



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 9.1a

Meeting Date: August 18, 2011

Subject: Grants, Entitlements, and Other Income Agreements
Ratification of Other Agreements
Approval of Bid Awards
Approval of Declared Surplus Materials and Equipment
Change Notices
Notices of Completion

- ☐ Information Item Only
- ☒ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☐ Conference/First Reading (Action Anticipated: _____)
- ☐ Conference/Action
- ☐ Action
- ☐ Public Hearing

Learning Support Unit/Department: Administrative Services

Recommendation: Recommend approval of items submitted.

Background/Rationale:

Financial Considerations: See attached.

Documents Attached:

1. Grants, Entitlements, and Other Income Agreements
2. Other Agreements
3. Approval of Declared Surplus Materials and Equipment
4. Recommended Bid Awards – Facilities Projects
5. Change Notices – Facilities Projects

Estimated Time:	N/A
Submitted by:	Daniel M. Sanchez, Manager II, Purchasing Services Kimberly Teague, Contract Specialist
Approved by:	Patricia A. Hagemeyer, Chief Business Officer

GRANTS, ENTITLEMENTS AND OTHER INCOME AGREEMENTS - REVENUE

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>ADULT EDUCATION</u>		
A12-00019 Sacramento Employment and Training Agency	7/1/11 – Ongoing: Charles A. Jones Career Education Center to provide alternative secondary school services (general education classes) and leadership development opportunities to participants in Sacramento Employment and Training Agency's Adult and Dislocated Worker Workforce Skills Preparation program.	\$3,768/student Income Contract

ADULT EDUCATION

A12-00021 California Department of Education	7/1/11 – 6/30/12: Grant funding for Workforce Investment Act, Title II: Adult Education and Family Literacy Act, English Literacy, and Civics Education programs. The programs supported by these funds improve employment opportunities; and provide training, literacy, and vocational rehabilitation to community adults. Achievement in Adult Basic Education, English as a Second Language, English as a Second Language – Citizenship, General Education Development, Adult Secondary Education, and other vocational programs is measured through testing. Benchmarks are tracked for future funding opportunities.	\$1,040,492 No Match
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CAREER & TECHNICAL PREPARATION

A12-00020 Sacramento County Office of Education	7/1/11 – 6/30/12: Funding for Career Technical instructional program for high school students participating in Regional Occupational Programs (ROP). Approximately 2,300 high school students are enrolled in 90 sections of ROP. Classes are located at nine district high schools. Courses include: Construction Technology, Visual Communications, Digital Media, Automotive Technology, Culinary, Computer Aided Design and Drafting, Medical Careers and Early Childhood Development. ROP classes are open to all SCUSD high school students. ROP funds will provide 20 full time equivalent teacher positions, instructional materials, and equipment for courses.	\$1,917,630 Income Contract
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EXPENDITURE AND OTHER AGREEMENTS

<u>Contractor</u>	<u>Description</u>	<u>Amount</u>
<u>ACADEMIC OFFICE</u>		
	The district is in Year 3 of Program Improvement. To implement corrective actions mandated for districts with this designation, the California Department of Education has allocated funds to address the student academic performance. These funds are to be used to partner with external providers to target the areas of deficiencies. As a result of a Request for Proposal (RFP) process, the	

District will partner with **Pearson, Texas Instruments, and Wireless Generation (see below)** to implement intervention supports and assessments designed to determine the degree of impact of such interventions in the areas of reading and mathematics, plus provide high quality professional development targeted to improve student achievement in fourteen (14) of its most high need schools, which are in Year 3, 4, or 5 of Program Improvement. They are **Elementary:** Bowling Green McCoy & Chacon, Collis P. Huntington, Ethel Phillips, Freeport, John Still, Joseph Bonnheim, Mark Hopkins and Pacific; **Secondary:** California, John Still, Kit Carson Sam Brannan and American Legion.

To address such noted disparities, catapult student learning, and answer the clarion call outlined in Pillar One of *Strategic Plan 2010-14*, a targeted, systematic process will be implemented that is designed to accelerate the rate of student learning at these low-performing sites. It includes in-time intervention supports that tackle varying levels of student abilities and areas of deficiencies, plus utilizes ongoing assessments coupled with a systematic data inquiry methodology for learning from student results, indicating shortcomings in both teaching and learning, as well as designing and implementing instructional improvements.

SA12-00118
Pearson

8/1/11 – 6/30/12: Mathematics Navigator is an intervention program designed to help students repair gaps and misconceptions of students in Grades 2-6. It builds skills, problem solving and the conceptual understanding needed for success in algebra, geometry, and other higher-level courses. It includes diagnostic screeners and ongoing formative assessments that will allow teachers to differentiate instruction and check progress.

\$165,425
Program
Improvement Grant
Funds

SA12-00119
Texas Instruments (TI)

8/1/11 – 6/30/12: TI MathForward™ is a systematic mathematics reform program designed to enrich, expand, and integrate with the middle school or algebra mathematics curriculum. MathForward incorporates technology, student assessment, on-going teacher professional development, and fosters collaboration among teachers to improve student achievement and increase teacher content knowledge. This interactive approach builds a strong conceptual understanding of mathematics for students, promotes student reasoning, allows for additional time to use problem solving and collaborative learning strategies, and integrates ongoing formative assessment, allowing immediate adjustments in instruction as necessary.

\$190,420
Program
Improvement Grant
Funds

In addition, the schools (Will C. Wood, Rosemont and Hiram Johnson) that served as early implementation sites last year will continue to use the program as their intervention design.

SA12-00121
Wireless Generation

8/1/11 – 6/30/12: This technology-based assessment and intervention program addresses all five essential elements (phonological awareness, phonics, fluency, vocabulary, and comprehension) of reading. The program is designed to identify, target, and address students' reading deficiencies across the five elements in Grades K-6. The elementary schools will administer the DIBELS and Reading-3D benchmark and progress monitoring assessments and Burst Reading intervention program. The technology will analyze the assessment data at the specific item level and group students with similar needs, provide teachers with 10-day sequences of curriculum and detailed lesson plans that are synchronized to the students' changing needs.

In addition, the schools (Caleb Greenwood, James Marshall, Sutterville and Earl Warren Elementary Schools) that served as our early implementation sites last year will continue to use the program as their intervention design.

\$471,297
Program
Improvement Grant
Funds; Title I Funds

ACCOUNTABILITY OFFICE

SA12-00089
Transformation by
Design

10/3/11 – 10/2/12: Data Inquiry training and support, year two of three year initiative. Focus of year two is to deliver professional development and services related to common learner-centered problems and problems of practice, and to organize schools into networks focused on solving common learner-centered problems. Within the school, focus will be on selecting learning tasks related to the Common Core Standards and analyzing student work. Administrators and teachers will be trained to conduct focused walk-throughs called instructional rounds among cohort groups of schools led by a trained facilitator. The goal of the professional development is to build capacity within Sacramento City Unified School District staff so that all administrators and many teachers become proficient in the Data Inquiry cycle of improvement and the collaborative learning model of instructional rounds so that the district becomes self-sustaining in these strategies.

Strategic Plan: Aligns with Pillar I, College and Career Ready Students, in that the focus of the outcome is improvement in teaching and learning which ultimately affects student achievement.

\$302,160
Title I Funds

ACCOUNTABILITY OFFICE

SA12-00090
Transformation by
Design

8/1/11 – 6/30/12: 8/1/11 – 6/30/12: Year two of re-design of six priority schools around a new vision of student learning which includes capacity building in school site staff. In year two, school support will be delivered through a combination of professional development, technical assistance and student work reviews. The Priority School staffs will become proficient in the Data Inquiry process, learn how to conduct

\$174,990
Title I Funds

instructional rounds, focus on student results, especially those who have not responded to initial changes, receive intensive training in strategies and lesson design in literacy, math, history and science. Also, the contractor will facilitate the initial design process at a seventh Priority School, Rosa Parks Middle School, and train that staff in all of the professional development detailed above. Administrators and teachers will become proficient in the processes and protocols so that the initiatives and strategies become embedded in the district work and the district can become self-sustaining in this area.

Strategic Plan: Aligns with Pillar I, College and Career Ready Students. The focus of the outcome is intense professional development for staff in teaching strategies, lesson design, data inquiry, and instructional rounds. Aligns with Pillar III, Organizational Transformation, as the Priority Schools Initiative is designed to use these seven schools as innovators and learning laboratories in order to identify strategies and interventions so that the lessons learned may be applied to all under-performing district schools.

ADULT EDUCATION

SA12-00079
Richard L. Neely

7/1/11 – 6/30/12: To serve as Director to the Vocational Nursing Program, working with staff at Charles A. Jones Career Education Center to develop and maintain the medical programs including classroom instruction, curriculum, screening and selection criteria and evaluation of methodologies.

\$85,200
Adult Education

Strategic Plan: Aligns with Pillars II and III by providing staff to supervise the Licensed Vocational Nursing Program and support teaching and learning. The Board of Nursing and Psychiatric Technicians require the school have a Director of Nursing. Richard Neely will continue to serve as the Director of the Vocational Nursing Program.

SPECIAL EDUCATION

On June 30, 2011, the Governor of California signed AB 114, which effectively shifts the responsibility or the provision of special education mental health services in California from county mental health agencies to local educational agencies (LEAs) pursuant to the federal Individual with Disabilities Education Act mandate.

Despite that LEAs became responsible for educationally related mental health services on July 1, 2011, the Sacramento City Unified School District (SCUSD) and the Sacramento County Department of Health and Human Services (DHHS) entered into a Memorandum of Understanding that provides that, until July 31, 2011, the cost of educationally-related mental health services to SCUSD students placed in residential facilities pursuant

to an Individualized Education Program (IEP), including care and supervision costs and mental health services costs, will be paid by DHHS directly to the residential facility under existing contracts, agreements, or arrangements between the county and the residential facility.

The requirement to provide educationally-related residential mental health services will revert from DHHS back to SCUSD on August 1, 2011; therefore, it is the intent of SCUSD to enter into a Master Contract with Residential Treatment Centers (RTCs) to continue providing SCUSD students in residential facilities with mental health and board and care services from August 1, 2011, through the 2011-2012 school and extended school year.

Strategic Plan: Aligns with Pillar III, Organizational Transformation by supporting teaching and learning.

S12-00067 Clarinda Academy	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$83,000 Special Education
S12-00068 Victor Treatment Center	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$89,600 Special Education
S12-00069 Mingus Mountain Academy	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$78,000 Special Education
S12-00071 Red Rock Canyon School	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$146,000 Special Education
S12-00072 Summitview	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$200,000 Special Education
S12-00073 Woodward Youth Corporation	7/1/11 – 6/30/12: Master Contract for residential mental health services	\$77,500 Special Education

Copy of Master Contract issued to all facilities is attached

APPROVAL OF DECLARED SURPLUS MATERIALS AND EQUIPMENT

ITEM	SITE/DEPARTMENT	TOTAL VALUE	DISPOSAL METHOD
Computer Equipment	Capital City School	None	Recycle
Office Equipment	Capital City School	None	Recycle
Vehicle	Operation Support Services	None	Surplus

RECOMMENDED BID AWARDS – FACILITIES PROJECTS

Bid No. PC12-800-0822: Energy Management & Control System Expansion

Bids received: July 28, 2011
Recommendation: Award to Johnson Controls
Amount: \$2,525,210
Funding Source: Bond Funds / Sacramento Municipal Utility Districts American Recovery & Reinvestment Act (ARRA) Funds

BIDDER	BIDDER LOCATION	AMOUNT
Johnson Controls Lic. #22445	Folsom, CA	\$2,525,210
Direct Digital Controls Lic. #702144	Rancho Cordova, CA	\$2,770,000

CHANGE NOTICES – FACILITIES PROJECTS

The following change notice(s) are submitted for approval.

