

SHADY CREEK OUTDOOR SCHOOL AND EVENT CENTER



Billing and Reservations:
970 Klamath Lane, Yuba City, CA 95993
(530) 822-2949 - (530) 822-3039 Fax

Shannon Cueva, Director

Camp Address:

18601 Pathfinder Way, Nevada City, CA 95959
(530) 292-3436 - (530) 292-3538 Fax



TO: Shady Creek Participating Schools
Teachers and Principals

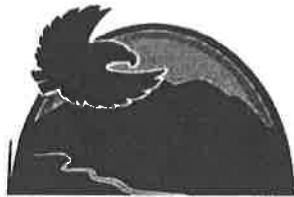
FROM: Shannon Cueva, Director

DATE: July 1, 2018

RE: Contract, Schedule, Nurses, and Details

1. Your contract and schedule are attached. Please carefully review your scheduled week and projected student attendance. If you anticipate **any** change in student attendance please call us immediately. Please download all necessary forms, including t-shirt order form at Shadycreek.org. **Please do not use prior year forms, information and pricing may have changed and we want to be sure you have current information.**
2. The fee for the 2018/2019 Shady Creek Program will be \$250.00 for a five-day week or \$229.00 if you are on a scheduled four-day week.
3. **Changes in the number of students expected to attend Shady Creek should be communicated as soon as possible. After 90 days prior to arrival at Shady Creek schools will be charged a minimum of 90% of their contracted number.**
4. State regulations involving student medications make it necessary for a nurse to be on site during your week at Shady Creek. If your district is the designated Administrator for the week, it is your responsibility to secure and fingerprint the nurse. The providing district will receive a \$500.00 credit on their final invoice. **Please check the schedule to determine if your district is the weekly administrator. If so, begin planning now.** If you are having difficulty finding a nurse, please call Monica Ramos for the names of nurses who may be able to go with your district.
5. Student and teacher feedback on Eco Quest, our pre/post student curriculum books, has been excellent. Kids love it, and they are learning. An added plus is that Eco Quest is very teacher friendly. They can be ordered at your planning session meeting or by calling Monica Ramos at (530) 822-2949. The cost is \$3.25 per booklet.
6. 2018/2019 Benefit Tickets will be available through the Shady Creek Outdoor Education Foundation. Please call Daria Ali at (530) 933-0907 if you are interested in participating. Ticket sales not only help kids raise money to attend Shady Creek, they also generate funds for the Shady Creek Foundation, which in turn offers scholarships and grants to schools and students.

The Shady Creek Outdoor Education Foundation will be holding their annual **"Friends and Family Day" at Shady Creek on September 8, 2018.** This is a wonderful opportunity for parents to come and see the facility, meet the staff, and participate in hikes and tours to understand the magic of Shady Creek.



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970 Klamath Lane, Yuba City, CA 95993
(530) 822-2949 - (530) 822-3038 Fax

Camp Address:
18601 Pathfinder Way, Nevada City, CA 95959
(530) 822-2470 - (530) 292-3538 Fax

Shannon Cueva, Director

Fall 2018
Revised 6/13/18

The following schedule is based on anticipated attendance from the schools participating in the Shady Creek Program.
If there is a change in your estimated attendance, please call our office immediately.

Week No.	School(s)	Pupils	Grade	Administrator/Nurse
Wk 1 Sept. 24 - 28	Manzanita (40) Foothill (65) Yuba Feather (13) Dobbins (3) Lincoln Montessori (14)	135	5, 6	Manzanita
Wk 2 Oct 2 - 5 4-Day Week	Alder Creek Middle School	185	6	Alder Creek
Wk 3 Oct 8 - 12	Plumas Ave. (46) Sierra Ave. (60) Poplar Ave. (48)	154	5	Thermalito Unified
Wk 4 Oct. 15 - 19	St. Isidore (22) Notre Dame (25) St. Thomas (21) LOMS (100)	188	5, 6	St. Isidore
Wk 5 Oct. 22 - 27	Riverbend (73) Barry (83) King (62)	188	5	YCUSD
Wk 6 Oct. 30- Nov. 2 4-Day Week	Coppin (70) First Street (70) Sheridan (7)	147	5	Coppin
Wk 7 Nov 5 - 9	Lincrest (123) Twin Rivers Charter (50) Robbins (17)	190	5	Lincrest
Wk 8 Nov 13 - 16 4-Day Week	Bridge (66) Park (60)	166	5	YCUSD
November 19 - 23				
Thanksgiving Break				
Wk 9 November 26 - 30	Lone Tree (60) Bear River (85) Robie (65)	200	5, 6	Lone Tree
TOTAL:		1633		

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(530) 292-3436 - (530) 292-3538 Fax



Shannon Cueva, Director

BILLING TO:

Foothill Intermediate
5351 Fruitland Road
Marysville, CA 95901
Attention: Principal

DATE: July 1, 2018

INVOICE: 19-0015

Shady Creek Outdoor School Program Fall 2018 - First Installment

TOTAL CHARGES:		participants	@	\$	229.00	4-day	\$	-
	65	participants	@	\$	250.00	5-day	\$	16,250.00
						Total		<u>\$16,250.00</u>

First Installment 50%

Total Due: \$ 8,125.00

Payment Due September 1, 2018

MAKE CHECKS PAYABLE TO: SUTTER COUNTY SCHOOLS OFFICE

Please return check to: Shady Creek Outdoor School, Attn. Monica Ramos
970 Klamath Ln., Yuba City, CA 95993

SHADY CREEK OUTDOOR SCHOOL PROGRAM
Management Services Provided By
SUTTER COUNTY SUPERINTENDENT OF SCHOOLS OFFICE
Dr. Baljinder Dhillon, Superintendent
970 Klamath Lane, Yuba City, CA 95993
(530) 822-2949

ENVIRONMENTAL EDUCATION AGREEMENT 2018/2019

THIS AGREEMENT ("Agreement") is entered into between the Sutter County Superintendent of Schools ("Superintendent") Foothill Intermediate ("District"). Collectively Superintendent and District shall be referred to as "Parties."

WHEREAS, Superintendent owns an outdoor education facility known as Shady Creek Outdoor School ("Shady Creek"), which is located at 18601 Pathfinder Way, Nevada City, CA, and thereon operates the Shady Creek Outdoor School Program ("Program"), an outdoor educational program for the benefit of public school students; and

WHEREAS, District desires its students to participate in the Program and stay at Shady Creek on the terms and conditions set forth in this Agreement.

The Parties agree as follows:

1. **Participation Fee:** District will participate in the Shady Creek Outdoor School Program on the terms and conditions set forth in this agreement. District desires to reserve space for 65 pupils and agrees to pay an amount **equal to \$250.00 per pupil** if scheduled for a five-day week and **\$229.00** per pupil if scheduled for a four-day week to participate in the Shady Creek Program (Participation Fee). *There will be no adjustment to the per pupil fee for students arriving late or leaving early.* This contractual reserved space is based on numbers supplied by your school administrator. If there is a discrepancy with these numbers contact the Shady Creek office immediately. **Final Payment will be due no later than June 15, 2019.**
2. **Deposit.** This Participation Fee shall also cover the cost of lodging, food and recreational activities for the adult participants and cabin counselors provided by the District as required by sections 3 and 4 of this Agreement. District shall pay fifty percent (50%) of the Participation Fee for the number of Students identified in Section 1 as a nonrefundable deposit ("Deposit"). The Deposit shall be received by the Superintendent by ***September 1, 2018 for fall scheduled schools and January 2, 2019 for spring scheduled schools*** to reserve participation in the program. The District shall pay the balance of the Participation Fee once actual attendance is computed and final billing received by District. Final billing will be based on actual Student attendance, but in no event shall be less than Ninety Percent (90%) of the number of Students identified in Section 1.
3. **Adult Participation Requirements.** District shall require the following adult participants, who shall stay at Shady Creek with the Students.
 - a. **Program Coordinator.** District shall designate one Program Coordinator who is responsible for coordinating the District's participation in the Program, including payment of the Participation Fee and coordination of Program activities. The Program Coordinator may be a teacher or administrator otherwise attending the Program. The Program Coordinator shall be responsible for communicating with the Shady

Creek Resident Director or designee to ensure that all requirements of this Agreement have been fulfilled prior to the arrival of the District at Shady Creek.

b. Teachers. District shall provide one teacher for each class of 20 or more Students at no additional cost. Districts with less than 20 students will have a prorated fee for the teachers food and lodging.

c. Administrator: District's attending shall coordinate to provide one administrator for each week Students are in attendance. If more than one district is participating in the Program during the Program Term, Districts shall provide an administrator on a rotating basis. The Shady Creek Director or designee shall be responsible for coordinating the rotation of the Administrator.

d. Nurse. If all Students for the Program Term are from the same District, District shall provide one school nurse or health technician. If more than one district is participating in the Program during the Program Term, Districts shall provide a nurse or health technician on a rotating basis. The Shady Creek Director shall be responsible for coordinating the rotation of the school nurse. The Superintendent will pay the district a \$500.00 stipend for providing a School Nurse or a \$360.00 stipend for providing a Health Technician.

