



PROFESSIONAL SERVICES AGREEMENT

(for all professionals required to be licensed by the state except for professional architects. Examples include insurance agents, engineers, doctors, mental health professionals, physical therapists, occupational therapists, certified public accountants, and lawyers.)

Between

«SCHOOL DISTRICT NAME» DISTRICT

And

«PROVIDER NAME»

Agreement No. « NUMBER »

THIS AGREEMENT SHALL BE BINDING ON THE DISTRICT ONLY IF IT IS APPROVED BY THE TRUSTEES AND EXECUTED BY THE SUPERINTENDENT OR AUTHORIZED DESIGNEE

[Note: Text that is bracketed, bold red is optional.]

This Professional Services Agreement (“Agreement”), is entered into by and between School District Name (“District”), and «Service Provider Name» (“Provider”). District and Provider may be collectively referred to as the “Parties.”

1. **Term.** This Agreement is effective as of the date of the last signature of the Parties (“Effective Date”) and shall terminate on _____, unless earlier terminated pursuant early termination provisions of this Agreement. This Agreement shall not be automatically renewed or extended.
2. **Provider Services.** Provider agrees to furnish all necessary labor, materials and other services necessary to carry of the Scope of Services, as described in Exhibit A attached hereto and incorporated herein by reference (collectively “Services”). Services authorized by District is limited to Exhibit A. Provider will not perform any services for District and District will not pay for any additional services without the prior express written authorization of District by executed amendment or change order, describing with particularity the additional scope and cost of such services.
3. **Payment.**
 - a. Compensation. The District shall pay Provider for all Services set forth in Exhibit A, in the amount and payment method as described in Exhibit B (Cost of Services), which is attached hereto and incorporated herein by reference. Provider shall furnish and cover at its own expense all necessary labor, supplies, materials, overhead, administrative and support services, equipment, clerical personnel, facilities, communications and related facilities and personnel necessary to perform the Services. District’s obligations to compensate Provider for the Services, shall solely be governed by Exhibit B. Should Provider incur additional or unanticipated expenses, District shall not be obligated to pay for, or reimburse, said expenses to the extent not set forth in Exhibit B. District shall be entitled to refuse to pay for any unauthorized costs or expenses.
 - b. W-9: Provider acknowledges and agrees that it must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed Agreement and that the District will report payment information to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Provider.
 - c. Invoicing and Method of Payment: Unless otherwise specified in Exhibit B, Provider shall invoice District «monthly». Upon completion and acceptance of the Services, invoice approval, and according to this Agreement’s Terms and Conditions, District shall pay invoices «net 30 days». District reserves the

right to withhold payments to Provider for amounts reasonable and sufficient to cover District's costs in processing invoices more than 60 days late. **[Invoices must include all of the following: invoice date, agreement number, dates of service, detailed description of service, payment rate, total payment due, remit to address, Provider name, and contact information.]**

- d. Payment upon Early Termination. Upon early termination pursuant to the early termination provisions of this Agreement, the District shall pay Provider for all Services performed to District's satisfaction in accordance with this Agreement prior to the date of termination. Any amounts disputed and unpaid by the District shall be withheld pending the outcome of the dispute resolution procedures set forth herein.

4. **Independent Contractor Relationship.** Provider is an independent contractor and is solely responsible for performing the Services. Provider represents and warrants that Provider and Provider's employees, and agents are not officers, agents, or employees of District. Provider acknowledges and agrees that any personnel performing the Services shall at all times be under Provider's exclusive direction and control, and that Provider is solely responsible for payment of all compensation, wages, salaries, benefits, and other amounts due to such personnel. Provider further acknowledges and agrees that Provider shall be solely responsible for payment of any and all taxes and fees applicable the Services, including, but not limited to, all federal, state, and local taxes, social security taxes, income tax withholding, unemployment insurance, workers' compensation insurance.

