payments of Compensation in advance. In such cases, Contractor shall promptly return such advance payments to RCEB if Contractor subsequently fails to timely provide all receipts and necessary documentation to support such payments.

5.2 Claim Submission Procedure. Each time Contractor satisfies a Project Milestone, Contractor may submit one or more claims based on such completed task; provided, however, the aggregate amount of such claims shall not exceed the Compensation limit in Section 4.1 above. Each claim for Compensation must be consistent with the Budget, the Scope of Work and the applicable Project Milestone relating to such claim. Each claim must be electronically submitted to RCEB. In addition, each claim that falls within any of the following

categories (if applicable, based on the Scope of Work) must comply with the terms and conditions in that category as a condition to RCEB's reimbursement for such expense:

5.2.1 Specialized Equipment, Supplies and Furnishings. If RCEB reimburses Contractor for equipment and program supplies (including computers and related equipment), or specialized/durable and other furnishings, Contractor's documentation for payment of such items must include (1) an itemized account of all items to be reimbursed, (2) proof of receipt of the approved items purchased (the receipts must clearly state the item purchased, and Contractor must handwrite the item on the receipt if unclear) and (3) multiple quotes or another objective justification for the cost-effectiveness of each purchase.

5.2.2 Remodeling of Residential Facility. If RCEB reimburses Contractor for the cost to remodel a residential facility, the facility modifications must be related to furthering compliance with the Final Rule. Further, prior to construction, Contractor must submit to RCEB, for its prior approval, a set of plans and at least two itemized bids for the proposed work. All bids shall be from contractors who are insured and bonded, and have a contractor's license that is active and in good standing with the Contractors State License Board. All modifications which require a building permit must be completed with a building permit. Documentation to be submitted by the Contractor to RCEB for payment of modifications must include: (1) approved plans (stamped by the governmental entity as approved, as applicable); (2) all necessary itemized bids, as approved by RCEB; (3) evidence of payment of permit fees; (4) invoices from architects, engineers, contractors, as applicable; (5) cancelled checks related to such invoices, evidencing payment by Contractor; (6) receipts for material purchased by Contractor not listed on an invoice; (7) invoices from subcontractors, if any, for work not covered in a contractor's invoice; (8) evidence of payment of inspections fees from the Fire Marshall, if any; (9) applicable executed mechanic's lien waivers and releases.

5.2.3 Vehicles. If RCEB reimburses Contractor for the cost to acquire, maintain and/or insure specialized vehicles for the transportation of People Receiving Services, Contractor's documentation must include: (1) itemized list of vehicles to be reimbursed; (2) copies of all receipts of approved items that have been purchased; and (3) multiple quotes or another objective justification for the cost-effectiveness of each purchase.

5.2.4 Specialized Training. If RCEB reimburses Contractor for specialized training needed to meet the needs of People Receiving Services, Contractor must obtain RCEB's approval prior to attending training sessions in order to be considered for reimbursement. Registration/admission fees and other costs Contractor incurs for attending such training (i.e. lodging, airfare, etc.) may be reimbursed by RCEB on a case-by-case basis, if RCEB approves such costs in advance. Documentation to be submitted by Contractor to RCEB must include: (1) trainer's flyer or other document describing the training; (2) proof of paid registration; and (3) receipts for any other costs associated with attending the training.

5.2.5 Employee Wages and Benefits. If RCEB reimburses Contractor for its employees' wages and benefits, including wages and benefits for Contractor's staff, Contractor must provide adequate documentation for such costs.

5.2.6 Office Space. If RCEB reimburses Contractor for its cost to rent office space, Contractor must provide the fully executed lease and other adequate documentation for such costs. To the extent Contractor requests reimbursement for the cost to remodel such office space, the provisions in Section 5.2.2 above (“Remodeling of Residential Facility”) shall apply to such office space remodel.

5.2.7 Meetings; Travel Expenses. If RCEB reimburses Contractor for mileage to and from a State Developmental Center and/or other highly restrictive settings for the purpose of individual transition planning for People Receiving Services, RCEB must pre-approve such costs, including lodging, airfare, mileage, etc. RCEB shall only approve such costs when it is necessary to visit specific People Receiving Services and/or programs and when the expense for lodging and airfare is directly related to the development of the Project. Documentation to be submitted by the Contractor to RCEB must include: (1) itemized list of costs associated with each travel, including lodging, airfare, mileage, etc.; and (2) receipts of costs associated to such travel which have been approved by RCEB. RCEB will reimburse approved mileage at the current IRS reimbursement rate in effect at the time the mileage expense was incurred.