It is understood that small districts may wish to combine pupils or classes and jointly provide the required instructional and administrative personnel. The Program Coordinator for the District shall work with the Shady Creek Resident Director to confirm that adequate adult supervision is available in the event the District wishes to combine classes or supervision with another participating district.

4. Cabin Counselors. In addition to the adult supervision required in Section 3, District shall provide cabin counselors at a ratio of 1 to 7 for the girls and a ratio of 1 to 9 for the boys and no less than one counselor per cabin and shall establish a selection procedure which ensures competent and responsible counselors. The cabin counselors are not required to be over the age of 18. However, in the event that the cabin counselors are minors, District shall require a parent or guardian of the cabin counselor to sign the release on the counselor health form. Signed release shall be submitted to the Shady Creek Director or designee upon arrival at camp. If you bring additional counselors there will be a fee of ½ the student price for the additional counselors.

5. Transportation. District shall be responsible for providing transportation of all employees, students, counselors and staff to and from Shady Creek.

6. Safety. District shall be solely and completely responsible for the safety of all persons and property during times when District, its employees, volunteers and students access the Shady Creek. District, its employees, volunteers and students shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety, and any rules posted at Shady Creek. Failure of the District, any Student or any other Program participant to comply with this section may result in the District, Student or Program participant being removed from the Program or the District not being allowed to participate in the Program in the future. Superintendent shall not be obligated to refund any Participation Fee to the District in the event any Student or other Program participant is removed from the Program as a result of violating this Section.

7. Health Forms and Waiver of Liability: District shall be responsible for collecting a health form including the Waiver of Liability for each student, counselor, and teacher attending camp and submitting to the Shady Creek Director or designee upon arrival.

8. Indemnity. District agrees to indemnify, defend and hold harmless the Superintendent, its officers, agents and employees, from and against any and all claims and losses whatsoever accruing or resulting in connection with performance of this Agreement, and from all claims and losses accruing or resulting to a person, firm, or corporation for damages, injury or death arising out of or connected with this Agreement and participation in the Program and access to Shady Creek. Without limiting the District's indemnification, the District shall maintain in force at all times while participating in the Program a policy or policies of insurance covering such participation including but not limited to the following coverages, and in the minimum limits of liability as stated herein: Comprehensive general liability, including personal injury in combined single limit of \$1,000,000.00 (one million dollars).

All such policies shall provide an endorsement naming the Superintendent, his officers, agents, employees, *as additional insured*. The above described coverage shall be maintained throughout District's participation in the Program. **District shall file with the Superintendent a certificate of insurance evidencing that the insurance coverage as required herein has been obtained and is currently in effect.**

9. Waiver and Release of Liability. No board member, officer, employee, representative, or agent of Superintendent, shall be personally liable in any manner or to any extent under or in connection with this Agreement District, its employees and participants hereby waive any and all claims of such personal liability.

10. Interpretation. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sutter. The language in all parts of this Agreement shall be in all cases construed as a whole according to their fair meaning and not strictly for or against either the District or Superintendent. Any headings in this Agreement are included only as a matter of convenience and for reference and in no way define the scope or extent of this Agreement or the construction of any provision.

11. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, then the remainder of this Agreement shall not be affected.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall, together, constitute one and the same instrument.

15. Entire Agreement; Amendments. This Agreement and the documents referred to in this Agreement constitutes the entire agreement of the Parties hereto with respect to the matters contained herein, and prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing which is signed by the Parties hereto or their respect successors-in-interest and indicates that it is an amendment of this Agreement. Neither party shall assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the other party.

16. **Authority.** Superintendent has delegated authority to enter into this Agreement with District to the Shady Creek Resident Director.

_____ School District

By: _____
(Authorized signature)

Dated: _____

Sutter County Superintendent of Schools

By: Shannon Cueva
Sutter County Superintendent of Schools

Dated: 5/22/18

NOTE: Please sign and return one copy to Shady Creek Outdoor School, Sutter County Superintendent of Schools by **September 1, 2018.**

The District designates as Program Coordinator:

Name: _____ From: _____
(school or office)

Phone: _____

Please provide us with an email address for further correspondence:

Email: _____

Participating Teachers email address:

SHADY CREEK OUTDOOR SCHOOL AND EVENT CENTER



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(530) 822-2949 - (530) 822-3039 Fax

Camp Address:
18601 Pathfinder Way, Nevada City, CA 95959
(530) 292-3436 - (530) 292-3538 Fax



Shannon Cueva, Director

BILLING TO:

Yuba Feather

P.O. Box 398

Challenge, CA 95925

Attention: Principal

DATE:

July 1, 2018

INVOICE:

19-0016

**Shady Creek Outdoor School Program
Fall 2018 - First Installment**

TOTAL CHARGES:

	participants	@	\$	229.00	4-day	\$	-
13	participants	@	\$	250.00	5-day	\$	3,250.00
					Total		<u>\$3,250.00</u>

First Installment 50%

Total Due:

\$ 1,625.00

Payment Due September 1, 2018

MAKE CHECKS PAYABLE TO: SUTTER COUNTY SCHOOLS OFFICE

Please return check to: Shady Creek Outdoor School, Attn. Monica Ramos
970 Klamath Ln., Yuba City, CA 95993

SHADY CREEK OUTDOOR SCHOOL PROGRAM
Management Services Provided By
SUTTER COUNTY SUPERINTENDENT OF SCHOOLS OFFICE
Dr. Baljinder Dhillon, Superintendent
970 Klamath Lane, Yuba City, CA 95993
(530) 822-2949

ENVIRONMENTAL EDUCATION AGREEMENT 2018/2019

THIS AGREEMENT ("Agreement") is entered into between the Sutter County Superintendent of Schools ("Superintendent") Yuba Feather ("District"). Collectively Superintendent and District shall be referred to as "Parties."

WHEREAS, Superintendent owns an outdoor education facility known as Shady Creek Outdoor School ("Shady Creek"), which is located at 18601 Pathfinder Way, Nevada City, CA, and thereon operates the Shady Creek Outdoor School Program ("Program"), an outdoor educational program for the benefit of public school students; and

WHEREAS, District desires its students to participate in the Program and stay at Shady Creek on the terms and conditions set forth in this Agreement.