CONTRACTOR PROJECT and DESCRIPTION OF CHANGE

David Engineering	Leonardo da Vinci Parking Lot Repair		
	Change Order No.1	Unforeseen Change Order. Unknown conditions materially differ from contract documents.	\$45,962 25.2%
	Initiated by: District and Engineer		
	Description: Due to unsuitable materials in the subgrade, dig out and removal of said materials was required and recommended by testing agency, Wallace-Kuhl & Associates.		
	Change Order Subtotal:	\$45,962	25.2%
	Original Contract:	\$182,400	
	Previously Authorized Change Orders:	\$-0-	
	New Contract Amount / Total Change Order %:	\$228,362	25.2%
	Contract Time will be extended by:	-0-	days

SERVICES AGREEMENT

Date: August 19, 2011 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Pearson, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Implement Mathematics Navigator intervention program designed to help students repair gaps and misconceptions in Grades 2–6; and build skills, problem solving and the conceptual understanding needed for success in algebra, geometry, and other higher-level courses per Proposal submitted July 5, 2011

ARTICLE 2. TERM.

This Agreement shall commence on August 1, 2011, and continue through June 30, 2012, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be One Hundred Sixty Five Thousand, Four Hundred Twenty Five Dollars (\$165,425).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Olivine Roberts, Chief Academic Officer, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor

to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability

insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:



District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870

Attn: Olivine Roberts, Chief Academic Officer

Contractor:
Pearson
1300 National Drive
Sacramento, CA 95834
Attn: Vicky Bush, Vice President

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.



ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

PEARSON

By: _____

Patricia A. Hagemeyer
Chief Business Officer

Date

By: _____

Signature

Print Name/Title

Date

EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title

TI MathForward™
Terms and Conditions of Service
Agreement # 08052011SCUSD

This Service Agreement ("Agreement"), the provisions of which shall be effective as of August 18, 2011 (the "Effective Date"), is made and entered into by and between TEXAS INSTRUMENTS INCORPORATED, a Delaware corporation with its principal address at 12500 TI Boulevard, Dallas, Texas 75243 ("TI"), and the Sacramento City Unified School District ("District"), with its principal address at 5735 47th Avenue, Sacramento, CA 95824

RECITALS

WHEREAS, the District has chosen to implement the TI MathForward™ Program (the "Program") using the **TI Implementation Specialist** model selected by the District with participating teachers in the following school(s) American Legion High School, California Middle School, Fern Bacon Middle School, Hiram Johnson High School, John Still Middle School, Kit Carson Middle School, Rosemont High School, Sam Brannan Middle School, and Will C. Wood Middle School ("Campus(es)"); and

WHEREAS, the District and TI have set out in this Agreement the mutual obligations of the parties in connection with the Program, and Exhibit A the Statement of Work ("SOW") to be performed in connection with the Program; and

WHEREAS, the District's Board has authorized the District to execute this Agreement, to provide for the payment of the sums provided in this Agreement to TI as consideration for TI's services; and

WHEREAS, TI has been duly authorized to enter into this Agreement with the District;

NOW THEREFORE, in consideration of the Recitals set forth above, which are incorporated into the body of this Agreement, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the **District and TI agree as follows:**

AGREEMENT

1. Term. This Agreement shall be effective from 08/18/2011 to 06/30/2012 (the "Term"), unless sooner terminated in accordance with the provisions of this Agreement or extended in writing by the inclusion of one or more additional SOWs. Should an additional SOW be entered into under this Agreement which extends a party's obligations beyond the stated Term, this Agreement shall remain in effect until thirty (30) days after completion of all such additional SOWs.

2. Services to Be Performed by TI.

2.1 Training Services. TI will provide to the District certain services ("Services") as set forth in each SOW attached hereto, in accordance with the schedule set forth therein or as otherwise agreed upon by the parties. The training will be conducted by educational professionals selected by TI, with whom TI has contracted to perform the Services.

2.2 Training and Curriculum Materials. As part of the Program, and subject to the terms and conditions of the license granted herein in Section 8, TI will provide the materials listed in the SOWs (the "Training Materials"). These are the only materials that TI will provide to the District, Campuses and Participating Teachers as part of the Program.

2.3 Meetings. TI will, upon request from the District, meet with District personnel to discuss any issues which may arise in connection with the Program or this Agreement.

2.4. Contact Person. TI designates the following person as TI's contact person in connection with the Program or this Agreement:

Name: Steven Bailey
Title: Director, Business Development
Address: 7800 Banner Drive, MS 3920, Dallas, Texas 75251
Telephone: 972-917-1382 **Fax:** 972-917-4296 **Email:** sbailey@ti.com

TI may change its designated contact person from time to time by giving the District written notice of the change.

3. District Obligations

3.1 Performance of SOW Requirements. The District will perform the District's obligations set out in the SOWs in a timely manner, and will require the Campus and the Participating Teachers to comply with any applicable implementation obligations set out in the SOWs. The parties acknowledge and agree that, as an essential element of the Program, each party must fulfill each and every implementation obligation assigned to it in the SOWs. Further, the parties agree that the schedule assigned to each element, as set forth in the SOWs, is a critical requirement under the obligations. Failure by either party to perform its obligations or to adhere to the schedule may adversely affect the effectiveness of the Program.

3.2. Payment. The District agrees to promptly pay TI in accordance with the terms of this Agreement.

3.3 Meetings. The District will, upon request from TI, meet in a timely manner to discuss any issues or concerns which may arise in connection with the Program or this Agreement.

3.4 Contact Person. The District designates the following persons to act as the District's contact for the Program and this Agreement:

PRIMARY CONTACT

Name: Lucy Gutierrez

Title: Academic Office

Address: 5735 47th Avenue - Box 721

Sacramento, CA 95824

Telephone: 916-643-9086

Fax: 916-643-9488

Email: Lucygu@sac-city.k12.ca.us

SECONDARY CONTACT

Name: Matt Perry

Title: Director HS Reform Initiatives

Address: 5735 47th Avenue

Sacramento, CA 95824

Telephone: 916-643-7400

Fax: 916-643-9210

Email: Matt-Perry@sac-city.k12.ca.us

The District may change its designated contact person from time to time by giving TI written notice of the change.

4. Compensation/Rates, Charges and Taxes.

4.1 Compensation/Rates and Charges. As compensation for the Services provided by TI under this Agreement, the District shall pay TI the amounts set forth in the SOWs in accordance with the payment schedule provided therein or upon submission by TI of an invoice setting out the amount of payment due and describing the Services performed. It is understood and agreed that the District will be obligated to pay TI the payments owed under this Agreement from funds appropriated by the District (as described in Section 4.3 below).

4.2 Payments. Payments shall be due and payable within thirty (30) days from the date of TI's invoice. Payments not made when due shall accrue interest in accordance with the provisions of Chapter 2251 of the Texas Government Code.

4.3 Appropriated Funds. The District hereby represents and warrants to TI, that the District's Board appropriated and budgeted for payment under this Agreement, all funds necessary to meet the District's payment obligations under this Agreement for the Term.

4.4. Taxes. The amount of compensation shown in the SOW does not include the amount of any taxes to which the District may be subject. If the District is exempt from the payment of taxes in connection with the Program, the District shall provide to TI a sales tax exemption certificate or other appropriate documentation required to establish the tax exemption. If the District is subject to the payment of taxes on any portion of the Program, the District will promptly notify TI of this fact, and TI will add sales taxes to the compensation to be paid to TI as required by applicable law, and the District will pay such taxes in addition to the stated compensation.

5. Termination

5.1. Termination for Convenience. TI or the District may terminate this Agreement and any SOW hereunder for any reason, including but not limited to reasons of convenience, by providing the other party with at least thirty (30) days prior written notice.

5.2. Termination for Breach. In the event of a material breach of this Agreement by either party, the non-breaching party may notify the party in breach of such breach in writing and, if said breach is not cured within thirty (30) days after such notification, the non-breaching party may immediately terminate this Agreement. Notwithstanding the foregoing, either party may immediately terminate this Agreement by providing written notice and without giving the other party a chance to cure if the other party: (i) is involved in any voluntary or involuntary bankruptcy proceeding or any other proceeding concerning insolvency, dissolution, cessation of operations, reorganization or indebtedness or the like, and such proceeding is not dismissed within sixty (60) days; or (ii) becomes insolvent or is unable to pay its debts in the ordinary course of business or makes an assignment for the benefit of its creditors.

5.3. Effect of Termination. Upon receipt of notification of termination, whether for convenience or cause, (i) TI shall immediately cease performance of Services under this Agreement, (unless the parties agree to continued performance up to a specified date or activity), and (ii) the District shall pay TI for all Training Materials provided and Services performed by TI to the date of termination, within 30 days after the date of termination. The District may, however, offset any monies due to it by TI prior to payment.

6. Limitation of Liability and Damages

6.1. WAIVER OF CONSEQUENTIAL DAMAGES. THE FOREGOING NOTWITHSTANDING, THE DISTRICT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO PURSUE OR OBTAIN PUNITIVE, SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES AGAINST TI WITH REGARD TO ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, BUT ONLY TO THE EXTENT PERMITTED BY LAW. IN NO EVENT SHALL TI'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT RECEIVED BY TI AS COMPENSATION UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

6.2. DISCLAIMER OF WARRANTIES AND REPRESENTATIONS. THE DISTRICT RECOGNIZES THE EDUCATIONAL NATURE OF THE SERVICES TO BE PERFORMED BY TI UNDER THIS AGREEMENT AND THAT THE EFFECTIVENESS OF THE PROGRAM IS DEPENDENT ON FACTORS WHICH ARE BEYOND THE CONTROL OF TI, INCLUDING, BUT NOT LIMITED TO, THE DILIGENCE WITH WHICH PARTICIPANTS PURSUE THE TRAINING ACTIVITIES. TI DOES NOT MAKE ANY REPRESENTATIONS,

GUARANTIES OR WARRANTIES OF ANY KIND AS TO THE EFFECTIVENESS OF THE PROGRAM IN ACHIEVING ANY PARTICULAR LEVEL OR DEGREE OF RESULTS, OR ANY GOALS OR STANDARDS SET OR ADOPTED BY THE DISTRICT. TI DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED WITH REGARD TO THE PROGRAM OR THE TRAINING MATERIALS.