5.3 Consequence of Contractor’s Failure to Satisfy Requirements. Contractor’s failure to complete any of the Scope of Work by the applicable deadlines noted in the Project Milestones shall constitute Contractor’s default under this Agreement. Notwithstanding the foregoing, if Contractor’s failure to complete the Scope of Work is due solely to RCEB’s refusal or failure to timely approve an item submitted by Contractor in good faith, then RCEB’s refusal or failure to approve such submittal by the applicable milestone deadline shall, at RCEB’s option, constitute the failure of a contingency under this Agreement. Upon the failure of a contingency, this Agreement shall be rescinded, and neither party shall have any further rights or obligations to the other, except for those obligations that are intended to survive such rescission (such as, for example, Contractor’s obligation to return Compensation to RCEB as provided in Paragraph 11.3 below).

5.4 RCEB’s Review of Documents and Disbursement of Funds. RCEB will endeavor to review all documents provided by Contractor within ten working days of receipt, including receipts for purchases. After RCEB approves Contractor’s documentation for each applicable claim described above, RCEB shall send an authorization for payment to its accounting department. RCEB accounting department shall remit payment to Contractor within 30 days of receipt of all required documentation.

5.5 Expenditures in Accordance with Agreement. RCEB has no obligation to reimburse Contractor for any expenditure that exceeds the Budget line item for such expenditure, that is not described in the Scope of Work, or that is otherwise not in accordance with this Agreement.

6. MONITORING BY RCEB. RCEB reserves the right to monitor Contractor’s progress under this Agreement. As part of such monitoring, RCEB may at any time (1) perform site inspections at any facility owned or leased by Contractor, (2) determine whether Contractor’s performance complies with State law and applicable regulations, and (3) determine

whether RCEB's expenditure of funds pursuant to this Agreement is within its program priorities, allowable expenditures and appropriate allocations.

7. CONTRACTOR'S RECORDS; INSPECTION AND AUDIT RIGHTS

7.1 Contractor agrees to maintain and make available to RCEB accurate books, invoices, receipts, and accounting records relative to its costs and expenses, to the extent and in such detail as will properly reflect all of Contractor's direct and indirect net costs of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which Contractor requests funds from RCEB under this Agreement. The books and records shall indicate the relationship of the applicable expense to the Scope of Work.

7.2 Contractor shall also maintain and make available to RCEB all books, records, documents, and other evidence pertaining to all income and services relating to and connected with the performance of this Agreement at all times during the Agreement. Contractor agrees to hold RCEB harmless from any administrative or legal actions occurring because of the failure of the Contractor to maintain personnel records and practices in accordance with the provisions of this Agreement and state or federal laws.

7.3 All of the books, records and other documents described in this Section 7 are hereinafter referred to as Contractor's "**Records.**" Contractor will permit RCEB and any authorized agency representative to audit, examine and make excerpts, reproductions and transcripts from the Records with respect to related to all matters covered by this Agreement. Contractor shall maintain its Records in an accessible location and condition for a period of not less than five years after the end of the term of this Agreement or until after RCEB resolves its final audit of the Contractor, whichever is later. However, Contractor's Records that relate to litigation or the settlement of claims arising out of the performance of this Agreement shall be retained by Contractor until disposition of such appeal, litigation, claim, or exception.

7.4 RCEB shall conduct all audits in accordance with the provisions of Section 50606 of Title 17 of the CCR. Contractor shall be bound by Section 50700, *et seq.*, of Title 17 of the CCR should Contractor elect to appeal any audit finding or recommendation.

7.5 Contractor shall accept financial liability for any and all audit findings and/or recommendations disclosed by any audit and promptly repay amounts owed; provided, however, during such period as Contractor may appeal such findings and/or recommendations so that collection is stayed pursuant to CCR Title 17, Section 50705, Contractor shall have the rights and obligations as set forth in such regulations.

7.6 Subject to RCEB's audit and inspection rights as described herein, Contractor shall maintain the confidentiality of records of People Receiving Services in accordance with the provisions of Welfare and Institutions Code §§ 4514, 5328, and 14100.2. Contractor and all of its employees shall respect the confidentiality of all information they receive about the People Receiving Services.

7.7 All Parties shall at all times remain in compliance with the mandatory provisions of the HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A & E).

7.8 Contractor's Reviews and Audits. This Section shall only apply if all payments Contractor cumulatively receives from RCEB and other regional centers during Contractor's fiscal year equals or exceeds Five Hundred Thousand Dollars (\$500,000).

7.8.1 Contractor shall, at Contractor's cost, cause an independent Certified Public Accountant to (1) annually audit or review Contractor's financial statements and (2) provide a copy of each annual audit results (the "**Audit Report**") or review results (the "**Review Report**") to RCEB. If the cumulative payments Contractor receives from RCEB and all other regional centers is less than Two Million Dollars (\$2 Million) in Contractor's fiscal year, Contractor may conduct a review and provide a Review Report to RCEB rather than an Audit Report; otherwise, Contractor shall conduct an audit and provide an Audit Report to RCEB.