The Parties agree as follows:

1. **Participation Fee:** District will participate in the Shady Creek Outdoor School Program on the terms and conditions set forth in this agreement. District desires to reserve space for 13 pupils and agrees to pay an amount **equal to \$250.00 per pupil** if scheduled for a five-day week and **\$229.00** per pupil if scheduled for a four-day week to participate in the Shady Creek Program (Participation Fee). *There will be no adjustment to the per pupil fee for students arriving late or leaving early.* This contractual reserved space is based on numbers supplied by your school administrator. If there is a discrepancy with these numbers contact the Shady Creek office immediately. **Final Payment will be due no later than June 15, 2019.**
2. **Deposit.** This Participation Fee shall also cover the cost of lodging, food and recreational activities for the adult participants and cabin counselors provided by the District as required by sections 3 and 4 of this Agreement. District shall pay fifty percent (50%) of the Participation Fee for the number of Students identified in Section 1 as a nonrefundable deposit ("Deposit"). The Deposit shall be received by the Superintendent by ***September 1, 2018 for fall scheduled schools and January 2, 2019 for spring scheduled schools*** to reserve participation in the program. The District shall pay the balance of the Participation Fee once actual attendance is computed and final billing received by District. Final billing will be based on actual Student attendance, but in no event shall be less than Ninety Percent (90%) of the number of Students identified in Section 1.
3. **Adult Participation Requirements.** District shall require the following adult participants, who shall stay at Shady Creek with the Students.
 - a. **Program Coordinator.** District shall designate one Program Coordinator who is responsible for coordinating the District's participation in the Program, including payment of the Participation Fee and coordination of Program activities. The Program Coordinator may be a teacher or administrator otherwise attending the Program. The Program Coordinator shall be responsible for communicating with the Shady

Creek Resident Director or designee to ensure that all requirements of this Agreement have been fulfilled prior to the arrival of the District at Shady Creek.

b. Teachers. District shall provide one teacher for each class of 20 or more Students at no additional cost. Districts with less than 20 students will have a prorated fee for the teachers food and lodging.

c. Administrator: District's attending shall coordinate to provide one administrator for each week Students are in attendance. If more than one district is participating in the Program during the Program Term, Districts shall provide an administrator on a rotating basis. The Shady Creek Director or designee shall be responsible for coordinating the rotation of the Administrator.

d. Nurse. If all Students for the Program Term are from the same District, District shall provide one school nurse or health technician. If more than one district is participating in the Program during the Program Term, Districts shall provide a nurse or health technician on a rotating basis. The Shady Creek Director shall be responsible for coordinating the rotation of the school nurse. The Superintendent will pay the district a \$500.00 stipend for providing a School Nurse or a \$360.00 stipend for providing a Health Technician.

It is understood that small districts may wish to combine pupils or classes and jointly provide the required instructional and administrative personnel. The Program Coordinator for the District shall work with the Shady Creek Resident Director to confirm that adequate adult supervision is available in the event the District wishes to combine classes or supervision with another participating district.

4. Cabin Counselors. In addition to the adult supervision required in Section 3, District shall provide cabin counselors at a ratio of 1 to 7 for the girls and a ratio of 1 to 9 for the boys and no less than one counselor per cabin and shall establish a selection procedure which ensures competent and responsible counselors. The cabin counselors are not required to be over the age of 18. However, in the event that the cabin counselors are minors, District shall require a parent or guardian of the cabin counselor to sign the release on the counselor health form. Signed release shall be submitted to the Shady Creek Director or designee upon arrival at camp. If you bring additional counselors there will be a fee of ½ the student price for the additional counselors.

5. Transportation. District shall be responsible for providing transportation of all employees, students, counselors and staff to and from Shady Creek.

6. Safety. District shall be solely and completely responsible for the safety of all persons and property during times when District, its employees, volunteers and students access the Shady Creek. District, its employees, volunteers and students shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety, and any rules posted at Shady Creek. Failure of the District, any Student or any other Program participant to comply with this section may result in the District, Student or Program participant being removed from the Program or the District not being allowed to participate in the Program in the future. Superintendent shall not be obligated to refund any Participation Fee to the District in the event any Student or other Program participant is removed from the Program as a result of violating this Section.

7. Health Forms and Waiver of Liability: District shall be responsible for collecting a health form including the Waiver of Liability for each student, counselor, and teacher attending camp and submitting to the Shady Creek Director or designee upon arrival.

8. Indemnity. District agrees to indemnify, defend and hold harmless the Superintendent, its officers, agents and employees, from and against any and all claims and losses whatsoever accruing or resulting in connection with performance of this Agreement, and from all claims and losses accruing or resulting to a person, firm, or corporation for damages, injury or death arising out of or connected with this Agreement and participation in the Program and access to Shady Creek. Without limiting the District's indemnification, the District shall maintain in force at all times while participating in the Program a policy or policies of insurance covering such participation including but not limited to the following coverages, and in the minimum limits of liability as stated herein: Comprehensive general liability, including personal injury in combined single limit of \$1,000,000.00 (one million dollars).

All such policies shall provide an endorsement naming the Superintendent, his officers, agents, employees, **as additional insured.** The above described coverage shall be maintained throughout District's participation in the Program. **District shall file with the Superintendent a certificate of insurance evidencing that the insurance coverage as required herein has been obtained and is currently in effect.**

9. Waiver and Release of Liability. No board member, officer, employee, representative, or agent of Superintendent, shall be personally liable in any manner or to any extent under or in connection with this Agreement District, its employees and participants hereby waive any and all claims of such personal liability.

10. Interpretation. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sutter. The language in all parts of this Agreement shall be in all cases construed as a whole according to their fair meaning and not strictly for or against either the District or Superintendent. Any headings in this Agreement are included only as a matter of convenience and for reference and in no way define the scope or extent of this Agreement or the construction of any provision.

11. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, then the remainder of this Agreement shall not be affected.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall, together, constitute one and the same instrument.

15. Entire Agreement; Amendments. This Agreement and the documents referred to in this Agreement constitutes the entire agreement of the Parties hereto with respect to the matters contained herein, and prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing which is signed by the Parties hereto or their respect successors-in-interest and indicates that it is an amendment of this Agreement. Neither party shall assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the other party.

16. Authority. Superintendent has delegated authority to enter into this Agreement with District to the Shady Creek Resident Director.

_____ School District

By: _____
(Authorized signature)

Dated: _____

Sutter County Superintendent of Schools

By: Shannon Gieva
Sutter County Superintendent of Schools

Dated: 5/22/18

NOTE: Please sign and return one copy to Shady Creek Outdoor School, Sutter County Superintendent of Schools by **September 1, 2018**.

The District designates as Program Coordinator:

Name: _____ From: _____
(school or office)

Phone: _____

Please provide us with an email address for further correspondence:

Email: _____

Participating Teachers email address:

SHADY CREEK OUTDOOR SCHOOL AND EVENT CENTER



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Camp Address:
18601 Pathfinder Way, Nevada City, CA 95959
(530) 292-3436 - (530) 292-3538 Fax



Shannon Cueva, Director

BILLING TO:

Dobbins Elementary

PO Box 129

Dobbins, CA 95935

Attention: Principal

DATE:

July 1, 2018

INVOICE:

19-0017

Shady Creek Outdoor School Program Fall 2018 - First Installment

TOTAL CHARGES:

3	participants	@	\$	229.00	4-day	\$	-
	participants	@	\$	250.00	5-day	\$	750.00
						Total	<u>\$750.00</u>

First Installment 50%

Total Due:

\$ 375.00

Payment Due September 1, 2018

MAKE CHECKS PAYABLE TO: SUTTER COUNTY SCHOOLS OFFICE

Please return check to: Shady Creek Outdoor School, Attn. Monica Ramos
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SHADY CREEK OUTDOOR SCHOOL PROGRAM
Management Services Provided By
SUTTER COUNTY SUPERINTENDENT OF SCHOOLS OFFICE
Dr. Baljinder Dhillon, Superintendent
970 Klamath Lane, Yuba City, CA 95993
(530) 822-2949

ENVIRONMENTAL EDUCATION AGREEMENT 2018/2019

THIS AGREEMENT ("Agreement") is entered into between the Sutter County Superintendent of Schools ("Superintendent") Dobbins Elementary ("District"). Collectively Superintendent and District shall be referred to as "Parties."