5. **Compliance with Applicable Law.** Provider shall comply with all federal, state, and local laws, regulations, and administrative rules, as well as all District policies and procedures applicable to public contracts and to the Services, including but not limited to all of the following:

- a. Licensing Requirements. Provider covenants and agrees to obtain and maintain, during the term of this Agreement, all necessary government and professional licenses, permits, certifications and incidents of authority required for the legal performance of the Services. Provider shall immediately notify District in the event any license, permit or certification denial, suspension, revocation, or non-renewal. District maintains the right to request and immediately receive evidence of proper licensure and certificates at any time during the term of this Agreement.
- b. Conflicts of Interest. Provider warrants and covenants that Provider presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render this Agreement a violation of any applicable state, local, or federal law, or District policy, regarding conflicts of interest, including, but not limited to, Government Code section 1090. Provider shall comply with all provisions of the Political Reform Act and implementing regulations, as applicable, and in accordance with the District's Conflict of Interest Code. If any principal provider of the Services is a "consultant" for the purposes of the Fair Political Practices Act (Gov. Code § 81000 et seq.), each such person shall comply with Form 721 Statement of Economic Interests filing requirements in accordance with state or City local Conflict of Interest Code. If any conflict of interest should hereinafter arise, Provider shall promptly notify District of the existence of such conflict of interest. The existence of a conflict of interest which violates any applicable state, local, or federal law, or District policy shall be cause for immediate termination of this Agreement.
- c. Non-Discrimination. Provider represents that it is an equal opportunity employer and acknowledges that it shall not subject any person to unlawful discrimination based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.
- d. Minority/Disadvantaged Enterprise Programs. Provider agrees to comply with all relevant provisions any Minority Business Enterprise (MBE) program, Disadvantage Enterprise Program, Disabled Veterans

Business Enterprise (DVBE), or other related programs or policies currently in effect or hereinafter enacted by the District.

- e. **[Mandatory Reporter Requirements:** Provider acknowledges and understands that, pursuant to California Penal Code section 11165.7, each person whose duties under the Scope of Services include contact and supervision of children is a mandatory reporter of known or suspected instances of child abuse or neglect. Provider is responsible for ensuring that every mandatory reporter takes the Child Abuse Mandated Reporter Educators Training Module within six weeks of hire and annually thereafter within the first six weeks of each school year. Provider will ensure that each mandatory reporter executes an Employee Acknowledgement Form and a Suspected Child Abuse Reporting Acknowledgement Form. Provider will provide copies of each of these signed forms for each mandatory reporter to the District within six weeks of the hire of the mandatory reporter and annually.]

- f. **[Live Screen Criminal Background Check Requirements:** Provider, at its sole cost and expense, and as necessary to satisfy the requirements of Education Code (EC) section 45125.1 and 45125.2 or District policy, will ensure that all required criminal background checks are timely conducted. If required by EC section 45125.1, Provider must provide for the completion of a Fingerprint Certification form, in the District's required format, prior to any of the Provider's personnel, who are anticipated to come into contact with the District's students. Provider further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code section 45125 et seq., and that Provider will comply with any such requirements. Provider further acknowledges and agrees that no Provider personnel shall come into contact with students if they have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).] Notwithstanding anything to the contrary herein, if Provider is an individual operating as a sole proprietor, if required by Education Code section 45125.1(k), it shall be the responsibility of the District to prepare and submit that individual's fingerprints to the Department of Justice.]

- g. **[Unsupervised Contact:** "Unsupervised contact" with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Provider shall ensure that Provider and Provider's officers, employees, and agents will have no direct, unsupervised contact with students while on District property. Provider will work with District to ensure compliance with this requirement. If Provider is unable to ensure through a security plan that none of its personnel, will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Provider shall notify District before beginning any work that could result in such contact. In addition to any Live Screen Criminal Background Check Requirements as set forth above, Provider authorizes District, at its discretion, to obtain information about Provider and its history and to independently conduct its own criminal background check, including fingerprinting, of any Provider officers, employees, or agents who may have unsupervised contact with students. Provider shall cause its personnel, to authorize District to conduct these background checks. Unless otherwise required by law, Provider shall pay all fees for processing the background check. District may deduct the cost of such fees from a progress or final payment to Provider under this Agreement, unless Provider elects to pay such fees directly.]