7.8.2 If Contractor engages an independent Certified Public Accountant to review (but not audit) Contractor's financial statements, (1) the review shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(e) and (2) the Review Report shall, at minimum, comply with the provisions set forth in WIC Section 4652.5(f).

7.8.3 Contractor shall commence the independent audit or review within 120 days after the end of Contractor's fiscal year. Contractor shall complete the audit or review within nine (9) months after the end of Contractor's fiscal year.

7.8.4 In accordance with WIC Section 4652.5(b), Contractor shall provide copies of the independent Audit Report or Review Report to RCEB within 30 days after completion of the audit or review. Contractor shall provide copies of the independent Audit Report or Review Report and accompanying management letters to RCEB no later than nine months after Contractor's fiscal year end date or calendar year end date, pursuant to WIC Section 4652.5(b).

7.8.5 If RCEB believes that any issues identified in the Audit Report or Review Report have an impact on services Contractor provides to People Receiving Services, RCEB will so notify Contractor and provide Contractor with 30 days to resolve such issues. Contractor's failure to resolve such issues to RCEB's reasonable satisfaction within such 30 day period shall constitute a material breach of this Agreement. As a result of such breach, RCEB may, among its other remedies, terminate this Agreement.

7.8.6 If RCEB does not find any issues in Contractor's prior year Audit Report or Review Report, Contractor may apply, in writing, to RCEB for a two-year exemption from the independent Audit Report or Review Report.

7.9 The State of California, and any federal agency having an interest in the subject of this Agreement, shall have the same rights as conferred upon RCEB by this Section 7.

8. VENDOR STATUS. Contractor must comply with all RCEB vendorization requirements and must obtain and preserve its vendor status at all times during the term of this Agreement.

9. OFFICIALS NOT TO BENEFIT. No member of or delegate to the U.S. Congress or the State Legislature shall be entitled to any share or part of this Agreement, or to any benefit that may arise there from, except as otherwise allowed by law.

10. NONDISCRIMINATION IN SERVICES, BENEFITS, FACILITIES AND PROGRAMS

10.1 During the performance of this Agreement, Contractor shall not deny the Agreement's benefit to any person on the basis of religion, color, ethnic group identification, sex, sexual orientation, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

10.2 Contractor shall at all times comply with the provisions of the California Fair Employment and Housing Act (Government Code, Section 12900 and following), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 and following), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code, entitled "Discrimination" (Government Code, Section 11135 and following) and the regulations and standards adopted thereunder.

10.3 Contractor shall permit access to its Records and other books, accounts, sources of information, and its offices, by RCEB, representatives of the Department of Fair Employment and Housing and other applicable state agencies, upon reasonable notice and at any time during the normal business hours, but in no case less than 24 hours' notice (unless otherwise permitted by law), to insure Contractor's compliance with the terms of this Section 10.

10.4 Contractor shall give written notice of its obligations, where applicable, under this Section 10 to labor organizations with which it has a collective bargaining or other agreement.

10.5 Contractor shall include the nondiscrimination and other provisions of this Section 10 in all subcontracts to perform work under this Agreement (to the extent such subcontracts are allowed under this Agreement).

10.6 By its signature on this Agreement, Contractor swears under penalty of perjury that either (i) it has never been out of compliance with an order of the Federal National Labor Relations Board; or (ii) no more than one final non-appealable finding of contempt of court by a federal court has been issued against Contractor within the two-year period immediately preceding the date of this Agreement because of Contractor's failure to comply with a federal court order that Contractor comply with an order of a Federal National Labor Relations Board. RCEB may rescind this Agreement if Contractor falsely swears to the truth of the above statement.

10.7 If Contractor does not comply with the discrimination provisions of this Agreement or with any similar federal rule, regulation, or order, RCEB shall have the right and option to cancel, terminate, or suspend this Agreement in whole or in part, in which event

Contractor may be declared ineligible for further RCEB and State contracts, to the extent provided by law.

11. TERMINATION

11.1 Contractor's Default; Cure Notice; RCEB's Right to Terminate. RCEB shall have the right to suspend or terminate this Agreement for cause upon Contractor's breach of this Agreement. Contractor shall be deemed in breach of this Agreement if Contractor defaults in the performance of any of its obligations herein and fails to cure the default within 15 days after RCEB's delivery of notice to do so. Contractor's defaults include, but are not limited to, the following:

11.1.1 Contractor's failure or refusal to perform or do any act herein required.

11.1.2 Contractor's failure to perform any portion of the Scope of Work by any of the applicable deadlines noted on the Project Milestones.

11.1.3 Evidence of Contractor's or its agents', employees' or subcontractors' unsafe or hazardous practice in the provision of services or performance under this Agreement.