WHEREAS, Superintendent owns an outdoor education facility known as Shady Creek Outdoor School ("Shady Creek"), which is located at 18601 Pathfinder Way, Nevada City, CA, and thereon operates the Shady Creek Outdoor School Program ("Program"), an outdoor educational program for the benefit of public school students; and

WHEREAS, District desires its students to participate in the Program and stay at Shady Creek on the terms and conditions set forth in this Agreement.

The Parties agree as follows:

1. **Participation Fee:** District will participate in the Shady Creek Outdoor School Program on the terms and conditions set forth in this agreement. District desires to reserve space for 3 pupils and agrees to pay an amount **equal to \$250.00 per pupil** if scheduled for a five-day week and **\$229.00** per pupil if scheduled for a four-day week to participate in the Shady Creek Program (Participation Fee). *There will be no adjustment to the per pupil fee for students arriving late or leaving early.* This contractual reserved space is based on numbers supplied by your school administrator. If there is a discrepancy with these numbers contact the Shady Creek office immediately. **Final Payment will be due no later than June 15, 2019.**
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a. **Program Coordinator.** District shall designate one Program Coordinator who is responsible for coordinating the District's participation in the Program, including payment of the Participation Fee and coordination of Program activities. The Program Coordinator may be a teacher or administrator otherwise attending the Program. The Program Coordinator shall be responsible for communicating with the Shady

Creek Resident Director or designee to ensure that all requirements of this Agreement have been fulfilled prior to the arrival of the District at Shady Creek.

b. Teachers. District shall provide one teacher for each class of 20 or more Students at no additional cost. Districts with less than 20 students will have a prorated fee for the teachers food and lodging.

c. Administrator: District's attending shall coordinate to provide one administrator for each week Students are in attendance. If more than one district is participating in the Program during the Program Term, Districts shall provide an administrator on a rotating basis. The Shady Creek Director or designee shall be responsible for coordinating the rotation of the Administrator.

d. Nurse. If all Students for the Program Term are from the same District, District shall provide one school nurse or health technician. If more than one district is participating in the Program during the Program Term, Districts shall provide a nurse or health technician on a rotating basis. The Shady Creek Director shall be responsible for coordinating the rotation of the school nurse. The Superintendent will pay the district a \$500.00 stipend for providing a School Nurse or a \$360.00 stipend for providing a Health Technician.

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4. Cabin Counselors. In addition to the adult supervision required in Section 3, District shall provide cabin counselors at a ratio of 1 to 7 for the girls and a ratio of 1 to 9 for the boys and no less than one counselor per cabin and shall establish a selection procedure which ensures competent and responsible counselors. The cabin counselors are not required to be over the age of 18. However, in the event that the cabin counselors are minors, District shall require a parent or guardian of the cabin counselor to sign the release on the counselor health form. Signed release shall be submitted to the Shady Creek Director or designee upon arrival at camp. If you bring additional counselors there will be a fee of ½ the student price for the additional counselors.

5. Transportation. District shall be responsible for providing transportation of all employees, students, counselors and staff to and from Shady Creek.

6. Safety. District shall be solely and completely responsible for the safety of all persons and property during times when District, its employees, volunteers and students access the Shady Creek. District, its employees, volunteers and students shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety, and any rules posted at Shady Creek. Failure of the District, any Student or any other Program participant to comply with this section may result in the District, Student or Program participant being removed from the Program or the District not being allowed to participate in the Program in the future. Superintendent shall not be obligated to refund any Participation Fee to the District in the event any Student or other Program participant is removed from the Program as a result of violating this Section.

7. Health Forms and Waiver of Liability: District shall be responsible for collecting a health form including the Waiver of Liability for each student, counselor, and teacher attending camp and submitting to the Shady Creek Director or designee upon arrival.

8. Indemnity. District agrees to indemnify, defend and hold harmless the Superintendent, its officers, agents and employees, from and against any and all claims and losses whatsoever accruing or resulting in connection with performance of this Agreement, and from all claims and losses accruing or resulting to a person, firm, or corporation for damages, injury or death arising out of or connected with this Agreement and participation in the Program and access to Shady Creek. Without limiting the District's indemnification, the District shall maintain in force at all times while participating in the Program a policy or policies of insurance covering such participation including but not limited to the following coverages, and in the minimum limits of liability as stated herein: Comprehensive general liability, including personal injury in combined single limit of \$1,000,000.00 (one million dollars).

All such policies shall provide an endorsement naming the Superintendent, his officers, agents, employees, **as additional insured**. The above described coverage shall be maintained throughout District's participation in the Program. **District shall file with the Superintendent a certificate of insurance evidencing that the insurance coverage as required herein has been obtained and is currently in effect.**

9. Waiver and Release of Liability. No board member, officer, employee, representative, or agent of Superintendent, shall be personally liable in any manner or to any extent under or in connection with this Agreement District, its employees and participants hereby waive any and all claims of such personal liability.

10. Interpretation. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Sutter. The language in all parts of this Agreement shall be in all cases construed as a whole according to their fair meaning and not strictly for or against either the District or Superintendent. Any headings in this Agreement are included only as a matter of convenience and for reference and in no way define the scope or extent of this Agreement or the construction of any provision.

11. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstance shall be held, to any extent, invalid or unenforceable, then the remainder of this Agreement shall not be affected.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall, together, constitute one and the same instrument.

15. Entire Agreement; Amendments. This Agreement and the documents referred to in this Agreement constitutes the entire agreement of the Parties hereto with respect to the matters contained herein, and prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing which is signed by the Parties hereto or their respect successors-in-interest and indicates that it is an amendment of this Agreement. Neither party shall assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the other party.

16. **Authority.** Superintendent has delegated authority to enter into this Agreement with District to the Shady Creek Resident Director.

_____ School District

By: _____
(Authorized signature)

Dated: _____

Sutter County Superintendent of Schools

By: Shannon Gueva
Sutter County Superintendent of Schools

Dated: 5/22/18

NOTE: Please sign and return one copy to Shady Creek Outdoor School, Sutter County Superintendent of Schools by **September 1, 2018.**

The District designates as Program Coordinator:

Name: _____ From: _____
(school or office)

Phone: _____

Please provide us with an email address for further correspondence:

Email: _____

Participating Teachers email address:



CONTRACT SERVICES AGREEMENT
Cedar Lane – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 7/17/18 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

- 1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.
- 1.2 TERM: This Agreement shall have a term of **2018-2019** commencing from **September 5, 2018 – May 1, 2019**
- 1.3 COMPENSATION:
- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).
 - B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FOURTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.
- 1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: **CONTRACTOR** hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 **SEVERABILITY:** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 **AMENDMENT; MODIFICATION:** No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 **CAPTIONS:** The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 **INCONSISTENCIES OR CONFLICTS:** In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 **COUNTERPARTS:** This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide eight full days of professional development for the certificated staff at Cedar Lane Elementary School to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. Dates are subject to change based on need.

Wednesday, September 5, 2018
Thursday, October 11, 2018
Tuesday, November 6, 2018
Thursday, January 17, 2019
Tuesday, February 5, 2019
Wednesday, March 27, 2019
Monday, April 8, 2019
Wednesday, May 1, 2019



CONTRACT SERVICES AGREEMENT
Olivehurst – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 7/17/18 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 TERM: This Agreement shall have a term of **2018-2019** commencing from **August 29, 2018 – March 1, 2019**

1.3 COMPENSATION:

- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).
- B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: **CONTRACTOR** hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:

- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
- ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

- 6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: _____ *Maria Nielsen*

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide 3 full days of professional development for the certificated staff at Olivehurst Elementary School to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. Dates are subject to change based on need.

Wednesday, August 29, 2018
Thursday, February 28, 2019
Friday, March 1, 2018



CONTRACT SERVICES AGREEMENT
Yuba Gardens – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 7/17/18 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2018-2019** commencing from **September 13, 2018 – March 14, 2019**

1.3 **COMPENSATION:**

- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).
- B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FOURTY FIVE THOUSAND DOLLARS AND NO CENTS (\$45,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that its shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.
- 5.3 **SCOPE OF WAIVER:** No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 *et seq.* and the California False Claims Act, Government Code Section 12650 *et seq.*

6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.