6. **Safety and Security.** Provider shall perform all Services so as to avoid injury or damage to any person or property by exercising all necessary safety and security precautions as may be appropriate to the nature of the Services and the conditions under which the Services are to be performed. **[Provider further agrees to comply with all of the following:**

- a. **Identification:** When performing Services on District property, Provider shall be in appropriate work attire (or uniform, if applicable) at all times. If Provider does not have a specific uniform, then Provider shall provide identification tags and/or any other mechanism the District in its sole discretion determines is required to easily identify Provider, as opposed to faculty, staff, parents, students or other members of the public. Provider and its employees shall (i) display on their clothes the above-mentioned identifying information and (ii) carry photo identification and present it to any District personnel upon request. If Provider cannot produce such identification or if the identification is unacceptable to District, District may provide at its sole discretion, District-produced identification tags to Provider, costs to be borne by Provider.
- b. **Sign-in required:** As required by schools and other District locations, Provider personnel must sign into the location's main office to receive an in-school identification/visitors tag. Such individuals must display this tag on their person at all times while on District property.
- c. **No Smoking/Non-Prescription Drugs:** All District properties are tobacco-free and drug-free zones. Provider personnel are prohibited from using any tobacco product on or immediately adjacent to District property. Provider personnel are prohibited from using illegal drugs on District property.
- d. **No Weapons or Firearms:** Except as provided by statute and District policy, all District properties are weapons- and firearms-free zones. Provider personnel are strictly prohibited from possessing on their persons or in their vehicles any weapons or firearms while on District property.
- e. **Employee Removal.** At District's request, Provider shall immediately remove any person from all District properties in cases where the District in its sole discretion determines that removal of any such person is in the District's best interests.]
- f. **District Property.** District hereby deems all information, documents, and property contained in or on District property privileged and confidential. Any removal or disclosure of any privileged and confidential materials by Provider without express written consent of District shall be considered a material breach of this Agreement and shall be cause for immediate termination of this Agreement. IF PROVIDER BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, PROVIDER SHALL IMMEDIATELY NOTIFY DISTRICT.]

7. **Other Service Providers.** District reserves the right to enter into other agreements for services additional or related to the subject matter of this Agreement, and Provider agrees to cooperate fully with these other Providers and with the District. When requested by District, Provider shall coordinate its performance under this Agreement with such additional or related service providers. Provider shall not interfere with the work performance of any other service provider or District employee.

8. **Early Termination.** This Agreement may be terminated as follows unless otherwise specified herein:
- a. Mutual: The Parties may terminate this Agreement at any time by their written agreement.
 - b. District's Sole Discretion: District in its sole discretion may terminate this Agreement for any reason on 30 days' written notice to Provider.
 - c. Breach: Either party may terminate this Agreement in the event of a material breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. Said notice must describe the breach in sufficient detail to provide the other party with adequate notice and an opportunity to cure. If the breaching party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.
 - d. Provider Licensing; Bankruptcy.: Notwithstanding any other provision herein, District may terminate this Agreement immediately by written notice to Provider upon either of the following events: 1) denial, suspension, revocation, or non-renewal of any license, permit, insurance, or certificate that Provider must hold to perform the Services; or 2) in the event Provider files for bankruptcy.

- e. Furlough: District reserves the right to immediately terminate or otherwise suspend this Agreement without notice if District's Board determines that funding for the Services is insufficient.

9. **Access to Records.** During the term of this Agreement and for a period of three years after termination, Provider shall permit the District and its authorized representatives to review all Provider books, documents, papers, plans, and records, electronic or otherwise (“Records”), related to this Agreement. Provider shall maintain all Records in accordance with generally accepted accounting principles so as to document clearly Provider's performance of the Services. Following final payment and termination of this Agreement, Provider shall retain and keep accessible all Records for a minimum of three years, or such longer period as may be required by law, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

10. **[Ownership of Work Products. Provider agrees that all work products created or developed for District by Provider pursuant to this Agreement are intended as “works made for hire” and shall be the exclusive property of the District. If any such work products contain Provider’s intellectual property that is or could be protected by federal copyright, patent, or trademark laws, Provider hereby grants District a perpetual, royalty-free, fully-paid, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, and use or re-use, in whole or in part, and to authorize others to do so, all such work products. District claims no right to any pre-existing work product of Provider provided to District by Provider in the performance of this Agreement, except to copy, use, or re-use any such work product for District use only.]**

11. **Confidentiality.** As used herein, “Confidential Information” means all student data, pupil records, or other information that is privileged, confidential, not publically available, which is covered by federal or state privacy laws, rules, and regulations, or which is otherwise considered confidential and protected from disclosure by the policies and procedures of District. Provider understands and agrees that all Confidential Information shall be preserved and protected as privileged or confidential, that Confidential Information shall be held strictly in accordance with applicable law and the District’s policies and procedures, and that Confidential Information shall not be shared with any third party without the expressed written authorization of District. **IF PROVIDER BECOMES AWARE OF A POSSIBLE UNAUTHORIZED RELEASE OR DISCLOSURE OF CONFIDENTIAL INFORMATION, PROVIDER SHALL IMMEDIATELY NOTIFY THE DISTRICT.**