11.1.4 Contractor's loss of any license(s), accreditation(s), or certification(s) required for the lawful operation of its business or facilities.

11.1.5 Contractor's failure to maintain practices consistent with good management, such as, but not limited to: (a) failure to make payments of payroll tax and contribution payments; and (b) failure to adhere to established accounting and fiscal practices designed to meet its other regular financial obligations.

11.2 Contractor's Automatic Breach. Any misconduct by Contractor or its agents, employees or consultants that results in an imminent threat to the health and/or safety of People Receiving Services shall be deemed an automatic and material breach of this Agreement. Elements which may constitute imminent threat to the health and safety of People Receiving Services consist in part, but are not limited to: physical, emotional, or mental abuse, sexual misconduct, abandonment or neglect of People Receiving Services, theft of money or property of People Receiving Services, violation of the rights under the law of People Receiving Services, placing People Receiving Services in physical danger, or any other circumstance that may bring physical or emotional harm to the People Receiving Services. In this particular situation, (1) Contractor's default shall be noncurable, (2) RCEB shall not have any obligation to provide a 15-day cure notice (or any cure notice) and (3) Contractor shall be deemed in breach of this Agreement.

11.3 Contractor's Return of Compensation to RCEB. Contractor acknowledges that it is receiving Compensation to assist in timely completing the Project. As such, Contractor further acknowledges that the Compensation is not deemed earned by Contractor until the full completion of all components of the Scope of Work. Thus, if this Agreement terminates or is rescinded before Contractor completes the Project for any reason whatsoever (other than as noted

in Section 11.4 below, entitled, “Exceptions”), then Contractor shall immediately refund to RCEB 100 percent of the Compensation that Contractor has received through the date of such termination or rescission. If a refund of Compensation is due to RCEB, Contractor agrees that RCEB shall have the right and option to recover the Compensation by offsetting any Purchase of Service payments due to Contractor for services provided under any other agreement between the Parties. After the Contractor timely returns the applicable Compensation to RCEB, the Contractor shall be entitled to maintain ownership of all materials and supplies, modifications, and other assets purchased with funds from the Compensation, including but not limited to furnishings and equipment, office equipment and vehicles. If, and only if, Contractor timely refunds all of the Compensation to RCEB, RCEB shall waive its right to recover consequential damages and punitive damages arising out of Contractor’s breach of this Agreement, whether arising out of contract or tort.

11.4 Exceptions. Notwithstanding the provisions in Section 11.3, the Contractor shall not be required to refund Compensation if Contractor ceases performing its obligations under this Agreement due to one of the following events:

11.4.1 RCEB is in material breach of this Agreement after notice and the expiration of all applicable cure periods; or

11.4.2 The failure of a Funding Contingency (as defined in Section 12 of this Agreement) during the term of this Agreement causes RCEB to cease remitting Compensation that is otherwise due to Contractor.

11.5 RCEB’s Breach; Contractor’s Remedies. RCEB shall be deemed in breach of this Agreement if RCEB defaults in the performance of any of its obligations herein and fails to cure the default within 30 days after Contractor’s delivery of notice to do so; provided, however, if the default is nonmonetary, such time period shall be extended until RCEB cures the default, as long as RCEB commences such cure within such 30-day period and diligently pursue such cure until completion. In any event, Contractor hereby waives its right to recover consequential damages, lost profits and punitive damages arising out of RCEB’s breach of this Agreement, whether based in contract or tort.

12. TERMINATION OR MODIFICATION RESULTING FROM FAILURE OF FUNDING CONTINGENCY

12.1 Notwithstanding anything in this Agreement to the contrary, the validity of this Agreement (including RCEB’s obligation to remit payments to Contractor) is conditioned on RCEB’s receipt of adequate funds from DDS to pay for the services described in this Agreement (the “**Funding Contingency**”). The Funding Contingency is a part of this Agreement because RCEB’s annual funding agreement with DDS provide that such funding agreements are subject to the appropriation of funds by the Legislature, and that if such funds are not appropriated for any fiscal year into which such funding agreements extends, the funding agreements are of no force and effect. RCEB shall therefore have the right and option to terminate this Agreement without liability, and such termination shall be deemed a failure of the Funding Contingency, if (1) DDS for any reason fails to deliver funds to RCEB for any period covered by this Agreement or (2) RCEB receives funds from DDS for a period covered by this

Agreement but determines that such funds are inadequate to pay for all of the vendor services and other expenses which RCEB expects to incur in such fiscal year, and therefore elects to fund other services rather than the services identified in this Agreement or (3) RCEB receives funds from DDS for a period covered by this Agreement and initially allocates a portion of such funds for the services in this Agreement, but thereafter elects to reallocate some or all of such DDS funds to fund services other than the services in this Agreement. When insufficient funds exist for RCEB to pay for all potential services, RCEB shall have the right (under clauses (2) and (3) above) in its sole and arbitrary discretion to fund services other than the services identified in this Agreement, based on which services RCEB believes are in its best interests and the best interests of its clients as a whole. If there is a failure of the Funding Contingency, then (1) RCEB shall have no liability to pay any further funds whatsoever to Contractor or to furnish any other considerations under this Agreement and (2) neither party shall be obligated to further perform any provisions of this Agreement.