6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____

Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide nine full days of professional development for the certificated staff at Yuba Gardens Intermediate School to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. Dates are subject to change based on need.

Wednesday, September 13, 2018
Tuesday, October 23, 2018
Wednesday, November 7, 2018
Thursday, November 8, 2018
Thursday, November 15, 2018
Wednesday, January 9, 2019
Thursday, January 10, 2019
Monday, March 11, 2019
Wednesday, March 13, 2019
Thursday, March 14, 2019



CONTRACT SERVICES AGREEMENT
South Lindhurst High School – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 7/17/18 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2018-2019** commencing from **September 17, 2018 – May 2, 2019**

1.3 **COMPENSATION:**

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the “Approved Rate Schedule”).

B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **TWENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.
- 5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.8 **SUBCONTRACTING:** CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.9 **DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS:** DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

6.10 **PROHIBITED INTERESTS:** CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.11 **TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Agreement.

6.12 **GOVERNING LAW AND VENUE:** This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.

6.13 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

6.14 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.

6.15 **NO THIRD PARTY BENEFIT:** There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide five full days of professional development for the certificated staff at South Lindhurst High School to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. Dates are subject to change based on need.

Monday, September 17, 2018
Tuesday, November 27, 2018
Tuesday, January 29, 2019
Tuesday, March 7, 2019
Thursday, May 2, 2019



CONTRACT SERVICES AGREEMENT
Marysville High School – Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and entered into on 7/17/18 (hereinafter, the “Effective Date”), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT (“DISTRICT”) and Maria Nielsen with Learning by Design, LCC (hereinafter, “CONTRACTOR”). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit “A”** (hereinafter referred to as the “**Scope of Work**”). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term “Work.” CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 TERM: This Agreement shall have a term of **2018-2019** commencing from **September 26, 2018 – February 7, 2019**

1.3 COMPENSATION:

- A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is see **Exhibit A**. (hereinafter, the “Approved Rate Schedule”).
- B. Section 1.3(A) notwithstanding, CONTRACTOR’s total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **THIRTY FIVE THOUSAND DOLLARS AND NO CENTS (\$35,000.00)** (hereinafter, the “Not-to-Exceed Sum”), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR’s charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR’s performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR’s monthly compensation is a function of hours worked by CONTRACTOR’s personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.
- 5.3 **SCOPE OF WAIVER:** No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

- 6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

- 6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide seven full days of professional development for the certificated staff at Marysville High School to support and build their Professional Learning Community. Certificated staff members will work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. Dates are subject to change based on need.

Thursday, September 27, 2018
Wednesday, October 3, 2018
Thursday, October 4, 2018
Wednesday, January 23, 2019
Thursday, January 24, 2019
Wednesday, February 6, 2019
Thursday, February 7, 2019



CONTRACT SERVICES AGREEMENT
MCAA- Learning By Design, LLC

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into on 7/17/18 (hereinafter, the "Effective Date"), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT ("DISTRICT") and Maria Nielsen with Learning by Design, LCC (hereinafter, "CONTRACTOR"). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Work**"). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "Work." CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 TERM: This Agreement shall have a term of **2018-2019** commencing from **August 30, 2018-April 30, 2019**

1.3 COMPENSATION:

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the "Approved Rate Schedule").

B. Section 1.3(A) notwithstanding, CONTRACTOR's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum **FOURTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00)** (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR's performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 PAYMENT OF COMPENSATION: The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR's monthly compensation is a function of hours worked by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within **THIRTY (30)** calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice.

Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Maria Nielsen with Learning by Design to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;
 - C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

- F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise,

unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 VERIFICATION OF COVERAGE: CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial well-being and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants,

represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.
- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
 - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or

regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
 - i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
 - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
 - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

- 5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon request, all DISTRICT data shall be returned to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 FINGERPRINTING. CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.
- 6.4 DRUG FREE WORKPLACE CERTIFICATION. CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.
- 6.5 FALSE CLAIMS ACT. CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

6.6 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

Learning By Design, LLC
213 South 400 East
Hyrum, UT. 84319

Phone: 435-994-0887

Fax:

Email: marianielsenplc@gmail.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

6.7 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.

6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.

6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

- 6.16 **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 **SEVERABILITY:** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 **AMENDMENT; MODIFICATION:** No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 **CAPTIONS:** The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 **INCONSISTENCIES OR CONFLICTS:** In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.21 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.
- 6.22 **COUNTERPARTS:** This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson
Assistant Superintendent of Business Services

Contractor

By: Maria Nielsen

Name: Maria Nielsen

Title: Owner

Exhibit A
Scope of Work

During the instructional day, Maria Nielsen will provide eight full days of professional development for the certificated staff at MCAA to support and build their Professional Learning Community. This site based training provides consistency for instructional teams in moving to the next level of PLC to implement more intermediate and advanced work, focusing attention to unique needs of the site while continuing to build on their work to prioritize essential standards, create pacing guides for essential standards, and begin designing units of study based on the essential standards. In addition, site administration will be provided coaching and ongoing interaction with an expert in the field. Leadership benefits from one on one assistance and ongoing feedback throughout the process. Dates are subject to change based on need.

Thursday, August 30, 2018
Tuesday, September 25, 2018
Monday, October 22, 2018
Monday, November 26, 2018
Friday, January 18, 2019
Tuesday, February 26, 2019
Tuesday, March 26, 2019
Tuesday, April 30, 2019

High School Textbook/Instructional Materials Adoption

☒ Primary Textbook/Materials ☐ Supplemental Textbook/Materials (Intervention and acceleration Materials Exempt) ☐ Updated Version (previously board approved) ☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: Agricultural Mechanics: Fundamentals and Applications 7th Edition

Author(s): Ray V Herren

Publisher: Cengage Copyright: 2013

ISBN: 978-1-2850-5985-5 Hard Copy Cost: _____

Site Funding Source: Ag Incent + CTE Digital Cost: _____

Grades: 9-12 Projected # of books: 40

Course Title(s): Ag Mechanics 1 Ag Mech No Sum Course Course ID(s): AG0030 CTIAMA

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment ☐ Yes, moderate coverage/alignment (Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair [Signature] Date: 6-6-18

Lindhurst High School Principal [Signature] Date: 6-13-18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

	By Phone	By Email	In Person	
<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person		Date: _____

☐ District School Board Approval Date: _____

Approved by the Board of Trustees at the _____ board meeting.



Request Form for New Course and/or Textbook(s)/Material(s)

- ☐ Change of Text ☐ Add as a Supplement ☐ Existing Textbook/Reordering
[Currently not listed on textbook list]
☒ Text for New Course ☐ English Learners/Comite' Compliance
☐ NEW COURSE: _____

For use beginning with the semester of:

☒ Fall ☐ Spring Year: 2018

This form will provide the Board of Trustees, administration, and teachers an overview of the strengths this proposed textbook(s)/material(s) will support a particular course.

Textbook(s)/Material(s) Title: Agricultural Mechanics: Fundamentals & Applications 7th Edition

Author: Ray V Herren

Publisher: Cengage Learning

Copyright: 2013 Price \$: _____ ISBN #: 9781285058955

School: Marysville High School Teacher/Department Requesting: Amanda Farrah/Ag Department

Funding Source: Ag Incentive/Perkins Grade Level(s): 9-12

Title of Course/Subject: Ag Mechanics 1

Course Description(s) Covered: Intro to Ag Mechanics

Projected number of books to be ordered: 180

Does this textbook(s)/material(s) cover the content standards?

- ☒ Yes, thorough coverage/alignment
☐ Yes, moderate coverage/alignment

Will this textbook(s)/material(s) be used at all MJUSD high school?

☐ Yes ☒ No

If not, why not? LHS is not offering the same course

Has the decision to request this textbook(s)/material(s) been discussed by all MJUSD high schools?