12. **Indemnification and Hold Harmless.** To the fullest extent allowed by law, Provider shall defend, indemnify and hold District, its officials, trustees, officers, agents, employees, volunteers, and representatives (“Indemnitees”) free and harmless from any and all claims, demands, negligence (including the active or passive negligence of Indemnitees as allowed by law), causes of action, costs, expenses, liabilities, losses, damages or injuries, fines, penalties in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of: 1) Provider’s failure to fully comply with or breach of any of the terms and conditions of this Agreement, and 2) any acts, omissions, negligence or willful misconduct of Provider and Provider’s officials, officers, employees, and agents arising out of or in connection with the performance of the Services or otherwise arising from this Agreement (“Indemnification”). Provider’s Indemnification includes, but is not limited to, the payment of all damages and attorney’s fees, fines, penalties and other related costs and expenses. The only limitations on this provision shall be those imposed by Civil Code § 2782, as may be applicable, or other applicable provisions of law. Provider’s defense obligations (with counsel approved by District), shall arise immediately upon tender of any of the Indemnitee, notwithstanding whether liability is, can be or has yet been established.

13. **Insurance Requirements.** During the term of this Agreement, at Provider’s sole cost and expense, Provider agrees to procure and maintain the following insurance:

- a. Commercial General Liability Insurance in the minimum amount «\$2,000,000» per occurrence, including coverage for property damage, bodily injury, personal & advertising injury, products and completed operations, liability assumed under an insured contract (including tort of another assumed in a business contract), and independent Provider's liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. District, its officials, trustees, officers, agents, employees, volunteers, and representatives ("District Entities") shall be named as additional insureds with respect to liability arising out of the Services performed by or on behalf of the Provider under this Agreement. The policy shall contain a severability of interests/cross liability clause or language stating that Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- b. Professional Liability (Errors and Omissions) Insurance appropriate to Provider's profession, with limits not less than \$2,000,000 per occurrence or claim and \$4,000,000 aggregate. If the E&O policy provides claims-made coverage: 1) The Retroactive Date must be shown, and must be before the anticipated commencement of Services., 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after termination of this Agreement; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Provider must purchase "extended reporting" coverage for a minimum of five (5) years after termination of this Agreement.
- c. **[Sexual Abuse and Molestation Insurance with at least the same limits as set forth above for the CGL coverage, covering bodily injury, emotional distress, or mental anguish related to any claim, cause of action or liability associated with child molestation or sexual abuse. District Entities must be named as additional insureds. The coverage must contain a severability of interests/cross liability clause or language stating that Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.]**
- d. **[Commercial Automobile Liability Insurance in the minimum amount of «\$1,000,000» per accident for bodily injury and property damage covering any auto, including all vehicles that are owned, non-owned, and hired and personal injury protection. If Provider has no owned autos the policy may be limited to cover hired and non-owned autos only. The policy must provide Contractual Liability coverage equivalent to that provided in the 1990 and later editions of ISO form CA 00 01.]**
- e. **[Workers' Compensation Insurance: Coverage must be at least as broad as that which is required by the State of California, with Statutory Limits. Provider must also maintain Employer's Liability Insurance with limit of no less than «\$1,000,000» per accident for bodily injury or disease.]**
- f. Provider Insurance Primary: For any claims related to this Agreement, the Provider's insurance coverage shall be primary insurance coverage. Any insurance or self-insurance maintained by the District Entities shall be excess of the Provider's insurance and shall not contribute with it.
- g. Waiver of Subrogation. Provider hereby grants to the District Entities, a waiver of any right to subrogation which any insurer of said Provider may acquire against the District, its board of trustees, officials, employees, volunteers, and agents by virtue of the payment of any loss under such insurance. Provider shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District, its board of trustees, officials, employees, volunteers, and agents have received a waiver of subrogation endorsement from the insurer.
- h. Acceptability of Insurers. Unless otherwise acceptable to the District , all insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best's rating of no less than A:VII, or approved by the Surplus Lines Association to do business in California.
- i. Verification of Coverage. Provider shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the District before

commencement of the Services. However, failure to obtain the required documents prior to the commencement of Services shall not waive the Provider's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- j. Waivers, Modifications, or Changes. Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the District. Not more frequently than annually, if in the opinion of District the amount of the foregoing insurance coverages is not adequate or the type of insurance or its coverage adequacy is deemed insufficient, Provider shall amend the insurance coverage as required by the District.