12.2 In addition to the above, if there are insufficient funds available from DDS to pay for all of Contractor's services and other expenses that RCEB expects to incur in any fiscal year, as determined by RCEB in its sole and arbitrary discretion, RCEB shall have the option at any time, on 30 days' notice to Contractor, to reduce or change the scope of services being provided under this Agreement. In such event, RCEB and Contractor will in good faith negotiate to attempt to agree on Contractor's new amount of Compensation under the modified Agreement. If the Parties are unable to agree on Contractor's new amount of Compensation for its modified services within such 30 day period, RCEB shall then either (1) terminate this Agreement, because of the failure of a Funding Contingency or (2) rescind its modification of Contractor's services, in which event this Agreement shall continue in full force and effect without such modification in services or compensation.

12.3 If this Agreement terminates as a result of the failure of a Funding Contingency, Contractor shall repay any unused or unexpended Compensation to RCEB.

13. COMPLIANCE WITH LAWS.

13.1 Knowledge of the Final Rule. Contractor represents and warrants that it has read and is familiar with the Final Rule, including but not limited to: (i) 42 Code of Federal Regulations ("CFR") Part 441, Subpart G (HCBS: Waiver Requirements); and (ii) 42 CFR Part 441, Subpart M (State Plan HCBS for the Elderly and Individuals with Disabilities), including 42 CFR §441.710 of Subpart M in particular (which describes the qualities of HCBS and non-HCBS settings). A summary of key provisions in Section 441.710 is located on the Internet at: <http://www.aucd.org/docs/policy/HCBS/references/requirements-for-home-and-community-settings.pdf>

13.2 Applicable Law. Contractor shall render all services in accordance with the applicable provisions of federal and California laws, including the Final Rule, Welfare and Institutions Code §§ 4500 *et seq.* and regulations promulgated thereunder including Title 17 of the CCR, commencing at § 50201 *et seq.* The terms of this Agreement shall not be construed to excuse compliance with existing statutes or regulations. Contractor shall at all times comply with contract requirements and Service Provider Accountability Regulations, including 17 CCR §§ 50601 through 50612.

13.3 Amendments by Law. Any provision of this Agreement in conflict with statutes or regulations is hereby amended to conform to the provisions of these statutes and regulations. Such amendment of the Agreement shall be binding on the Parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the Parties. RCEB shall endeavor in good faith to notify Contractor upon its gaining notice of any amendment or new law which would affect this Agreement.

13.4 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstance

14. RCEB'S ZERO TOLERANCE POLICY. RCEB has adopted a Zero Tolerance Policy for Consumer Abuse or Neglect (the "**Zero Tolerance Policy**"). The policy is posted on RCEB's website under "Board Policies" at: <http://www.rceb.org/sites/main/files/file-attachments/zerotolerancepolicy.pdf>. The Zero Tolerance Policy is incorporated herein by this reference. Contractor shall comply with the Zero Tolerance Policy at all times.

15. INDEPENDENT CONTRACTOR

15.1 Contractor and its agents and employees, in performance of this Agreement, shall act in an independent capacity in the performance of this Agreement and not as officers or employees or agents of RCEB or DDS.

15.2 Contractor shall be wholly responsible for the manner in which Contractor and its employees perform the services required of Contractor by the terms of this Agreement.

15.3 Contractor agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Social Security withholdings and all other regulations governing such matters.

15.4 Contractor shall not be, or in any manner represent, imply or hold itself out to be an agent, partner or representative of RCEB. Contractor has no right or authority to assume or create in writing or otherwise any obligation of any kind, express or implied, for or on behalf of RCEB. The business to be operated by Contractor pursuant to this Agreement is separate and apart from the business operated by RCEB. The only relationship between Contractor and RCEB is that of independent contractors and neither shall be responsible for any obligations, liabilities, or expenses of the other, or any act or omission of the other, except as expressly set forth herein.