☐ Yes ☒ No

If not, why not? LHS is not offering the same course

Are there sections and/or passages in the textbooks(s)/materials(s) a parent/guardian or student may find objectionable?

☐ Yes ☒ No

If yes, **explain in detail:** Violence: How much? What kind? (Guns, fighting, knives, swords, etc.) / Profanity: (sexual expressions, inappropriate verbiage and/or innuendoes, etc.)

N/A

Please contact Mong Yang (749-6161) if you have any questions or need assistance.

List Major Content Standard(s) Covered:

Example:

Reading/Language Arts -

Gr. 9: Literary Response and Analysis: 3.3, 3.6, 3.10

Writing Strategies: 1.1, 1.5, 1.7, 1.8

History-Social Science -

Grade 12: Principles of American Democracy: 12.1 - #1, #2, #6

Principles of Economics: 12.2 - #2, #3, #8, #10

See attached

No Standards attached

Prerequisites/Guidance Information:

Graduation Requirement:

☐ Yes

☒ No

UC/CSU Credit:

☒ Yes

☐ No

Is this an elective class?

☒ Yes

☐ No

Course Length: 1 Year

Credits: 10.00

Additional comment(s) teacher/department would like to express in support of their decision to choose the proposed textbook(s) or basic learning material(s):

This is the textbook that the majority of CA Intro to Ag Mechanics courses are using.

I hereby verify the textbook(s)/material(s):

- Meets the legal compliance requirements of Education Code Sections 60040-60047
- Supports MJUSD standards for this course
- Meets the intent of Board Policy 6205

Department Chairperson:

Date:

4/19/18

Site:

MHS

Department Chairperson:

Date:

6/6/18

Site:

LHS

Principal Approval:

Date:

6/14/18

Site:

LHS

Principal Approval:

Date:

6/14/18

Site:

MHS

Approval:

Lennie Tate, Executive Director of Educational Services

Date

☐ Approved

☐ Denied

Revised
04/08/16

Please contact Mong Yang (749-6161) if you have any questions or need assistance.

High School Textbook/Instructional Materials Adoption

☒ Primary Textbook/Materials ☐ Supplemental Textbook/Materials (Intervention and acceleration Materials Exempt) ☐ Updated Version (previously board approved) ☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: Leadership: Personal Development and Career Success

Author(s): Cliff Ricketts and John C Ricketts

Publisher: Cengage Copyright: 2011

ISBN: 978-1-3059-5381-9 Hard Copy Cost: _____

Site Funding Source: Ag Incent + CTE Digital Cost: _____

Grades: 9-12 Projected # of books: 40

Course Title(s): Ag Leadership Ag Lead/FFA Course ID(s): AG0005 (CTE/CAPSTONE) 7112

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment ☐ Yes, moderate coverage/alignment (Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair [Signature] Date: 6/18/18

Lindhurst High School Principal [Signature] Date: 6/14/18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

	By Phone	By Email	In Person	Date:
<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person		Date: _____

☐ District School Board Approval Date: _____

High School Textbook/Instructional Materials Adoption

☒ Primary Textbook/Materials
 ☐ Supplemental Textbook/Materials
(Intervention and acceleration Materials Exempt)
☐ Updated Version
(previously board approved)
☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: Modern Livestock and Poultry Production

Author(s): Frank B Flanders and James R Gillespie

Publisher: Cengage Copyright: 2016

ISBN: 978-1-133-29350-8 Hard Copy Cost: _____

Site Funding Source: Ag Incent + CTE Digital Cost: _____

Grades: 10-12 Projected # of books: 80

Course Title(s): Animal Science-P *No 3rd Course* Course ID(s): CT2ASB

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____
 ☒ No

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment *supplemental OK*
☐ Yes, moderate coverage/alignment
(Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair Wahldech Date: 6/15/18

Lindhurst High School Principal [Signature] Date: 6/15/18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

	By Phone	By Email	In Person	Date:
<input checked="" type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person		Date: _____

☐ District School Board Approval Date: _____

High School Textbook/Instructional Materials Adoption

☒ Primary Textbook/Materials ☒ Supplemental Textbook/Materials ☐ Updated Version ☐ Novel
(Intervention and acceleration Materials Exempt) (previously board approved)

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: The Science of Animal Agriculture

Author(s): Ray V. Herren

Publisher: Cengage Copyright: 2019

ISBN: 978-1-337-39086-6 Hard Copy Cost: _____

Site Funding Source: Ag Incent + CTE Digital Cost: _____

Grades: 10-12 Projected # of books: 40

Course Title(s): Animal Science - P Course ID(s): CT2ASB

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No

~~Life Science~~ K - Life Science
N - other Science
V - Vocational
CTE (Constrator 7141)

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment ☐ Yes, moderate coverage/alignment
(Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by: _____

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair [Signature] Date: 6/14/18

Lindhurst High School Principal [Signature] Date: 6/15/18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by: _____

	By Phone	By Email	In Person	
<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/16/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/16/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/16/18</u>
<input type="checkbox"/> District Parent Advisory Committee				Date: _____

☐ District School Board Approval Date: _____

High School Textbook/Instructional Materials Adoption

☒ Primary Textbook/Materials ☐ Supplemental Textbook/Materials (Intervention and acceleration Materials Exempt) ☐ Updated Version (previously board approved) ☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: The Art of Floral Design

Author(s): Norah T Hunter

Publisher: Cengage Copyright: 2013

ISBN: 978-1-4180-6303-0 Hard Copy Cost: _____

Site Funding Source: Ab Int + CTE Digital Cost: _____

Grades: 9-12 Projected # of books: 40

Course Title(s): The Art and History of Floral Design Course ID(s): ROP 814

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment ☐ Yes, moderate coverage/alignment (Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair Wahedeh Date: 6/14/18

Lindhurst High School Principal [Signature] Date: 6-14-18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

By Phone By Email In Person

<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Date: <u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Date: <u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> Date: <u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person	Date: _____

☐ District School Board Approval Date: _____

Approved by the Board of Trustees at the _____ board meeting.



Request Form for New Course and/or Textbook(s)/Material(s)

☐ Change of Text

☐ Add as a Supplement

☐ Existing Textbook/Reordering
[Currently not listed on textbook list]

☒ Text for New Course

☐ English Learners/Comite' Compliance

☐ NEW COURSE: _____

For use beginning with the semester of:

☒ Fall

☐ Spring

Year: 2018

This form will provide the Board of Trustees, administration, and teachers an overview of the strengths this proposed textbook(s)/material(s) will support a particular course.

Textbook(s)/Material(s) Title: The Art of Floral Design

Author: Norah T Hunter

Publisher: Cengage Learning

Copyright: 2013

Price \$: _____

ISBN #: 13:978-1-4180-6303-0

School: Marysville High School

Teacher/Department Requesting: Amanda Farrah

Funding Source: Ag Incentive/Perkins

Grade Level(s): 9-12

Title of Course/Subject: Art and the History of Floral Design

-No Such Course

Course Description(s) Covered: Floral Design

Projected number of books to be ordered: 40

Does this textbook(s)/material(s) cover the content standards?

☒ Yes, thorough coverage/alignment
☐ Yes, moderate coverage/alignment

Will this textbook(s)/material(s) be used at all MJUSD high school?

☒ Yes ☐ No

If not, why not? _____

Has the decision to request this textbook(s)/material(s) been discussed by all MJUSD high schools?

☒ Yes ☐ No

If not, why not? _____

Are there sections and/or passages in the textbooks(s)/materials(s) a parent/guardian or student may find objectionable?

☐ Yes ☒ No

If yes, **explain in detail:** Violence: How much? What kind? (Guns, fighting, knives, swords, etc.) / Profanity: (sexual expressions, inappropriate verbiage and/or innuendoes, etc.)

N/A

Please contact Mong Yang (749-6161) if you have any questions or need assistance.