14. **Disputes.**

- a. Resolution Procedures. Any dispute that either Party may have regarding this Agreement, including, but not limited to, disputes for additional compensation, shall be submitted to District within 30 days of the occurrence which gave rise to the dispute. District and Provider shall attempt to negotiate a resolution of such dispute and process an amendment to this Agreement to implement the terms of such resolution. If the dispute cannot be resolved through direct discussions, the Parties agree to first endeavor to resolve the dispute in an amicable manner by non-binding mediation under the applicable rules of the Judicial Arbitration and Mediation Service (JAMS), or other similar organization mutually selected by the Parties. If any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, remains after mediation, the matter shall be determined in a court of law of proper jurisdiction in the District's place of venue.
- b. Services Pending Outcome. Unless the Agreement has been terminated pursuant to the early termination provisions of this Agreement, Provider agrees to continue to perform all Services required under this Agreement pending the outcome of any claim, dispute, or mediation.
- c. Claims Statute Requirement. This provision does not relieve Provider of its obligation to timely comply with all applicable provisions of the Government Claims Act before initiating any legal proceeding against the District.
- d. Controlling Law. California law will govern any dispute related to this Agreement.
- e. Remedies. In case of Provider breach, and in addition to any other provision of this Agreement, District shall be entitled to any other available legal and equitable remedies. In case of District breach, Provider's remedy shall be limited to termination of the Agreement and receipt of any payments to which Provider is entitled for Services performed prior to termination.

15. **Miscellaneous.**

- a. Assignment. Provider shall not assign or delegate, by contract, agreement or otherwise, the Services or any part of the Services to be performed under this Agreement to any other person or entity without the express written permission of District by executed addendum. Consent to any assignment may be withheld by District at its sole and unrestricted discretion. District shall not be obligated to pay for any Work performed by an unauthorized person or entity. Should District consent to any assignment, Provider nevertheless remain fully and independently responsible and liable to District for the full and complete performance of the terms and conditions of this Agreement. Prior to performance of Services by any assignee, the assignee shall provide the District with evidence of all insurance, certificates, forms, and licenses required by this Agreement.
- b. Successors in Interest. This Agreement shall bind and inure to the benefit of the Parties, their successors, and approved assigns, if any.
- c. No Third Party Beneficiaries. District and Provider are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third parties unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

- d. Waiver. Waiver of any default or breach under this Agreement by District does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement.
- e. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held invalid.
- f. Amendments; Renewal. Any renewals to or amendments of the terms of this Agreement must be in writing and signed by authorized representatives of both Parties.
- g. Counterparts. The parties may execute this Agreement in counterparts, each of which constitutes an original and all of which comprise one and the same Agreement. Counterparts may be delivered by electronic means.
- h. Notices. All notices or other communications required or provided for by this Agreement shall be sent by electronic mail transmission, United States mail or hand delivery to the representative designated below for each party, or to any such other representative as a party may designate in writing from time to time:

For District: «REPRESENTATIVE NAME ADDRESS AND EMAIL»

For Provider: « REPRESENTATIVE NAME ADDRESS AND EMAIL»

- i. Entire Agreement. When signed by both Parties (and any attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the Parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
- j. Survival. Upon termination of this Agreement, the respective rights and obligations of the Parties shall survive such termination to the extent necessary to carry out the intentions of the Parties. The sections of this Agreement with the headings titled “Access to Records,” “Confidentiality,” and “Indemnification and Hold Harmless” shall survive the termination of this Agreement.
- k. Authority. The undersigned warrant that they are duly authorized representatives of the Parties and have been empowered to execute this Agreement on behalf of the party indicated.

PROVIDER

DISTRICT

Signature

Signature

Provider Printed Name and Title

Director, Purchasing

Date

Date

Exhibit A
Scope of Services

Exhibit B

Cost of Services and Method of Payment

[INSERT DETAILED COST OF SERVICES]

(Hourly Rates, Lump Sum Price, Unit Prices, Annual Cost or Other Form and Method of Payment)