7. **Notice.** Unless otherwise specified herein, any notice to either party by the other party shall be deemed to have been properly given if mailed to said party by certified mail, return receipt requested or if sent by facsimile or by overnight courier if evidence of receipt is verified and if correctly addressed to the last address for notice that the sending party has for the recipient at the time notice is given:

NOTICE TO TI

Name: Herbert Foster

Title: Business Services Manager

Address: 7800 Banner Drive MS 3918

Dallas, Texas 75251

Telephone: 972-917-1522

Fax: 972-917-1795

Email: h-foster@ti.com

Name: Lucy Gutierrez

Title: Academic Office Admin Asst

Address: 5735 47th Avenue, Box 721

Sacramento, CA 95824

Telephone: 916-643-9086

Fax: 916-643-9488

Email: LucyGu@sac-city@k12.ca.us

NOTICE TO THE DISTRICT

Notice given by certified mail, return receipt requested, as provided above, with copy sent concurrently by facsimile or email, will be deemed delivered, whether or not actually received, three days after deposit in the US mail. Notice given in any other manner will be deemed delivered if and when actually received. Either party may change its address for notice by providing written notice of the change in the manner for giving notice provided herein.

8. **Intellectual Property Rights and Materials License Grant.** Title, ownership to, and rights in intellectual property rights in the Training and Curriculum Materials delivered by TI hereunder this Agreement, including all permitted copies thereof shall remain with TI and its licensors. Subject to the District's compliance with and fulfillment of its responsibilities under this Agreement, TI grants the District a license to use, copy and internally distribute the Training and Curriculum Materials for the sole purpose of instructing teachers employed by the District in the elements of the Program.

9. **General Provisions**

9.1 **No Third Party Rights** This Agreement is entered into solely between, and may be enforced only by, TI and the District, and this Agreement shall not be deemed to create any rights in any third parties, including employees, suppliers or subcontractors, or to create any obligations of a party to any such third parties.

9.2 **Merger, Modification, and Severability.** This Agreement, together with the SOW, constitutes the entire

agreement between the parties as to the subject matter hereof, and supersedes any and all prior commitments, understandings, agreements and the like between the parties concerning the subject matter of this Agreement. To the extent of any conflict, the terms of each SOW shall supersede the terms of this Agreement. Except as otherwise provided herein, this Agreement, and the SOW hereto, may only be modified by a writing signed by an authorized representative of each of the parties. A faxed or emailed signature shall have the same legally binding effect as an original signature. In the event that any provision of this Agreement conflicts with the laws under which this Agreement is to be construed or if any such provision is held invalid by a Court with jurisdiction over the parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect.

9.3 Applicable Law. The parties agree that the transactions that are the subject matter of this Agreement bear a reasonable relationship to, and this Agreement shall be deemed to be a contract made in, the State of Texas. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of laws provisions. The parties agree that to the extent permitted by applicable law, venue for judicial action relating to this Agreement shall be in courts of competent jurisdiction in Dallas, Texas.

9.4 Independent Contractor. Each party shall act as an independent contractor under this Agreement and shall not represent to any third parties that it is anything other than an independent contractor. TI may use subcontractors in the performance of this Agreement.

9.5 Waiver of Default. No failure of either party to enforce at any time, or for any period of time, any of the provisions of this Agreement shall constitute a waiver of any provisions in this Agreement or of either party's right to enforce each and every provision at a later time or upon a subsequent default.

9.6 Assignment. Neither party shall assign this Agreement, any SOW, or any rights and obligations thereunder without the other party's prior written consent, provided, however, that nothing in this provision shall be deemed to prohibit TI from entering into or modifying subcontracts for the performances of the Services to be provided by TI under this Agreement. Any assignment in violation of this provision shall be void and of no effect.

9.7 Force Majeure. Except for District's obligations to make payment for services already performed, neither party shall be liable to the other for failure to perform its obligations under this Agreement if prevented from doing so because of a Force Majeure. "Force Majeure" shall mean an act of God, fire, flood, civil disturbance, act of terrorism, or interference by civil or military authority, which is beyond the reasonable control of the party claiming Force Majeure, is not caused in whole or in part by the acts or omissions of such party, and adversely affects activities under this Agreement. Upon the occurrence of such an event, the party seeking to rely on this provision shall promptly give written notice to the other party of the nature and consequence of the Force Majeure. In any event, should the Force Majeure continue for a period of one (1) month, either party may terminate the portion of this Agreement or specific activity or activities under this Agreement that is/are

affected by the Force Majeure.

9.8 Survival. Notwithstanding any provision in this Agreement to the contrary, any terms or provisions of this Agreement which are performable after termination or expiration of this Agreement, or which may be performed after termination or expiration of this Agreement, will survive the expiration or termination of this Agreement.

9.9 Confidentiality. The parties acknowledge that the District is subject to Chapter 552 of the Texas Government Code regarding the disclosure of information to the public (the "Public Information Act"). The District agrees to keep the terms of this Agreement confidential to the greatest extent that it is permitted to do so by applicable law. The District further acknowledges that certain information and Training Materials to be provided by TI under the terms of this Agreement are or may be trade secrets, proprietary or confidential information which is exempt from disclosure under the terms of the Public Information Act. TI will provide to the District a list of all information which TI believes to be exempt from disclosure, and, to the extent practicable, TI shall mark at the top of each page of proprietary or confidential information provided to the District in hard copy format the word "Confidential" in conspicuous print. In the event the District receives a request for the disclosure of information which is marked Confidential, or which is contained in the list of confidential information which TI provided to the District, the District shall promptly notify TI of the request, and of the action taken by the District. If the District determines that the information is exempt, the District shall notify the requesting party of the exempt status of such information. If the District is not sure whether requested information is exempt, the District shall send such information to the Texas Attorney General with a request for a determination of the exempt status of the information and shall concurrently provide TI with a copy of the request. It shall be the obligation of TI to provide to the Attorney General, at TI's cost and expense, any information required to establish the exempt nature of the information.

9.10 Representations.

District Representations. The District represents to TI that the Recitals set forth above are true, correct and accurate. The District further represents to TI that all approvals and actions required to make this Agreement, including the payment obligations, binding on, and enforceable against, the District have been taken. The District further represents that the person signing this Agreement on behalf of the District has been fully authorized to execute this Agreement as the act of the District.

TI Representations. TI represents to the District that all approvals and actions required to make this Agreement binding on and enforceable against TI have been taken. TI further represents that the person signing this Agreement on behalf of TI has been fully authorized to execute this Agreement as the act of TI.

9.11 Exhibits. All Exhibits attached to this Agreement are incorporated herein and made a part hereof for all purposes. As of the Effective Date, the Exhibits to this Agreement are as follows:

- Exhibit A: STATEMENT OF WORK
- Exhibit B: Standard Terms and Conditions of Sale

- Exhibit C: MathForward Implementation Dependencies (SOW)
- Exhibit D: MathForward Payment Options
- Exhibit E: Campuses and Contact Information

This Agreement is executed by the parties on the dates set forth below, to be effective as of the Effective Date.

TEXAS INSTRUMENTS INCORPORATED

By: _____

Lisa B. Gill

Name: Lisa Brady Gill

Title: Executive Director, North America Marketing

Date: _____

8/9/2011

SCHOOL DISTRICT REPRESENTATIVE

By: _____

DR Robert

Date: _____

8/10/11

By: _____

Patricia A. Hagemeyer
Chief Business Officer

Date: _____

August 19, 2011

Exhibit A

School Dist:	Sacramento City USD
City, State:	Sacramento, CA
Attention:	Dr. Olivine Roberts
Title:	Chief Academic Officer
Email:	olivine-roberts@sac-city.k12.ca.us
Provided by:	Tonya Hancock tonya@ti.com
Date:	8/10/2011

MathForward™

Revised February 2011

Program: TI-MathForward™ utilizing TI Specialist

Optional:	
On-Site Mathematician Training	Not selected
110 Additional Days	Selected

Variables:	
# of Teachers Supported	14
# of Blocks per Teacher	2
# of Students per Block	30

Year 1 Cost Analysis	
Total expenditure	\$190,420
Cost per classroom	\$13,601
Cost per student	\$227

This TI-MathForward™ Program Includes:

TI MathForward™ Utilizing TI Specialist – Year 1

TI provides a certified Instructor and Implementation Specialist to oversee all aspects of the program. They work directly with the campus administrator and mathematics department to schedule training, coaching, and support. This model includes:

- MathForward™ Mathematics Content (one set per teacher)
- Teacher Training Materials (one set per teacher)
- Activities Exchange Integration - lesson plans/activities aligned to state & district standards
- Administrator Training
- Unlimited Access to the Online Resource Center (includes video mathematician)
- On-site mathematician (if selected)
- Professional Development – Technology Integration (first 4 days are consecutive)
- Professional Coaching (in classroom)

Training Provided	Year 1
On-site Professional Development (instructor days)	9
On-site Professional Coaching (instructor days)	30
Additional Days	110
Total training/coaching days provided	149

This Quotation is firm for 60 days and acceptance of Buyer's order shall be made only under the TI MathForward™ Terms and Conditions of Service.

EXHIBIT B

TEXAS INSTRUMENTS INCORPORATED EDUCATION TECHNOLOGY STANDARD TERMS AND CONDITIONS OF SALE

ANY PROVISION OR CONDITION, INCLUDING BUT NOT LIMITED TO ANY U.S. GOVERNMENT PROCUREMENT REGULATIONS, ("TERMS") OF AN ORDER FROM ANY CUSTOMER ("BUYER"), WHICH IS IN ANY WAY INCONSISTENT WITH OR IN ADDITION TO THESE TERMS SHALL NOT BE BINDING UPON TEXAS INSTRUMENTS INCORPORATED ("TI") UNLESS TI AGREES TO SUCH TERMS IN WRITING. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND RECEIVED BY TI AT ITS TEXAS HOME OFFICE PRIOR TO COMMENCEMENT OF PERFORMANCE BY TI. RETENTION BY BUYER OF ANY PRODUCTS DELIVERED BY TI HEREUNDER SHALL BE DEEMED ACCEPTANCE OF THE TERMS HEREOF.

PRICES

The prices shall be TI's standard prices that are in effect at the time TI accepts Buyer's order. TI may change product or services prices at any time.

Prices are exclusive of all taxes and are subject to an increase equal in amount to any tax, duty, or other charge TI may be required to collect or pay. Each party acknowledges that the purchase price reflects the allocation of risk expressed herein.

TITLE; DELIVERY; INSPECTION

Products shall be delivered F.O.B. TI's point of shipment except that products shipped outside the U.S. shall be delivered FCA (Incoterms 1990) TI's point of shipment and title shall pass upon entry to the country of destination. Services shall be deemed delivered upon performance.

TI may deliver the products in installments. Shipping dates are approximate only. Shipments will be freight collect unless otherwise agreed.

Buyer will have five working days from date of receipt to inspect the products. Failure by Buyer to give notice that identifies particular deficiencies during the inspection period will constitute Buyer's acceptance of the products. Services shall be deemed accepted upon completion of delivery.

DEFERMENTS AND CANCELLATIONS

Buyer may defer or cancel services or shipments of standard products by providing TI with advance written notice and paying applicable charges. Products held for Buyer are held at Buyer's sole risk and expense.

SOFTWARE PROGRAM

Rights to use software programs shall be determined by the end-user license agreement that accompanies the software program. No other license rights are granted.

TERMS AND METHOD OF PAYMENT

Terms of payment are net thirty days from date of invoice, subject to continuing credit approval. On noncredit sales, the parties must agree prior to shipment on the method of payment. In the case of TI's provision of services, terms of payment are net thirty days from the date services are delivered.