List Major Content Standard(s) Covered:

Example:
Reading/Language Arts -
Gr. 9: Literary Response and Analysis: 3.3, 3.6, 3.10
Writing Strategies: 1.1, 1.5, 1.7, 1.8
History-Social Science -
Grade 12: Principles of American Democracy: 12.1 - #1, #2, #6
Principles of Economics: 12.2 - #2, #3, #8, #10

See attached

No Attached w/ Standards

Prerequisites/Guidance Information:

Graduation Requirement:

☐ Yes

☒ No

UC/CSU Credit:

☒ Yes

☐ No

Is this an elective class?

☒ Yes

☐ No

Course Length: 1 Year

Credits: 10.00

Additional comment(s) teacher/department would like to express in support of their decision to choose the proposed textbook(s) or basic learning material(s):

This is the textbook that the majority of a-g Floral Design classes are using in CA.

I hereby verify the textbook(s)/material(s):

- Meets the legal compliance requirements of Education Code Sections 60040-60047
- Supports MJUSD standards for this course
- Meets the intent of Board Policy 6205

Department Chairperson:

Date: 4/19/10 Site: MHS

Department Chairperson:

Date: 6/14/18 Site: LHS

Principal Approval:

Date: 6-19-10 Site: LHS

Principal Approval:

Date: 6-14-18 Site: MHS

Approval:

Lennie Tate, Executive Director of Educational Services

Date:

☐ Approved

☐ Denied

Revised
04/08/16

Please contact Mong Yang (749-6161) if you have any questions or need assistance.

High School Textbook/Instructional Materials Adoption

☐ Primary Textbook/Materials ☒ Supplemental Textbook/Materials (Intervention and acceleration Materials Exempt) ☐ Updated Version (previously board approved) ☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: Plant and Soil Science

Author(s): Rick Parker

Publisher: Cengage Copyright: 2010

ISBN: 978-1-4283-3480-9 Hard Copy Cost: _____

Site Funding Source: AG intent + CE Digital Cost: _____

Grades: 10-12 Projected # of books: 0

Course Title(s): ROP Land/soil Hort Course ID(s): ROP 145 CT20HB
Adv. Land/soil Hort CT30HC

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No Other Science

Does this textbook(s)/material(s) cover the California content standards?

☒ Yes, thorough coverage/alignment? ☐ Yes, moderate coverage/alignment (Supplemental materials may be required.)

Supplemental: Plant + Soil Science
☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair [Signature] Date: 6/5/18

Lindhurst High School Principal [Signature] Date: 6/5/18

Marysville High School Department Chair [Signature] Date: 5/10/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

	By Phone	By Email	In Person	
<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Date: <u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person		Date: _____

☐ District School Board Approval Date: _____

High School Textbook/Instructional Materials Adoption

☐ Primary Textbook/Materials ☒ Supplemental Textbook/Materials (Intervention and acceleration Materials Exempt) ☐ Updated Version (previously board approved) ☐ Novel

For use beginning with the semester of: ☒ Fall ☐ Spring Year: 2018

Textbook(s)/Material(s) Title: Introductory Horticulture 9th Addition

Author(s): Carroll Shry, H. Edward Reiley

Publisher: Cengage Copyright: 2017

ISBN: ISBN-13: 9781305411371 Ag Incent Hard Copy Cost: _____

Site Funding Source: ~~60044 6 3860 1100 CTE~~ Digital Cost: _____

Grades: 10-12 Projected # of books: 40

Course Title(s): ROPLandOrnHort No Such Course ID(s): ROP745 CT20HB
Adv. Land Orn Hort Course CT30HC

Does this textbook(s)/material(s) contain information that a parent/guardian or student may find objectionable?

☐ Yes, _____ ☒ No Science
If Supplemental, title of primary textbook: Plant + Soil Science
intro horticulture intro.

Does this textbook(s)/material(s) cover the California content standards?
☒ Yes, thorough coverage/alignment Supplemental? ☐ Yes, moderate coverage/alignment (Supplemental materials may be required.)

☒ Meets the legal compliance requirements of 60040 – 60048 and 60052

☒ Meets the intent of board policy and administrative regulation 6161.1

Other Science

Submitted by: Amanda Farrah Date: 5/10/18

Approved by:

New primary and supplemental textbooks REQUIRE Department & Site Principal agreement that these instructional resources will be the materials used in all courses with the same content/course ID throughout the district

Lindhurst High School Department Chair Walden Date: 6/14/18

Lindhurst High School Principal Ellen Date: 6/14/18

Marysville High School Department Chair [Signature] Date: 5/15/18

Marysville High School Principal [Signature] Date: 5/11/18

Reviewed by:

	By Phone	By Email	In Person	Date:
<input type="checkbox"/> Marysville Charter Academy Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> South Lindhurst High School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> Community Day School Principal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>7/6/18</u>
<input type="checkbox"/> District Parent Advisory Committee		In Person		Date: _____

☐ District School Board Approval Date: _____



CONTRACT SERVICES AGREEMENT
Educational Services – Houghton Mifflin Harcourt

THIS CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into on 7/17/18 (hereinafter, the "Effective Date"), by and between the MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT ("DISTRICT") and **Houghton Mifflin Harcourt Publishing Company** *laj* (hereinafter, "CONTRACTOR"). For the purposes of this Agreement DISTRICT and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to DISTRICT or CONTRACTOR interchangeably.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONTRACTOR agree as follows:

I. ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONTRACTOR agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "**Scope of Work**"). CONTRACTOR further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "Work." CONTRACTOR shall not commence with the performance of the Work until such time as DISTRICT issues a written Notice to Proceed.

1.2 **TERM:** This Agreement shall have a term of **2017-2018** commencing from **August 10, 2018 - August 10, 2018**

1.3 **COMPENSATION:**

A. CONTRACTOR shall perform the various services and tasks set forth in the Scope of Services in accordance with the compensation schedule which is **see Exhibit A.** (hereinafter, the "Approved Rate Schedule").

B. Section 1.3(A) notwithstanding, CONTRACTOR's total compensation during the Term of this Agreement or any extension term shall not exceed the budgeted aggregate sum up to TWO THOUSAND NINE HUNDRED AND FIFTY DOLLARS AND NO CENTS (**\$2,950.00**) (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the DISTRICT acting in consultation with the Superintendent and the Director of Fiscal Services. In the event CONTRACTOR's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, DISTRICT may suspend CONTRACTOR's performance pending DISTRICT approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other DISTRICT-approved amendment to the compensation terms of this Agreement.

1.4 **PAYMENT OF COMPENSATION:** The Not-to-Exceed Sum shall be paid to CONTRACTOR as the Work is completed. Following the conclusion of each calendar month, CONTRACTOR shall submit to DISTRICT an itemized invoice indicating the services performed and tasks completed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONTRACTOR's monthly compensation is a function of

hours works by CONTRACTOR's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each tasks and service performed and a grand total for all services performed. Within THIRTY (30) calendar days of receipt of each invoice, DISTRICT shall notify CONTRACTOR in writing of any disputed amounts included in the invoice. Within FORTY-FIVE (45) calendar day of receipt of each invoice, DISTRICT shall pay all undisputed amounts included on the invoice. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONTRACTOR.

- 1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.
- 1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONTRACTOR's cessation or abandonment.

II. PERFORMANCE OF AGREEMENT

- 2.1 DISTRICT'S REPRESENTATIVES: The DISTRICT hereby designates Representative, Lennie Tate (hereinafter, the "DISTRICT Representatives") to act as its representatives for the performance of this Agreement. The Superintendent shall be the chief DISTRICT Representative. The DISTRICT Representatives or their designee shall act on behalf of the DISTRICT for all purposes under this Agreement. CONTRACTOR shall not accept directions or orders from any person other than the DISTRICT Representatives or their designee.
- 2.2 CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby, Houghton Mifflin Harcourt to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative shall have full authority to represent and act on behalf of the CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative shall constitute notice to CONTRACTOR.
- 2.3 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the DISTRICT Representatives at all reasonable times. All work prepared by CONTRACTOR shall be subject to inspection and approval by DISTRICT Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:
- A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;
 - B. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the DISTRICT;

- C. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
 - D. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and
 - F. All of CONTRACTOR's employees and agents (including but not limited to subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to DISTRICT for copying and inspection.
- 2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONTRACTOR are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONTRACTOR or on behalf of CONTRACTOR in the performance of this Agreement. In recognition of this interest, CONTRACTOR agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.6 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of DISTRICT and shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the Work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by CONTRACTOR and shall not be re-assigned to perform any of the Work.
- 2.8 COMPLIANCE WITH LAWS: CONTRACTOR shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.