16. ASSIGNMENT AND SUBCONTRACTING

16.1 Contractor shall not subcontract with any other entity or individual to perform the services described in this Agreement. However, the following are allowed, and are not considered subcontracts: licensed contractors who may make physical modifications to a facility, and technical assistance providers who may provide staff training or general business advice to the Contractor. Contractor shall not assign its interest in this Agreement, voluntarily or by operation of law, without the prior written approval of the Director of RCEB, which may be

withheld in his or her sole and absolute discretion. The experience, skill, knowledge, good judgment, discretion, capability, and reputation of Contractor, its principals, officers, directors, owners, and employees were a substantial inducement for RCEB to enter into this Agreement. If Contractor is an entity, the assignment by Contractor of 25% or more of the voting interests in such entity shall constitute an assignment for which Contractor must obtain RCEB's consent.

16.2 RCEB shall not be responsible for any payments of any kind directly to any subcontractors under any circumstance and shall not have any liability for any actions of any subcontractors.

17. TIME OF THE ESSENCE. Contractor agrees to work diligently on the tasks and obligations described herein to completion. Thus, time is of the essence with respect to Contractor's performance of all of its obligations hereunder. Further, large gaps of time without progress seriously compromise the completion of the Project. Thus, to ensure progress, Contractor must submit regular updates and otherwise strictly meet each of the Project Milestone deadlines set forth in this Agreement.

18. COOPERATION. Contractor shall at all times fully cooperate with RCEB to effect the purposes of this Agreement. Thus, for example, Contractor will return as soon as possible all documents submitted by RCEB which may be required by state or federal laws or regulations, including but not limited to the IRS W-9 form.

19. INDEMNITY AND HOLD HARMLESS AGREEMENT.

19.1 Contractor's Indemnity.

19.1.1 Contractor agrees to indemnify, defend, and hold harmless RCEB, DDS the State of California and their respective officers, agent, and employees (collectively, the "RCEB Indemnitees") from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any act, neglect, default, or omissions of Contractor or of any person, or entity performing any services in connection with this Agreement on behalf of Contractor; and

(b) Claims under workers' compensation laws or other employee benefit laws by Contractor's agents or employees; and

(c) Contractor's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including Contractor's breach of any representations or covenants given in this Agreement; and

(d) A violation of any local, state, or federal law, regulation or code by Contractor or by any of Contractor's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

19.1.2 Contractor at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against the

RCEB Indemnitees or any of them on any such claim or demand as set forth above. Contractor shall defend such matter by counsel reasonably satisfactory to RCEB. The RCEB Indemnitees need not have first paid any such claim in order to be so indemnified. Contractor shall also pay and satisfy any settlement, or any judgment which may be rendered against the RCEB Indemnitees or any of them arising from any injuries described in this Section 19.1 including, but not limited to, those claims and demands resulting from the negligence of the RCEB Indemnitees or any of them; provided, however, Contractor shall have no duty to indemnify any particular RCEB Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of such RCEB Indemnitee.

19.2 RCEB's Indemnity.

19.2.1 RCEB agrees to indemnify, defend, and hold harmless Contractor and its respective officers and employees (collectively, the “**Contractor Indemnitees**”) from every claim or demand made by reason of:

(a) Any personal injury or property damage sustained by any person, or entity, caused by or resulting from any gross negligence of RCEB or of any person, or entity performing any services in connection with this Agreement on behalf of RCEB; and

(b) RCEB's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including RCEB's breach of any representations or covenants given in this Agreement; and

(c) A violation of any local, state, or federal law, regulation or code by RCEB or by any of RCEB's employees, agents, consultants, or subcontractors in connection with the conduct of their activities performed in connection with this Agreement.

19.2.2 RCEB at his own expense and risk, shall defend any action, legal proceeding, arbitration, or other mediation proceeding, that may be brought against the Contractor Indemnitees or any of them on any such claim or demand as set forth above. RCEB shall defend such matter by counsel reasonably satisfactory to Contractor. The Contractor Indemnitees need not have first paid any such claim in order to be so indemnified. RCEB shall also pay and satisfy any settlement, or any judgment which may be rendered against the Contractor Indemnitees or any of them arising from any injuries described in this Section 19.2; provided, however, RCEB shall only have a duty to indemnify any particular Contractor Indemnitee for those injuries caused to Contractor or a third party by the gross negligence of RCEB or its officers, agents, or employees.

19.3 Survival. The indemnities set forth in this Section 19 shall apply during the term of this Agreement and shall also survive the expiration, rescission, or termination of this Agreement, until such time as action against the RCEB Indemnitees and the Contractor Indemnitees on account of any matter covered by each such indemnity is barred by the applicable statute of limitations.