Payment shall be made for products without regard to whether Buyer has made or may make any inspection of the products. Each shipment made under these terms shall be considered a separate transaction. In the event of any default by Buyer, TI may decline to make further shipments.

WARRANTY

THE FOLLOWING WARRANTIES FOR PRODUCTS ARE IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PART OF TI OR ITS LICENSORS.

TI warrants that at the time of delivery it has title, or the right to provide the products. TI warrants the products (including software program media) for the applicable warranty period against faulty workmanship or the use of defective materials. Unless a software warranty accompanies the software programs contained in or provided with the products, all such software programs are provided "AS IS" and without warranty. Services are warranted to be delivered and presented in a professional manner. No further warranty for services is given.

These warranties are granted only in the United States and Canada.

No additional obligation or liability shall arise from TI's rendering of technical, programming, or other advice or service in connection with the products.

REMEDIES

THE FOLLOWING STATES TI'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDIES:

During the applicable warranty period, at its option, TI will (1) repair, (2) replace (with new or functionally operative parts), or (3) credit Buyer's account for any nonconforming products. These remedies are provided on condition that: (a) TI is promptly notified in writing of the particular defects in the products; (b) TI's examination of the products discloses that the deficiencies actually existed within the warranty period and were not caused by accident, unreasonable use, neglect, alteration, improper service, improper installation, improper connections with peripherals, or other causes not arising out of defects in material or workmanship; and, (c) Buyer delivers the products or otherwise provides them to TI, at Buyer's risk and expense in accordance with TI's instructions. All such remedies are available only in the United States and Canada.

TI's liability under any other cause of action, whether brought as a breach of contract, tort, indemnity obligation, or otherwise, shall be limited to direct damages, not to exceed the price of the products involved.

If the preceding sole and exclusive remedies should be found to have failed their essential purpose, in no event shall TI's liability or Buyer's remedy exceed the greater of \$50,000 or the purchase price for the particular items of products or services involved.

DISCLAIMER OF DAMAGES

IN NO EVENT SHALL TI OR ITS SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, WHETHER THE ALLEGED DAMAGES ARE LABELED IN TORT, CONTRACT, OR INDEMNITY, EVEN IF TI OR ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY.

The foregoing Remedies and Disclaimer of Damages will not apply to the indemnity obligation set forth in the section entitled Patent and Copyright Indemnification.

PATENT & COPYRIGHT INDEMNIFICATION

TI will defend at its expense any action brought against Buyer which alleges that products developed, manufactured and supplied by TI hereunder directly infringe a United States patent or copyright ("Infringement"), and shall pay all damages and costs finally awarded against Buyer which are attributable to the Infringement, provided that TI is (1) given prompt notice of the claim, (2) furnished a copy of all communications, notices and/or other actions relating to the claim and (3) given the sole authority and reasonable assistance (at TI's expense) necessary to defend or settle the claim. TI shall not be obligated to defend, or be liable for any costs and damages, if the Infringement arises: (a) out of compliance with Buyer's specifications, (b) from Buyer's combination of products with products and/or items not manufactured and developed by TI, (c) from Buyer's modification of the products after delivery by TI, or (d) from the use of the products in the practice of a process.

Should the products delivered by TI under these terms become, or in TI's opinion be likely to become, the subject of a claim of infringement, TI may, at its option: (x) procure for Buyer the right to continue to use the products; or (y) replace or modify the products so that they become non-infringing; or (z) refund the purchase price less a reasonable charge for use, and accept the return of the products. If the claim occurs prior to completion of delivery of the products or prior to the making of further copies of software programs by Buyer, TI may decline to make further shipments of products or withdraw Buyer's authorization to make further copies of the software programs.

If any action is brought against TI based on a claim that the products manufactured or developed by TI in compliance with Buyer's specifications directly infringe any United States patent or copyright in the United States, then the indemnity obligations stated herein with respect to TI shall reciprocally apply with respect to Buyer.

Nothing contained in this Agreement shall be construed as granting or implying any rights by license, estoppel or otherwise.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE RIGHTS OF THE BUYER AND THE SOLE AND EXCLUSIVE LIABILITIES OF TI FOR PATENT AND COPYRIGHT INFRINGEMENT AND IS IN LIEU OF ALL CONDITIONS OR WARRANTIES IN REGARD THERETO.

MISCELLANEOUS

The Agreement is in the English language only, which language shall be controlling in all respects.

The validity, performance and construction of this Agreement shall, insofar as may be permitted by applicable law, be governed by and interpreted in accordance with the laws of the State of Texas, U.S.A. as apply to contracts made and fully performed in Texas. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this agreement.

This Agreement shall not be assigned or transferred by Buyer without the prior written consent of TI. Any attempted assignment or transfer of any of the rights, duties or obligations of this Agreement shall be void. If consent is given, this Agreement shall be binding upon and inure to the benefit of the assigns.

If any provision of this Agreement is held invalid, the other provisions shall not be affected.

The products may be subject to export regulations by the U.S. Government. Prior to export or reexport Buyer agrees to obtain any licenses that may be required under the applicable laws of the U.S., including the Export Administration Act and Regulations.

Continued use or possession of the products after expiration of the applicable warranty period will be a conclusive statement by Buyer that the warranty is fulfilled to Buyer's satisfaction, unless Buyer has previously notified TI in writing of a particular defect. Failure of either party to enforce any term and condition of this Agreement will not be deemed to be a waiver of such term or condition.

TI is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of TI, including but not limited to shortage of labor, fuel, raw material or machinery or technical or yield failures where TI has exercised ordinary care in the prevention thereof. Production and deliveries may be allocated by TI in any reasonable manner in the event of shortage of products. TI reserves the right to change its product and service offering at any time without notice including adding or deleting products and services or by modifying the specification of existing products.

MODIFICATION /ENTIRE AGREEMENT

THIS AGREEMENT CONSTITUTES THE COMPLETE AND EXCLUSIVE EXPRESSION OF ALL THE TERMS OF AGREEMENT BETWEEN THE PARTIES. IT SUPERSEDES ALL UNDERSTANDINGS AND NEGOTIATIONS CONCERNING THE MATTERS SPECIFIED HEREIN. ANY REPRESENTATIONS, PROMISES OR WARRANTIES MADE BY EITHER PARTY THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS AGREEMENT SHALL BE GIVEN NO FORCE OR EFFECT. NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS AGREEMENT SHALL BE BINDING UPON TI UNLESS MADE IN WRITING AND SIGNED BY A DULY-AUTHORIZED REPRESENTATIVE OF TI LOCATED AT TI'S TEXAS HOME OFFICE.

REV. 012507

TI-29450

EXHIBIT C
MATHFORWARD IMPLEMENTATION DEPENDENCIES – SOW

Item: Campus Staff Assigned to MathForward Program – a list of those educators assigned to the program

Responsible Party: District or Campus Administration

Timeline: Two weeks prior to first training session

Item: TI Instructional Technology Allocated - The program relies on each classroom being equipped with appropriate TI graphing calculators (one per student) and the TI-Navigator wireless classroom network (one per classroom)

Responsible Party: District or Campus Administration

Timeline: Calculators set-up and TI-Navigator System installed prior to the first date of training

Item: Block Scheduling of MathForward Classes – defined as continuous 80-100 minutes of instructional time with the same MathForward teacher.

Responsible Party: District or Campus Administration

Timeline: Minimum two weeks prior to start of school (program)

Item: Initial Professional Development Scheduled

Responsible Party: Implementation Specialist (District or TI)

Timeline: Two-four weeks prior to first day of school

Item: Common Planning Times Scheduled – defined as allowing three hours per week (minimum) for the teachers participating in the TI MathForward program so they can share instructional strategies, plan lessons for the week, analyze student work, and discuss underlying math concepts.

Responsible Party: District or Campus Administration

Timeline: Within ten days of the program begin date or the first day of school

Item: Teacher / Administrator Enrollment in MFORC (MathForward Online Resource Center)

Responsible Party: Implementation Specialist (TI)

Timeline: On or before initial training session

Item: Assignment of TI Implementation Specialist

Responsible Party: MathForward Supervisor

Timeline: Upon execution of contract

Item: Training and MathForward Curriculum Materials Provided

Responsible Party: MathForward Supervisor

Timeline: Before initial training session

Item: Campus Administrative Support – defined as attendance at meetings with MathForward Supervisor and/or Implementation Specialist

Responsible Party: Campus Administrator

Timeline: Quarterly

EXHIBIT D
MATHFORWARD PAYMENT OPTIONS

OPTION A: One Year Program

Pay all year one cost upon execution of initial professional development

OPTION B: One Year Program

Pay two equal payments.

- **Payment #1** (~ mid October) – Initial professional development and in-classroom coaching is complete; on-going coaching and curriculum alignment is in-progress
- **Payment #2** (~ mid March) – Advanced technical training, co-teaching / modeling, and assessment is in-progress; preparations for state assessments

OPTION C: One Year Program

Pay based on program deliverables – Total cost of program is equally divided among four payments for year one
Payment schedule:

- **Payment #1** (~ end of September) following completion of 25% professional development and coaching sessions
- **Payment #2** (~ mid December) following completion of 50% professional development and coaching sessions
- **Payment #3** (~ mid February) following completion of 75% professional development and coaching sessions
- **Payment #4** (~ mid May) following completion of 100% professional development and coaching sessions

OPTION D: Two Year Program

Pay both years cost upon execution of initial professional development

OPTION E: Two year program

- Pay all year one cost upon execution of initial professional development
- Pay all year two costs upon the twelve month anniversary of the Effective Date of the Agreement

OPTION F: Two Year Program

Pay two equal payments.

- Payment schedule for year one:
 - **Payment #1** (~ mid October) – Initial professional development and in-classroom coaching is complete; on-going coaching and curriculum alignment is in-progress
 - **Payment #2** (~ mid March) – Advanced technical training, co-teaching / modeling, and assessment is in-progress; preparations for state assessments
- Payment schedule for year two:
 - **Payment #1** (~ mid October) – Initial professional development and in-classroom coaching is complete; on-going coaching and curriculum alignment is in-progress
 - **Payment #2** (~ mid March) – Advanced technical training, co-teaching / modeling, and assessment is in-progress; preparations for state assessments

OPTION G: Two year program

Pay based on program deliverables – Total cost of two-year program is equally divided among four payments each year

- Payment schedule for year one:
 - **Payment #1** (~ end of September) following completion of 25% professional development and coaching sessions
 - **Payment #2** (~ mid December) following completion of 50% professional development and coaching sessions
 - **Payment #3** (~ mid February) following completion of 75% professional development and coaching sessions
 - **Payment #4** (~ mid May) following completion of 100% professional development and coaching sessions
- Payment schedule for year two:
 - **Payment #1** (~ end of September) following completion of 25% professional development and coaching sessions
 - **Payment #2** (~ mid December) following completion of 50% professional development and coaching sessions
 - **Payment #3** (~ mid February) following completion of 75% professional development and coaching sessions
 - **Payment #4** (~ mid May) following completion of 100% professional development and coaching sessions

PAYMENT OPTION SELECTED: B**TEXAS INSTRUMENTS, INC****Billing/Invoicing Contact:**

Attn. Tanya McMahon, MS 3920

P. O. Box 650311

Dallas, Texas 75265

Telephone: 972-917-1587

Fax: 1-866-843-3839

Email: tmcmahon@ti.com

DISTRICT**Billing/Invoicing Contact:**

Attn. Lucy Gutierrez

5735 47th Avenue, Box 721

Sacramento, CA 95824

Telephone: 916-643-9086

Fax: 916-643-9488

Email: LucyGu@sac-city.k12.ca.us

INVESTMENTS**Year 1**

- Total cost for *year one* implementation is \$190,420 as outlined in Exhibit A.