- 2.9 NON-DISCRIMINATION: In the performance of this Agreement, CONTRACTOR shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.10. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONTRACTOR shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONTRACTOR and all persons retained or employed by CONTRACTOR shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise, unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONTRACTOR and DISTRICT against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement. Policy shall contain a waiver of subrogation against the all parties named as additional insureds under this subsection arising from work performed by the CONTRACTOR. (NA)
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard &

Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the DISTRICT Representatives are authorized to authorize lower ratings than those set forth in this Section.

- 3.4 **PRIMACY OF CONSULTANT'S INSURANCE:** All policies of insurance provided by CONTRACTOR shall be primary to any coverage available to DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by DISTRICT or DISTRICT's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 3.5 **WAIVER OF SUBROGATION:** All insurance coverage provided pursuant to this Agreement shall not prohibit CONTRACTOR or CONTRACTOR's officers, employees, agents, subcontractors or subconsultants from waiving the right of subrogation prior to a loss. CONTRACTOR hereby waives all rights of subrogation against DISTRICT.
- 3.6 **VERIFICATION OF COVERAGE:** CONTRACTOR acknowledges, understands and agrees, that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding DISTRICT's financial wellbeing and, indirectly, the collective well-being of the residents of the DISTRICT. Accordingly, CONTRACTOR warrants, represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the DISTRICT if requested.** All certificates of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONTRACTOR's commencement of any work or any of the Work. Upon DISTRICT's written request, CONTRACTOR shall also provide DISTRICT with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

4.1 The Parties agree that DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "DISTRICT Indemnitees") should, to the fullest extent permitted by law, be protected from any and all actual loss, injury, damage, claim, lawsuit, cost, expense, reasonable attorneys' fees, litigation costs, or any other actual cost arising out of or in any way related to the performance of this Agreement, that is due to the Contractor's negligence, willful misconduct or otherwise as a result of a material breach of this Contract by Contractor and which is not also caused by the negligence, willful misconduct or material breach of the Contract by School District or by third parties beyond the control of Contractor. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the DISTRICT Indemnitees with the fullest protection possible under the law. CONTRACTOR acknowledges that DISTRICT would not enter into this Agreement in the absence of CONTRACTOR's commitment to indemnify, defend and protect DISTRICT as set forth herein.

- 4.2 To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the DISTRICT Indemnitees from and against all actual liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other 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 is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 DISTRICT shall have the right to offset against the amount of any compensation due CONTRACTOR under this Agreement any amount due DISTRICT from CONTRACTOR as a result of CONTRACTOR's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 4.4 The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers.

- 4.5 CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all actual claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice. *lay*
- 4.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONTRACTOR because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

V. TERMINATION

5.1 TERMINATION WITHOUT CAUSE: DISTRICT may terminate this Agreement at any time for convenience and without cause by giving CONTRACTOR a minimum of five (5) calendar days prior written notice of DISTRICT's intent to terminate this Agreement. Upon such termination for convenience, CONTRACTOR shall be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, DISTRICT may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 7.1 below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR shall be required to provide such Documents and Data within fifteen (15) calendar days of DISTRICT's written request. No actual or asserted breach of this Agreement on the part of DISTRICT pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict DISTRICT's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.B and 5.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute the such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONTRACTOR shall cure the following Events of Defaults within the following time periods:

- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONTRACTOR to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
- ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. .

In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) DISTRICT's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONTRACTOR within FORTY-FIVE (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONTRACTOR's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of DISTRICT's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR shall be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:

- i. Upon written notice to CONTRACTOR, the DISTRICT may immediately terminate this Agreement in whole or in part;
- ii. Upon written notice to CONTRACTOR, the DISTRICT may extend the time of performance;
- iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
- iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONTRACTOR shall be liable for all reasonable legal fees plus other actual costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement. *laj*

G. In the event DISTRICT is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to DISTRICT, a perpetual license for DISTRICT to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR shall require all subcontractors and subconsultants working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement. (NA)

6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONTRACTOR without prior written consent by DISTRICT. DISTRICT shall grant such consent if disclosure is legally required. Upon written request, all DISTRICT data shall be returned in a mutually agreed upon format to DISTRICT upon the termination or expiration of this Agreement. CONTRACTOR shall not use DISTRICT's name or insignia, photographs, or any publicity pertaining to the Work in *laj*

any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.

6.3 **FINGERPRINTING.** CONTRACTOR shall comply with all applicable provisions of Education Code Section 45125.1. CONTRACTOR will conduct criminal background checks of all employees, agents and/or representatives assigned performing any services and tasks on DISTRICT property on CONTRACTOR's behalf. CONTRACTOR will certify in writing that no such employees, agents and representatives who have been convicted of a violent or serious felony as described in the Notice Re: Criminal Records will have contact with DISTRICT's pupils. CONTRACTOR will provide DISTRICT with a list of all employees providing services pursuant to this Agreement. To the extent permitted under Education Code Section 45125.1, the DISTRICT Representatives may waive any fingerprinting requirements where it is determined that the CONTRACTOR, its employees and agents will have limited or no contact with pupils in the performance of any services and tasks called for under this Agreement. The waiver of the requirements of Education Code Section 45125.1 must be made in writing signed by one or both of the DISTRICT Representatives.

6.4 **DRUG FREE WORKPLACE CERTIFICATION.** CONTRACTOR shall apprise its officials and employees of the Drug-Free Workplace Act of 1990 (Govt. Code Section 8350 et seq.) (hereinafter, the "Act") which requires that every person or organization awarded a contract or grant for the procurement of property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. CONTRACTOR shall comply with the requirements publication and notification requirements of Government Code Section 8355 as to all employees performing services and tasks under this Agreement on DISTRICT property or from DISTRICT facilities.

6.5 **FALSE CLAIMS ACT.** CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

6.6 **NOTICES:** All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

~~Houghton Mifflin Harcourt~~ ATTN: General Counsel
~~125 High Street~~ 9205 South Park Center Loop
~~Boston, MA 02110~~ Orlando, FL 32819

Phone:

Fax: 800-269-5232

Email: k12orders@hnhco.com

DISTRICT:

Marysville Joint Unified School District
1919 B Street
Marysville, CA 95901

Phone: 749-6114

Fax: 742-0573

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepared and addressed to the Party at its applicable address.

6.7 **COOPERATION; FURTHER ACTS:** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

- 6.8 SUBCONTRACTING: CONTRACTOR shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.9 DISTRICT'S RIGHT TO EMPLOY OTHER CONTRACTORS: DISTRICT reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.
- 6.10 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of DISTRICT, during the term of his or her service with DISTRICT, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 6.11 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.12 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Yuba County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Northern District of California located in the City of San Francisco, California.
- 6.13 ATTORNEY'S FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.
- 6.14 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.15 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.16 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.17 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.18 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.19 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.20 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.

6.21 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONTRACTOR prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.15, above.

6.22 COUNTERPARTS: This Agreement shall be executed in TWO (2) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.15, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

**MARYSVILLE JOINT UNIFIED SCHOOL
DISTRICT:**

By: _____
Mike Hodson

Assistant Superintendent of Business Services

HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY

By: Lisa A. Jacobson
Director, Business Desk

Exhibit A
Scope of Work

HMH will continue work in supporting student instruction for the Board approved K-8 GoMath! mathematics program. Teachers new to the curriculum will receive up to 6 hours of training. Date is subject to change based on need.

August 10, 2018