20. INSURANCE

20.1 Contractor shall at all times during the term of the Agreement maintain policies of insurance issued by insurance companies qualified to conduct business in California and insuring against the perils of bodily injury, personal injury, malpractice, and property damage, including owned, non-owned, and hired auto coverage. Contractor shall maintain such insurance with a limit of liability of at least One Million Dollars (\$1,000,000) per occurrence. Contractor also agrees to maintain Worker's Compensation with Employers' Liability insurance in a sum not less than One Million Dollars (\$1,000,000) each occurrence. The company issuing Contractor's commercial general liability policy shall be rated at least A- and X at all times in the most recent edition of Best's Insurance Guide. At all times during the term of this Agreement, Contractor shall name RCEB as an additional insured on Contractor's liability insurance policy.

20.2 Upon the commencement of this Agreement, Contractor shall supply RCEB the following: certificates of insurance evidencing coverage in amounts and for the perils listed above (and also showing RCEB as an additional insured) that lists the address of any residential care facility for People Receiving Services, the policy number, the effective date, and the expiration date of each policy.

20.3 All insurance policies shall be endorsed to provide 30 days advance written notice of to RCEB of any cancellation, non-renewable or reduction in coverage, mailed to RCEB at its address for notice set forth in this Agreement.

21. COPYRIGHTS AND PATENTS. To the extent any services or work performed by the Contractor under this Agreement results in the invention or development of copyrightable materials, the State of California has the right to freely manufacture, reproduce, publish, use and/or distribute all inventions and copyrightable materials which were developed by or for the Contractor using funds provided by the State of California. To the extent applicable, Section 14 of Article I of the Regional Center Master Contract between RCEB and the State of California is incorporated herein by this reference.

22. APPLICANT/VENDOR DS1891 DISCLOSURE (17 CCR §54311). Contractor represents and warrants that it has completed and signed the State Department of Health and Human Service's Applicant/Vendor Disclosure Statement ("**DS1891 Form**") and submitted such form to RCEB. Contractor shall submit a new signed and dated DS1891 Form to RCEB within 30 days of any change in the information previously submitted pursuant to this paragraph or upon written request by RCEB for such information.

23. ARBITRATION; VENUE; CALIFORNIA LAW. Any controversy, claim, or dispute arising out of this Agreement, or modification thereof, or the relationship between the Parties hereto shall be governed by the laws of California and settled by binding arbitration in Alameda County, California, in accordance with the rules then obtaining of the American Arbitration Association for commercial arbitration. This Agreement is entered into in California and shall be interpreted according to its laws. California shall be the exclusive jurisdiction for all legal or administrative proceedings hereunder. Code of Civil Procedure Section 1283.05, which allows for discovery in arbitration, is incorporated herein by this reference.

24. WAIVER. No waiver of a breach of any provision of this Agreement by RCEB shall constitute a waiver of any other breach of such provision. Failure of RCEB to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. No custom or practice which may develop between the Parties in the course of administering this Agreement will be construed to waive any party's right to insist upon the performance by the other party of any obligation in this Agreement. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

25. NOTICES. Any notices or payments required or permitted under this Agreement shall be in writing and shall be sufficiently given if either delivered in person or mailed by a nationally recognized overnight mail carrier or certified or registered mail, postage prepaid, to the Parties at such address set forth below, or to another address as each Party (by notice to the other, given in the manner described above), may designate from time to time. All notices shall also be concurrently emailed to the recipient. Any written document will be deemed delivered either (i) on the day of the delivery in person, (ii) the next business day if delivered by overnight carrier or (iii) two business days after the mailing of such document by certified or registered mail. All notices, requests and demands shall be delivered to the following addresses:

RCEB:

Contractor:

Name : _____

Title : _____

Regional Center of the East Bay
500 Davis Street, Suite 100
San Leandro, CA 94577
Phone: _____
Email: _____

Name : _____
Title: Agency: Mt. Diablo Adult
Education a division of the Mt.
Diablo USD
Address: Loma Vista Adult Center
1266 San Carlos Ave.
Concord, CA 94518
Phone: (925) 685-7340
Email: lingenfelterk@mdusd.org

26. JOINT AND SEVERAL LIABILITY. If Contractor consists of multiple individuals and/or entities, each such individual and entity shall be jointly and severally liable for all of Contractor's obligations under the Agreement including, but not limited to, Contractor's obligation to repay the Compensation upon the early termination or rescission of this Agreement.

27. ATTORNEYS' FEES. If any action or proceeding is commenced to enforce any provision or right under this Agreement, the unsuccessful party to such action or proceeding, as determined by the Arbitrator, or other tribunal in the event that Arbitration is waived or deemed waived by all Parties, shall pay the prevailing party all costs, expenses, and reasonable attorneys' fees incurred by such party and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included as part of such judgment.

28. AUTHORITY TO SIGN. All Parties executing this Agreement acknowledge and warrant that they possess the authority to enter into this Agreement on behalf of their respective companies/organizations.

29. CONTRACTOR AS ENTITY; FINANCIAL STATEMENT. Contractor shall provide a copy of its most recent financial statement to RCEB upon Contractor's execution of this Agreement.