EXHIBIT E
CAMPUSES AND CONTACT INFORMATION

(1) Campus Name: American Legion High School

Principal: Stan Echols

Phone: (916) 277-6600

Email: Stan-Echols@sac-city.k12.ca.us

(8) Campus Name: Sam Brannan Middle School

Principal: Kamaljit Pannu

Phone: (916) 264-4350

Email: Kamaljit-Pannu@sac-city.k12.ca.us

(2) Campus Name: California Middle School

Principal: Elizabeth Vigil

Phone: (916) 264-4550

Email: Elizabeth-Vigil@sac-city.k12.ca.us

(9) Campus Name: Will C. Wood Middle School

Principal: Mary DeSplinter

Phone: (916) 382-5900

Email: MaryDe@sac-city.k12.ca.us

(3) Campus Name: Fern Bacon Middle School

Principal: Nancy Purcell

Phone: (916) 433-5000

Email: Nancypu@sac-city.k12.ca.us

(4) Campus Name: Hiram Johnson High School

Principal: Felisberto Cedros

Phone: (916) 277-6300

Email: FelisbCe@sac-city.k12.ca.us

(5) Campus Name: John Still Middle School

Principal: Andy O'Neil

Phone: (916) 433-5375

Email: Andy-Oneil@sac-city.k12.ca.us

(6) Campus Name: Kit Carson Middle School

Principal: Charlie Watters

Phone: (916) 277-6750

Email: Charlie-Watters@sac-city.k12.ca.us

(7) Campus Name: Rosemont High School

Principal: Liese Martinez

Phone: (916) 228-5844

Email: LeiseMa@sac-city.k12.ca.us

SERVICES AGREEMENT

Date: August 19, 2011 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Wireless Generation, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Implement technology-based assessment and intervention program that addresses all five essential elements of reading (phonological awareness, phonics, fluency, vocabulary and comprehension) to identify, target and address students' reading deficiencies in Grades K-6 per Proposal dated July 5, 2011.

ARTICLE 2. TERM.

This Agreement shall commence on August 1, 2011, and continue through June 30, 2012, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be Four Hundred Seventy One Thousand, Two Hundred Ninety Seventy Dollars (\$471,297).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Olivine Roberts, Chief Academic Officer, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose.

The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class



mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:	Contractor:
Sacramento City Unified School District	Wireless Generation
PO Box 246870	55 Washington Street, Suite 900
Sacramento CA 95824-6870	Brooklyn, NY 11201
Attn: Olivine Roberts, Chief Academic Officer	Attn: James D. Mylen, Senior Vice President

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.



ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.

**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

WIRELESS GENERATION

By: _____

Patricia A. Hagemeyer
Chief Business Officer

Date

By: _____

Signature

Print Name/Title

Date

EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title



SERVICES AGREEMENT

Date: August 19, 2011 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Transformation by Design, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Sacramento Common Planning Time Initiative, Phase 2, per Phase 2 Proposal, attached and incorporated as Exhibit B.

ARTICLE 2. TERM.

This Agreement shall commence on July 2, 2011, and continue through June 30, 2012, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be Three Hundred Two Thousand, One Hundred Sixty Dollars (\$302,160).



Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Mary Shelton, Chief Accountability Officer, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.



The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in limited contact with pupils. Contractor is required to comply with the conditions listed in Exhibit A, Contractor's Certification of Compliance. If the Contractor is unwilling to comply with these requirements, the Contractor's employees may not enter any school site until the Contractor provides the certification of fingerprinting clearance by the DOJ for employees providing services. These requirements apply to self-employed contractors.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability



to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Mary Shelton, Chief Accountability Officer

Contractor:
Rochelle Herring Peniston
dba Transformation by Design
20 Whalen Court
West Orange, NJ 07052

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any

employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.



**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

**ROCHELLE HERRING PENISTON
DBA TRANSFORMATION BY DESIGN**

By: _____
Patricia A. Hagemeyer
Chief Business Officer

Date

By: _____
Signature

Print Name/Title

Date



EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title

Sacramento Common Planning Time Initiative Phase 2 Proposal

The focus of this initiative is to provide services to school and central office staff that will enable a successful three-year phase of common planning time. By definition common planning time is a collaborative structure. In order for collaborative planning time to yield results for students, protocols, content and goals must be embedded in an inquiry methodology that promotes teacher learning and transformational leadership.

Within successful common planning structures, activities such as analyzing test data, selecting student learning tasks related to standards, analyzing student work, action planning, learning and monitoring results lead to more effective leadership, teaching and most importantly, student learning as demonstrated in student work, test work and projects.

Assumptions Guiding the Work Plan

1. Common Planning Time will be rolled out in six phases over three years.
2. The Sacramento Common Planning process will build on the work of Nancy Love (Using Data), Kathryn Boudette (Data Wise), Walter Doyle (Academic Work), David Conley (College Knowledge), Richard Elmore (Instructional Core and the Instructional Rounds), Kenneth Leithwood (Transformational Leadership) and from the Common Core Standards.
3. Central office staff will assume responsibility for follow up school visits to schools in year 1 and 2 of PI status.
4. Transformation By Design will be responsible for all training and (3) follow up schools visits to schools in year 3, 4 and 5 of PI status.
5. Phase 1- The focus of year one (2010-2011) is to assist schools with setting up collaborative structures, how to triangulate data sources in order to identify a student learning problem, how to triangulate data sources to identify a problem of practice and to develop actions plans aimed at improving student work outcomes and helping schools achieve coherence in their core program.
6. Phase 2- The focus of summer (2011) is to deliver professional development and services related to common learner-centered problems and problems of practice and to organize schools into networks focused on solving common learner-centered problems. *The support services described in this proposal are in support of this phase.*

7. Phase 3- The focus on year two (2011-2012) is to expand common planning time to include networks across schools. Within the school, common planning time will focus on selecting learning tasks related to the Common Core Standards and analyzing student work. Networks of schools encountering common learner centered problems and problems of practice will participate in Instructional Rounds. *The support services described in this proposal are in support of this phase.*
8. Phase 4- The focus of summer (2012) is to work intensively with Networks of schools to create shared agreements such as common assignments, common assessments and common practices among the schools. Each Network will be asked to create a presentation for the Leadership Academy describing what they have learned with their colleagues. Teacher leaders will be asked to facilitate sessions as well.
9. Phase 5- The focus of year 3 (2012-2013) will be identifying students who have not responded to the changes in instruction and focusing on learning how to bring their work to standard. Networks will continue to work with one another.
10. Phase 6- The focus of summer (2013) is to work intensively with Networks of schools to create shared agreements on how to work with students who have not met standard. By combining research with what the Networks have learned, the Networks will be asked to share presentations with colleagues on what they have learned from focusing on this particular group of learners.

Goals of the Common Planning Time Initiative

This work will be done in service the following goals:

1. All schools will use a consistent methodology for organizing common planning time.
2. All school instructional leaders will develop the capacity to facilitate common planning time.
3. All teachers will use resources for looking at student work, analyzing data, learning together, planning together and evaluating progress from the district common planning time tool-kit.
4. Professional development and school-based support will be designed around problems of practice and learner-centered problems identified during common planning time.

Summer Data Inquiry Institute

The focus of summer (2011) is to deliver professional development and services related to common learner-centered problems and problems of practice and to organize schools into networks focused on solving common learner –centered problems.

Train all schools in steps 9, 10, 1 and 2 of the inquiry process during the week of August 15th.)

Step 9- Document what you have learned from your year one inquiry cycle.

Step 10- Revisit systems to organize the school for collaborative effort and use time effectively.

Step 1- Organize for Collaborative Work by identifying a unifying philosophy for instruction.

Step 2- Promote assessment literacy through use of classroom based performance tasks.

Step 3- Preparing for a next-level Data Conversation using multiple data sources and Looking at Student Work Protocols.

8 cohorts (sections) for 3 days of training

Fee- \$125,000 (same rate as last year)

Includes Travel and Materials

2-Day Principal Institute- Leading Inquiry

Fee- \$10,500.00

Networks- The focus on year two (2011-2012) is to expand common planning time to include networks across schools. Within the school, common planning time will focus on selecting learning tasks related to the Common Core Standards and analyzing student work. Networks of schools encountering common learner centered problems and problems of practice will participate in Instructional Rounds.

Facilitate Instructional Communities of Practice with each network of schools 4 times a year.

Fee- \$166,660

8 cohorts x 4 times a year

Total- \$302,160.00



SERVICES AGREEMENT

Date: August 19, 2011 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Transformation by Design, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Continuation of re-design of six priority schools around a new vision for student learning, per Priority Schools Proposal 2011/12, attached and incorporated as Exhibit B.

ARTICLE 2. TERM.

This Agreement shall commence on August 19, 2011, and continue through June 30, 2012, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be One Hundred Seventy Four Thousand, Nine Hundred Ninety Dollars (\$174,990).

Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Mary Shelton, Chief Accountability Officer, Sacramento City Unified School District, P. O. Box 246870, Sacramento, California 95824-6870.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

The Contractor understands and agrees that all matters specifically produced under this Agreement that contain no intellectual property or other protected works owned by Contractor shall be works for hire and shall become the sole property of the District and cannot be used without the District's express written permission. The District shall have the right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. The Contractor consents to the use of the Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose in any medium.

As to those matters specifically produced under this Agreement that are composed of intellectual property or other protected works, Contractor must clearly identify to the District those protected elements included in the completed work. The remainder of the intellectual property of such completed works shall be deemed the sole property of the District. The completed works that include both elements of Contractor's protected works and the District's protected works, shall be subject to a mutual non-exclusive license agreement that permits either party to utilize the completed work in a manner consistent with this Agreement including the sale, use, performance and distribution of the matters, for any purpose in any medium.

ARTICLE 6. INDEPENDENT CONTRACTOR.

Contractor's relationship to the District under this Agreement shall be one of an independent contractor. The Contractor and all of their employees shall not be employees or agents of the District and are not entitled to participate in any District pension plans, retirement, health and welfare programs, or any similar programs or benefits, as a result of this Agreement.

The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in limited contact with pupils. Contractor is required to comply with the conditions listed in Exhibit A, Contractor's Certification of Compliance. If the Contractor is unwilling to comply with these requirements, the Contractor's employees may not enter any school site until the Contractor provides the certification of fingerprinting clearance by the DOJ for employees providing services. These requirements apply to self-employed contractors.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability



to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Mary Shelton, Chief Accountability
Officer

Contractor:
Rochelle Herring Peniston
dba Transformation by Design
2938 Harmattan Drive
Denver, NC 28037

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any

employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.



**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

**ROCHELLE HERRING PENISTON
DBA TRANSFORMATION BY DESIGN**

By: _____
Patricia A. Hagemeyer
Chief Business Officer

Date

By: _____
Signature

Print Name/Title

Date

EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title

TRANSFORMATION BY DESIGN

Priority Schools Proposal 2011-2012

Who We Are

Transformation By Design is a partner organization committed to empowering educational organizations to design their own solutions. Through the process of designing their own solutions, organizations will build their capacity to learn and develop an organizational response to persistent problems. In essence, we are committed to building learning organizations capable of having a positive impact on student achievement.

What We Do

We help schools, school systems and other educational organizations transform into learning organizations by:

1. Facilitating the development of a shared vision;
2. Facilitating the development of a supportive learning environment and results driven culture;
3. Using concrete methodology, protocols and practices to generate solutions, create systems and construct project/implementation plans;
4. Building the capacity of school based and district teams to connect data, learning and action;
5. Building the capacity of individuals to use new learning to increase their effectiveness;
6. Facilitating the use tools such as data dashboards and on-line learning communities to promote collaboration, organize learning, communicate and share results.

Proposal to Sacramento

To begin our relationship, Transformation By Design will partner with the Sacramento City Unified School District to Design the Priority schools Agenda.

Duration of Services: August 2011-June 2012

School Based Support

School support will be delivered through a combination of professional development, technical assistance and student work reviews. Although a support plan will be designed based on the needs of each school, the building blocks of the support will remain a constant. The building blocks to support are:

1. A grade by grade description of the curriculum and student work;
2. Use common planning time to use the data inquiry process to promote action research;
3. Collaborative work such as looking at student work, co-planning, teaching together, professional learning and peer feedback sessions.
4. Distributed leadership.

The school- based support will be provided in the form of:

- Three Leadership Teams work sessions in October, January and March. The October session will focus on providing feedback and setting up a coaching plan. The January work session will focus on setting up peer observation and feedback. The March session will focus on using on-demand assessments.
- This year, Leadership Team One-on-Ones will replace school visits to schools that are receiving year two support. The one-on-one team coaching sessions will take place in the months between trainings- September, November, February and April.
- The school based design support to Rosa Parks Middle School will be 17 days of on-site support to Rosa Parks. There will be five days of support allocated for leadership team coaching and Design Team meetings, six days of literacy support and 6 days for math support.

Total- \$63,990.00

Professional Development

All professional development will take place during the summer. Leadership Teams will attend training for three days and teachers will receive two days of professional development.

The Day-by-Day Focus of Each Training Series

Elementary Schools

Leadership Team

Day 1- The New Data Overview: Schools will review the content of the student work study as well as other sources of data to construct the new data overview.

Day 2- Year Two of Data Inquiry: The teams will learn how to conduct participatory action research and looking at student work protocols as a way to go deeper with their inquiry practice.

Day 3- Identify a Knowledge Base to Address Learner Centered Problems: The teams will identify the knowledge base they will work from during the year and map out coaching plans.

Teachers

Day 4 and 5- Using the Data Inquiry Process to Impact Student Work: Schools will receive an overview of quality student work and do simulations to illustrate how to revise the student work to meet the standard.

Fee: Cost: \$30,000.00

Secondary Schools

Leadership Team

Day 1- The New Syllabus: Secondary schools will explore how to use student work as the basis for syllabus revision and portfolio development.

Day 2- Year Two of Data Inquiry: The teams will learn how to conduct participatory action research and looking at student work protocols as a way to go deeper with their inquiry practice.

Day 3- Content Area Literacy Strategies and a Classroom to Routine to Address Learner Centered Problems: The teams will learn three content area literacy that can be used school wide as well as identify the classroom routines they aspire to have in place by the end of the year.

Teachers

Day 4 and 5- Using the Data Inquiry Process to Impact Student Work: Schools will receive an overview of quality student work and do simulations to illustrate how to revise the student work to meet the standard.

Fee: Cost: \$30,000.00

Redesign and Inquiry Work with the New Priority School

The new priority school should plan for the staff to engage in visioning, design and inquiry into the common core standards.

Day 1- Shared Vision and Team Building: The staff will craft a mission statement after reviewing data collected from the focus groups.

Day 2- The staff will develop a framework or project based learning and make decisions about the criteria and conditions for projects.

Day 3- The staff will create an Instructional Identity that is made up of:

- School Wide Practices and Expectations
- Content Specific Practices and Expectations

Day 4 and 5- Two Concurrent Sessions

Design of the Literacy Classroom and Tasks

Design of the Math Classroom and Tasks

Costs: \$30,000

Student Work Reviews

Student Work will be analyzed three times a year using pre-selected performance tasks. Data collection will take place three times a year.

Cost- \$ 21,000.00

Grand Total- \$174,990.00



SERVICES AGREEMENT

Date: August 19, 2011 **Place:** Sacramento, California

Parties: Sacramento City Unified School District, a political subdivision of the State of California, (hereinafter referred to as the "District"); and Richard L. Neely, (hereinafter referred to as "Contractor").

Recitals:

A. The District is a public school district in the County of Sacramento, State of California, and has its administrative offices located at the Serna Center, 5735 47th Avenue, Sacramento, CA 95824.

B. The District desires to engage the services of the Contractor and to have said Contractor render services on the terms and conditions provided in this Agreement.

C. California Government Code Section 53060 authorizes a public school district to contract with and employ any persons to furnish to the District, services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced and competent to perform the required services, provided such contract is approved or ratified by the governing board of the school district. Said section further authorizes the District to pay from any available funds such compensation to such persons as it deems proper for the services rendered, as set forth in the contract.

D. The Contractor is specially trained, experienced and competent to perform the services required by the District, and such services are needed on a limited basis.

In consideration of the mutual promises contained herein, the parties agree as follows:

ARTICLE 1. SERVICES.

The Contractor hereby agrees to provide to the District the services as described below ("Services"):

Serve as Director to the Vocational Nursing Program at Charles A. Jones Career Education Center per Memorandum of Responsibilities dated July 18, 2011, attached and incorporated as Exhibit B.

ARTICLE 2. TERM.

This Agreement shall commence on September 1, 2011, and continue through June 30, 2012, unless sooner terminated, as set forth in Article 10 of this Agreement, provided all services under this Agreement are performed in a manner that satisfies both the needs and reasonable expectations of the District. The determination of a satisfactory performance shall be in the sole judgment and discretion of the District in light of applicable industry standards, if applicable. The term may be extended by mutual consent of the parties on the same terms and conditions by a mutually executed addendum.

ARTICLE 3. PAYMENT.

District agrees to pay Contractor for services satisfactorily rendered pursuant to this Agreement as follows:

Flat Rate: The total payment to Contractor, including travel and other expenses, shall be Eighty Five Thousand, Two Hundred Dollars (\$85,200).



Payment shall be made within 30 days upon submission of periodic invoice(s) to the attention of Susan Galloway, Charles A. Jones Career Education Center, 5451 Lemon Hill Avenue, Sacramento, California 95824.

ARTICLE 4. EQUIPMENT AND FACILITIES.

District will provide Contractor with access to all needed records and materials during normal business hours upon reasonable notice. However, District shall not be responsible for nor will it be required to provide personnel to accomplish the duties and obligations of Contractor under this Agreement. Contractor will provide all other necessary equipment and facilities to render the services pursuant to this Agreement.

ARTICLE 5. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT

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The Contractor and their employees or agents rendering services under this agreement shall not be employees of the District for federal or state tax purposes, or for any other purpose. The Contractor acknowledges and agrees that it is the sole responsibility of the Contractor to report as income its compensation from the District and to make the requisite tax filings and payments to the appropriate federal, state, and/or local tax authorities. No part of the Contractor's compensation shall be subject to withholding by the District for the payment of social security, unemployment, or disability insurance, or any other similar state or federal tax obligation.

The Contractor agrees to defend, indemnify and hold the District harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee relationship exists by reason of this Agreement.

The District assumes no liability for workers' compensation or liability for loss, damage or injury to persons or property during or relating to the performance of services under this Agreement.

ARTICLE 7. FINGERPRINTING REQUIREMENTS.

Education Code Section 45125.1 states that if employees of any contractor providing school site administrative or similar services may have any contact with any pupils, those employees shall be fingerprinted by the Department of Justice (DOJ) before entering the school site to determine that they have not been convicted of a serious or violent felony. If the District determines that more than limited contact with students will occur during the performance of these services, Contractor will not perform services until all employees providing services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

District has determined that services performed under this Agreement will result in contact with pupils. Contractor shall obtain fingerprinting clearance for *all* employees before services can begin. Contractor will provide a complete list to the District of all employees cleared by the DOJ who will provide services under this Agreement. Failure to provide such written certification before services begin, or within thirty days after execution of this Agreement, whichever occurs first, will result in immediate termination.

ARTICLE 8. MUTUAL INDEMNIFICATION.

Each of the Parties shall defend, indemnify and hold harmless the other Party, its officers, agents and employees from any and all claims, liabilities and costs, for any damages, sickness, death, or injury to person(s) or property, including payment of reasonable attorney's fees, and including without limitation all consequential damages, from any cause whatsoever, arising directly or indirectly from or connected with the operations or services performed under this Agreement, caused in whole or in part by the negligent or intentional acts or omissions of the Parties or its agents, employees or subcontractors.

It is the intention of the Parties, where fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any damage attributable to fault of that Party. It is further understood and agreed that such indemnification will survive the termination of this Agreement.

ARTICLE 9. INSURANCE.

Prior to commencement of services and during the life of this Agreement, Contractor shall provide the District with a copy of its policy evidencing its comprehensive general liability insurance coverage in a sum not less than \$1,000,000 per occurrence. Contractor will also provide a written endorsement to such policy naming District as an additional insured, and such endorsement shall also state "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." If insurance is not kept in force during the entire term of the Agreement, District may procure the necessary insurance and pay the premium therefore, and the premium shall be paid by the Contractor to the District.

ARTICLE 10. TERMINATION.

The District may terminate this Agreement without cause upon giving the Contractor thirty days written notice. Notice shall be deemed given when received by Contractor, or no later than three days after the day of mailing, whichever is sooner.

The District may terminate this Agreement with cause upon written notice of intention to terminate for cause. A Termination for Cause shall include: (a) material violation of this Agreement by the Contractor; (b) any act by the Contractor exposing the District to liability



to others for personal injury or property damage; or (c) the Contractor confirms its insolvency or is adjudged a bankrupt; Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the Contractor's insolvency.

Ten (10) calendar days after service of such notice, the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, or this Agreement shall cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District. Written notice by the District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.

ARTICLE 11. ASSIGNMENT.

This Agreement is for personal services to be performed by the Contractor. Neither this Agreement nor any duties or obligations to be performed under this Agreement shall be assigned without the prior written consent of the District, which shall not be unreasonably withheld. In the event of an assignment to which the District has consented, the assignee or his/her or its legal representative shall agree in writing with the District to personally assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

ARTICLE 12. NOTICES.

Any notices, requests, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, or on the day after dispatching by Federal Express or another overnight delivery service, and properly addressed as follows:

District:
Sacramento City Unified School District
PO Box 246870
Sacramento CA 95824-6870
Attn: Susan Galloway, Adult Education

Contractor:
Richard L. Neely
2862 Springburn Way
El Dorado Hills, CA 95762

ARTICLE 13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Agreement be waived, except by written instrument signed by the party to be otherwise expressly permitted in this Agreement.