30. ENTIRE AGREEMENT. This Agreement (including Exhibits "A", "B" and "C", which are incorporated herein by this reference) constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes all prior agreements, representations, and understandings of the Parties, either oral or written regarding the subject matter hereof. Although the parties may also enter into one or more separate service provider agreements under which Contractor will provide continuing care services to People Receiving Services, nothing herein shall be construed to obligate RCEB to enter into such agreements.

31. AMENDMENTS. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties. The execution of any amendment or modification to this Agreement shall comply with the requirements of applicable statutes, regulations, and provisions of RCEB's contract with DDS.

32. INTERPRETATION. The section headings in no way define, limit, extend, or interpret the scope of this Agreement or any particular paragraph, and the masculine, feminine or neutral gender and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

33. COUNTERPARTS; ELECTRONIC COPIES. This Agreement may be executed in counterparts, each which shall be deemed an original and all of which shall constitute a single instrument. Signed copies of this Agreement delivered by fax or in a PDF email file shall be deemed the same as originals.

Executed at San Leandro, California, as of the first the date set forth above.

RCEB:

Regional Center of the East Bay, a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

CONTRACTOR:

[Mt. Diablo Adult Education a division of the Mt. Diablo USD Concord, California]

By: _____
Name: _____
Title: _____

EXHIBIT A

Scope of Work

This project will include hiring a new instructor to do community outreach to employers and provide job development and coaching for clients/students who desire Competitive Integrated Employment. This request is based on non-compliance with Federal Requirement #1: providing options for clients who seek paid employment.

Currently the programs provide vocational training through small group volunteer activities in the community. There are no additional funds in the budget to provide individualized services to help students transition to work.

When clients express an interest in employment, they are referred to Department of Rehabilitation and/or a supported employment program. Unfortunately, most programs have a wait list which delays any forward movement for the client.

The Job Developer will be able to assess interests, skills, and abilities to create an employment plan with each student. They will work closely with RCEB, Department of Rehab. and family or other supportive individuals to successful transition the student to Competitive Integrated Employment.

Through the development of a marketing/outreach plan, they will create relationships with local businesses and organizations to bridge successful employment.

In addition, they will provide disability awareness training as needed to facilitate a smooth transition for students/clients.

EXHIBIT B

Project Milestones

NOTE TO DRAFTER: Complete all information before executing this Agreement

Description of Milestone	Projected Cost	Deadline for Completion	How it will be Measured
Develop and post job on EdJoin, Craigslist and Indeed	\$75.00	7/2/18	Confirmation of job posting
Interviews and hiring procedures (e.g. fingerprinting, etc.)	\$1,217.88	8/10/18	Successful hiring of Job Developer
Orientation and training	\$665.46	8/17/18	Successful completion of mandatory orientation, training and observations.
Schedule meetings with students who are seeking employment assistance and conduct assessments as appropriate. Meet with students, case managers, DOR and family members (as appropriate) to develop an employment plan.	\$2,661.84	9/14/18	Submit assessments and student employment plans to Program Coordinator for review.
Continue with student meetings and develop marketing/outreach plan for job development.	\$1,330.92	9/28/18	Submission of plan to Program Coordinator for approval
Placement of two students in competitive integrated employment with job coaching assistance as needed.	\$5,989.14	12/1/18	Successful employment of students in an integrated setting at a competitive rate.

Placement of two students in competitive integrated employment with job coaching assistance as needed.	\$5,323.68	2/1/18	Successful employment of students in an integrated setting at a competitive rate.
Placement of two students in competitive integrated employment with job coaching assistance as needed.	\$5,323.68	4/1/18	Successful employment of students in an integrated setting at a competitive rate.
Placement of two students in competitive integrated employment with job coaching assistance as needed.	\$5,323.68	6/1/18	Successful employment of students in an integrated setting at a competitive rate.
Traveling expenses 8/20/18 – 6/30/19	\$600.00	6/30/19	Submission of mileage claim forms
TOTAL	\$28,511.28		

EXHIBIT C

Budget

Budget for Instructor/Job Developer for Life Skills (HB0962) and TOPS (HB0903)

July 1, 2018 – June 30, 2019

Salary:

18 hrs. per week

\$36.97 per hour (includes employer payroll deductions)

$18 \times \$36.97 = \mathbf{\$665.46}$ per week

42 weeks per year

$\$665.46 \times 42 = \$27,949.32$

Total staff cost for 8/13/18– 6/30/19 = \$27,949.32

Estimated mileage for outreach and coaching:

25 miles per week

MDUSD mileage rate = \$0.535

$25 \times \$0.535 = \13.38 per week

42 (weeks) x \$13.38 = \$561.96

TOTAL BUDGET: \$28,511.28