ARTICLE 14. CONFLICT OF INTEREST.

The Contractor shall abide by and be subject to all applicable District policies, regulations, statutes or other laws regarding conflict of interest. Contractor shall not hire any officer or employee of the District to perform any service covered by this Agreement. If the work is to be performed in connection with a Federal contract or grant, Contractor shall not hire any employee of the United States government to perform any service covered by this Agreement.

Contractor affirms to the best of their knowledge, there exists no actual or potential conflict of interest between Contractor's family, business or financial interest and the services provided under this Agreement. In the event of a change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to the District's attention in writing.

ARTICLE 15. NONDISCRIMINATION.

It is the policy of the District that in connection with all services performed under contract, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, handicap, religious creed, sex, age or marital status. Contractor agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act.

ARTICLE 16. ATTORNEY'S FEES.

In the event of any action or proceeding brought by one party against the other party under this Agreement, the prevailing party shall be entitled to recover its attorney's fees and reasonable costs in such action or proceeding in such an amount as the court may judge reasonable.

ARTICLE 17. SEVERABILITY.

Should any term or provision of this Agreement be determined to be illegal or in conflict with any law of the State of California, the validity of the remaining portions or provisions shall not be affected thereby. Each term or provision of this Agreement shall be valid and be enforced as written to the full extent permitted by law.

ARTICLE 18. RULES AND REGULATIONS.

All rules and regulations of the District's Board of Education and all federal, state and local laws, ordinance and regulations are to be strictly observed by the Contractor pursuant to this Agreement. Any rule, regulation or law required to be contained in this Agreement shall be deemed to be incorporated herein.

ARTICLE 19. APPLICABLE LAW/VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in Sacramento County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

ARTICLE 20. RATIFICATION BY BOARD OF EDUCATION.

This Agreement is not enforceable and is invalid unless and until it is approved and/or ratified by the governing board of the Sacramento City Unified School District, as evidenced by a motion of said board duly passed and adopted.

Executed at Sacramento, California, on the day and year first above written.



**SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT**

RICHARD L. NEELY

By: _____
Patricia A. Hagemeyer
Chief Business Officer

Date

By: _____
Signature

Print Name/Title

Date

EXHIBIT A

CONTRACTOR CERTIFICATION of COMPLIANCE

Fingerprinting: Education Code section 45125.1 provides that any contractor providing school site administrative or similar services to a school district must certify that employees who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees must be fingerprinted and the Department of Justice (DOJ) must report to the Contractor if they have been convicted of such felonies. No person convicted may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working and (3) whether the contractors will be working alone or with others, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees assigned to work at a school site under this Agreement will have only limited contact with pupils, provided the following conditions are met at all times:

1. Employees shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision of school district employees.
2. Employees shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.
3. Contractor will inform all employees who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
4. Contractor will immediately report to District any apparent violation of these conditions.
5. Contractor shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Contractor cannot adhere to the conditions stated above, the Contractor shall immediately so inform the District and shall assign only employees who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Contractor shall provide to the District the names of all employees assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

Authorized Signature of Contractor

Date

Printed Name/Title

July 18, 2011

MEMORANDUM OF RESPONSIBILITIES AND COMPENSATION, VOCATIONAL NURSING PROGRAM DIRECTOR

TO:

Susan Galloway
Supervisor II, Adult Education
Charles A. Jones Career and Education Center
5451 Lemon Hill Avenue
Sacramento, CA 95824

FROM:

Richard L. Neely, RN, BSN, MHCA

The following responsibilities represent the agreed to performance for the Program Director for the Vocational Nursing Program at Charles A. Jones.

RESPONSIBILITIES:

Hold a current California Registered Nurse license.

Work closely with Charles A. Jones administrative staff and instructors as well as District staff to develop and maintain the medical programs under the direction of the Program Director including classroom instruction, curriculum, screening and selection criteria and evaluation of methodologies.

Maintain and operate the assigned programs within the designated budget.

Work closely with the California Board of Vocational Nursing and Psychiatric Technicians to ensure that the Vocational Nursing Program at Charles A. Jones meets or exceeds regulatory requirements.

Assist with the recruitment and training of staff associated with the nursing programs.

Secure, coordinate and evaluate BVN/PT approved clinical training sites.

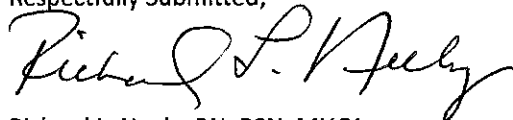
Represent Charles A. Jones and the District at related meetings and in-services related to the program.

Conduct classroom and clinical site visits to assure that adopted standards are implemented consistently.

Maintain work hours of a maximum of 25 hours per week or 100 hours per month.

Submit a monthly invoice reflecting hours worked at a rate of \$71.00 per hour, not to exceed a total of \$85,200 for the contract period.

Respectfully Submitted;

A handwritten signature in black ink, appearing to read "Richard L. Neely", is written over a horizontal line.

Richard L. Neely, RN, BSN, MHCA

**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
MASTER CONTRACT
GENERAL AGREEMENT FOR NONSECTARIAN,
MENTAL HEALTH RESIDENTIAL CARE SERVICES
2011-2012**

AUTHORIZATION FOR MASTER CONTRACT AND GENERAL PROVISIONS

1. MASTER CONTRACT

This Master Contract is entered into this 1st day of July, 2011, between the Sacramento City Unified School District (hereinafter referred to as "LEA" or "District") and «NonPublic_School» (hereinafter referred to as "CONTRACTOR") for the purpose of providing special education and/or related services to LEA students with exceptional needs under the authorization of California Education Code sections 56157, 56361 and 56365 et seq. and Title 5 of the California Code of Regulations section 3000 et seq., AB490 (Chapter 862, Statutes of 2003) and AB1858 (Chapter 914, Statutes of 2004). It is understood that this agreement does not commit the LEA to pay for special education and/or related services provided to any LEA student, or CONTRACTOR to provide such special education and/or related services, unless and until an authorized LEA representative approves the provision of special education and/or related services by CONTRACTOR.

The LEA shall develop an Individual Services Agreement (hereinafter referred to as "ISA") and submit this to CONTRACTOR, along with a Nonpublic Services Student Enrollment form. CONTRACTOR shall work with the LEA to complete and return these forms to the LEA prior to initiating any services for any student.

Unless otherwise agreed in writing, the ISA and the Nonpublic Services Student Enrollment form shall acknowledge CONTRACTOR's obligation to provide all services specified in the student's Individualized Education Plan (hereinafter referred to as "IEP"). The ISA shall be executed within ninety (90) days of an LEA student's enrollment. LEA and CONTRACTOR shall enter into an ISA for each LEA student served by CONTRACTOR.

Unless placement is made pursuant to an Office of Administrative Hearings (hereinafter referred to as "OAH") order, a lawfully executed agreement between LEA and parent or authorized by LEA for a transfer student pursuant to California Education Code section 56325, LEA is not responsible for the costs associated with nonpublic school placement until the date on which an IEP team meeting is convened, the IEP team determines that a nonpublic school placement is appropriate, and the IEP is signed by the LEA student's parent.

2. CERTIFICATION AND LICENSES

CONTRACTOR shall be certified by the California Department of Education (hereinafter referred to as "CDE") as a nonpublic, nonsectarian school/agency. All nonpublic school and nonpublic agency services shall be provided consistent with the area of certification specified by CDE Certification and as defined in California Education Code, section 56366 et seq. and within the professional scope of practice of each providers license, certification and/or credential.

In addition to meeting the certification requirements of the State of California, CONTRACTOR that operates a program outside of this State shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

If CONTRACTOR is a licensed children's institution (hereinafter referred to as "LCI"), CONTRACTOR shall be licensed by the state, or other public agency having delegated authority by contract with the state to license, to provide nonmedical care to children, including, but not limited to, individuals with exceptional needs. The LCI must also comply with all licensing requirements relevant to the protection of the child, and have a special permit, if necessary, to meet the needs of each child so placed. If the CONTRACTOR operates a program outside of this State, CONTRACTOR must obtain all required licenses from the appropriate licensing agency in both California and in the state where the LCI is located.

A current copy of CONTRACTOR's licenses and nonpublic school/agency certifications, or a validly issued waiver of any such certification, must be provided to LEA on or before the date this Master Contract is executed by CONTRACTOR. CONTRACTOR must immediately (and under no circumstances longer than three (3) calendar days) notify LEA if any such licenses, certifications or waivers are expired, suspended, revoked, rescinded, challenged pursuant to an administrative or legal complaint or lawsuit, or otherwise nullified during the effective period of this Master Contract. If any such licenses, certifications or waivers are expired, suspended, revoked, rescinded, or otherwise nullified during the effective period of this Master Contract, this Master Contract shall be null and void..

Total student enrollment shall be limited to capacity as stated on CDE certification. Total LEA student enrollment shall be limited to capacity as stated in Section 24 of the Master Contract.

3. COMPLIANCE WITH LAWS, STATUTES, REGULATIONS

During the term of this Master Contract, unless otherwise agreed, CONTRACTOR shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules, policies, and regulations. CONTRACTOR shall also comply with all applicable LEA policies and procedures unless CONTRACTOR and the LEA specifically agree, in writing, that a policy or policies, or a portion of a policy does not reasonably apply to CONTRACTOR. CONTRACTOR hereby acknowledges and agrees that it accepts all risks and responsibilities for its failure to comply with LEA policies and shall indemnify LEA under the provisions of section 16 of this Agreement for all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of CONTRACTOR's failure to comply with applicable LEA policies (e.g., those policies relating to the provision of special education and/or related services, facilities for individuals with exceptional needs, LEA student enrollment and transfer, LEA student inactive status, corporal punishment, student discipline, and positive behavior interventions).

CONTRACTOR acknowledges and understands that LEA may report to the CDE any violations of the provisions of this Master Contract, and that this may result in the suspension and/or revocation of CDE nonpublic school/agency certification pursuant to California Education Code section 56366.4(a).

4. TERM OF MASTER CONTRACT

The term of this Master Contract shall be from July 1, 2011 to June 30, 2012 (Title 5 California Code of Regulations section 3062(a)) unless otherwise stated. Neither the CONTRACTOR nor the LEA is required to renew this Master Contract in subsequent contract years. However, the parties acknowledge that any subsequent Master Contract is to be re-negotiated prior to June 30, 2012. In the event a Master Contract is not renegotiated by June 30th, an interim contract may be made available as mutually agreed upon for up to 90 days from July 1 of the new fiscal year. (Title 5 California Code of Regulations section 3062(d).) No Master Contract will be offered unless and until all of the contracting requirements have been satisfied. The offer of a Master Contract to a CONTRACTOR is at the sole discretion of the LEA.

5. INTEGRATION/CONTINUANCE OF CONTRACT FOLLOWING EXPIRATION OR TERMINATION

This Master Contract includes the LEA Procedures and each Individual Services Agreement which are incorporated herein by this reference. This Master Contract supersedes any prior or contemporaneous written or oral understanding or agreement. This Master Contract may be amended only by written amendment executed by both parties. Notwithstanding the foregoing, the LEA may modify the LEA procedures from time to time without the consent of CONTRACTOR.

CONTRACTOR shall provide the LEA with all information as requested in writing to secure a Master Contract or a renewal.

At a minimum, such information shall include copies of teacher credentials and clearance, insurance documentation and CDE certification. The LEA may require additional information as applicable. If the application packet is not completed and returned to the LEA, no Master Contract will be issued. If CONTRACTOR does not return the Master Contract to the LEA duly signed by an authorized representative within ninety (90) calendar days of issuance by LEA, the new contract rates will not take effect until the newly executed Master Contract is received by the LEA and will not be retroactive to the first day of the new Master Contract's effective date. If CONTRACTOR fails to execute the new Master Contract within such ninety day period, all payments shall cease until such time as the new Master Contract for the current school year is signed and returned to the LEA by CONTRACTOR. (California Education Code section 56366(c)(1) and (2).) In the event that this Master Contract expires or terminates, CONTRACTOR shall continue to be bound to all of the terms and conditions of the most recent executed Master Contract between CONTRACTOR and LEA for so long as CONTRACTOR is servicing authorized LEA students at the discretion of the LEA.

6. INDIVIDUAL SERVICES AGREEMENT

This Master Contract shall include an ISA developed for each LEA student for whom CONTRACTOR is to provide special education and/or related services. An ISA shall only be issued for LEA students enrolled with the approval of the LEA pursuant to Education Code section 56366(a)(2)(A). An ISA may be effective for more than one contract year provided that there is a concurrent Master Contract in effect. In the event that this Master Contract expires or terminates, CONTRACTOR shall continue to be bound to all of the terms and conditions of the most recent executed ISAs between CONTRACTOR and LEA for so long as CONTRACTOR is servicing authorized LEA students.

Any and all changes to a LEA student's educational placement/program provided under this Master Contract and/or an ISA shall be made solely on the basis of a revision to the LEA student's IEP. At any time during the term of this Master Contract, a LEA student's parent, CONTRACTOR, or LEA may request a review of a LEA student's IEP subject to all procedural safeguards required by law.

Unless otherwise provided in this Master Contract, the CONTRACTOR shall provide all services specified in the IEP unless the CONTRACTOR and the LEA agree otherwise in the ISA. (California Education Code sections 56366(a)(5) and Title 5 California Code of Regulations section 3062(e)). In the event the CONTRACTOR is unable to provide a specific service at any time during the life of the ISA, the CONTRACTOR shall notify the LEA in writing within five (5) business days of the last date a service was provided.

If a parent or LEA contests the termination of an ISA by initiating a due process proceeding with the OAH, CONTRACTOR shall abide by the "stay-put" requirement of state and federal law unless the parent agrees otherwise or an interim alternative educational placement is deemed lawful and appropriate by the LEA or OAH. CONTRACTOR shall adhere to all the LEA requirements concerning changes in placement.

Disagreements between the LEA and CONTRACTOR concerning the formulation of an ISA or the Master Contract may be appealed to the County Superintendent of Schools of the County where the LEA is located, or the State Superintendent of Public Instruction pursuant to the provisions of California Education Code section 56366(c)(2).

7. DEFINITIONS

The following definitions shall apply for purposes of this contract:

- a. The term “CONTRACTOR” means a nonpublic, nonsectarian school/agency certified by the California Department of Education and its officers, agents, employees.
- b. The term “authorized LEA representative” means a LEA administrator designated to be responsible for nonpublic school/agencies. It is understood that a representative of the Special Education Local Plan Area (SELPA) of which the LEA is a member is an authorized LEA representative in collaboration with the LEA. The LEA maintains sole responsibility for the Master Contract, unless otherwise specified in the Master Contract.
- c. The term “credential” means a valid credential, life diploma, permit, or document in special education or pupil personnel services issued by, or under the jurisdiction of, the State Board of Education if issued prior to 1970 or the California Commission on Teacher Credentialing, which entitles the holder thereof to perform services for which certification qualifications are required as defined in Title 5 of the California Code of Regulations section 3001(j).
- d. The term "qualified" means that a person holds a certificate, permit or other document equivalent to that which staff in a public school are required to hold to provide special education and designated instruction and services, and has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, including those requirements set forth in Title 5 of the Code of Federal Regulations sections 3064 and 3065, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code. Nothing in this definition shall be construed as restricting the activities of services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.
- e. The term “license” means a valid non-expired document issued by a licensing agency within the Department of Consumer Affairs or other state licensing office authorized to grant licenses and authorizing the bearer of the document to provide certain professional services, including but not limited to mental health and board and care services at a residential placement, or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level which has standards established for the certificate that are equivalent to a license shall be deemed to be a license as defined in Title 5 of the California Code of Regulations section 3001(r).
- f. Parent means a biological or adoptive parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child, a guardian generally authorized to act as the child’s parent or authorized to make educational decisions for the child, an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child’s welfare, a surrogate parent, a foster parent if the authority of the biological or adoptive parent to make educational decisions on the child’s behalf has

been specifically limited by court order in accordance with Title 34 Code of Federal Regulations 300.30(b)(1) or (2). Parent does not include the state or any political subdivision of government or the nonpublic school or agency under contract with the LEA for the provision of special education or designated instruction and services for a child. (California Education Code section 56028).

- g. The term “days” means calendar days unless otherwise specified.
- h. The phrase “billable day” means a school day in which instructional minutes meet or exceed those in comparable LEA programs.
- i. The phrase “billable day of attendance” means a school day as defined in California Education Code Section 46307, in which a LEA student is in attendance and in which instructional minutes meet or exceed those in comparable LEA programs unless otherwise stipulated in an IEP or ISA.
- j. It is understood that the term “Master Contract” also means “Agreement” and is referred to as such in this document.

ADMINISTRATION OF CONTRACT

8. NOTICES

All notices provided for by this Master Contract shall be in writing. Notices shall be mailed by first class mail deposited with the United States Postal Service, or delivered by hand and shall be effective as of the date of receipt by addressee.

All notices mailed to the LEA shall be addressed to the person and address as indicated on the signature page of the Master Contract. Notices to CONTRACTOR shall be addressed as indicated on signature page of this Master Contract.

9. MAINTENANCE OF RECORDS

All records shall be maintained by CONTRACTOR as required by state and federal laws and regulations. Notwithstanding the foregoing sentence, CONTRACTOR shall maintain all records for at least five (5) years after the termination of this Master Contract. For purposes of this Master Contract, “records” shall include, but not be limited to student records as defined by California Education Code section 49061(b) including electronically stored information; cost data records as set forth in Title 5 of the California Code of Regulations section 3061; registers and roll books of teachers and/or daily service providers; daily service logs and notes and other documents used to record the provision of related services including supervision; daily service logs and notes used to record the provision of services provided through additional instructional assistants, NPA behavior intervention aides, and bus aides; absence verification records (parent/doctor notes, telephone logs, and related documents) if the CONTRACTOR is funded for excused absences, however, such records are not required if positive attendance is required; bus rosters; staff lists specifying credentials held and documents evidencing other staff qualifications, social security numbers, dates of hire, and dates of termination; records of employee training and certification, staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related services subcontracts; school calendars; bell/class schedules when applicable; liability and worker’s compensation insurance policies; state nonpublic school and/or agency certifications by-laws; lists of current board of directors/trustees, if incorporated; documents evidencing financial expenditures; federal/state payroll quarterly reports; and bank statements and canceled checks or facsimile thereof.

CONTRACTOR shall maintain LEA student records in a secure location to ensure confidentiality and prevent unauthorized access. CONTRACTOR shall maintain a current list of the names and

positions of CONTRACTOR's employees who have access to confidential records. CONTRACTOR shall maintain an access log for each LEA student's record which lists all persons, agencies, or organizations requesting or receiving information from the record. Such log shall be maintained as required by California Education Code section 49064 and include the name, title, agency/organization affiliation, and date/time of access for each individual requesting or receiving information from the LEA student's record. Such log need record access to the LEA student's records by: (a) the LEA student's parent; (b) an individual to whom written consent has been executed by the LEA student's parent; or (c) employees of LEA or CONTRACTOR having a legitimate educational interest in requesting or receiving information from the record. CONTRACTOR/LEA shall maintain copies of any written parental concerns granting access to student records. For purposes of this paragraph, "employees of LEA or CONTRACTOR" do not include subcontractors. CONTRACTOR shall grant parents access to student records, and comply with parents' requests for copies of student records, as required by state and federal laws and regulations. CONTRACTOR agrees, in the event of school or agency closure, to forward all records within five (5) business days to LEA. These shall include, but not limited to, current transcripts, IEP/IFSPs, and reports.

10. SEVERABILITY CLAUSE

If any provision of this Master Contract is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Agreement shall be severable and remain in effect.

11. SUCCESSORS IN INTEREST

This contract binds CONTRACTOR's successors and assignees.

12. VENUE AND GOVERNING LAW

The laws of the State of California shall govern the terms and conditions of this Master Contract with venue in the County where the LEA is located.

13. MODIFICATIONS AND AMENDMENTS REQUIRED TO CONFORM TO LEGAL AND ADMINISTRATIVE GUIDELINES

This Master Contract may be modified or amended by the LEA to conform to administrative and statutory guidelines issued by any state, federal or local governmental agency. The LEA shall provide the CONTRACTOR thirty (30) days notice of any such changes or modifications made to conform to administrative or statutory guidelines and a copy of the statute or regulation upon which the modification or changes are based.

14. TERMINATION

This Master Contract or an Individual Service Agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the Master Contract or ISA unless the parent agrees to the transfer of the student to the public school program at an IEP team meeting. To terminate the Master Contract, either party shall give twenty (20) days prior written notice to the other party (California Education Code section 56366(a)(4)). At the time of termination, CONTRACTOR shall provide to the LEA any and all documents CONTRACTOR is required to maintain under this Master Contract. ISAs are void upon termination of this Master Contract. CONTRACTOR or the LEA may also terminate an individual ISA for cause. To terminate the ISA, either party shall also give twenty (20) days prior written notice to the other.

15. INSURANCE

CONTRACTOR shall, at his, her, or its sole cost and expense, maintain in full force and effect, during the term of this Agreement, the following insurance coverage from a California licensed and/or admitted insurer with an A minus (A-), VII, or better rating from A.M. Best, sufficient to cover any claims, damages, liabilities, costs and expenses (including counsel fees) arising out of or in connection with CONTRACTOR'S fulfillment of any of its obligations under this Agreement or either party's use of the Work or any component or part thereof:

- A. **Commercial General Liability Insurance**, including both bodily injury and property damage, with limits as follows:

\$1,000,000 per occurrence
 \$ 100,000 fire damage
 \$ 5,000 medical expenses
 \$1,000,000 personal & adv. injury
 \$2,000,000 general aggregate
 \$2,000,000 products/completed operations aggregate

- B. **Business Auto Liability Insurance** for all owned scheduled, non-owned or hired automobiles with a \$1 million combined single limit.

If no owned automobiles, then only hired and non-owned is required.

If CONTRACTOR uses a vehicle to travel to/from school sites, between schools and/or to/from students' homes or other locations as an approved service location by the LEA, CONTRACTOR must comply with State of California auto insurance requirements.

- C. **Workers' Compensation and Employers Liability Insurance** in a form and amount covering CONTRACTOR'S full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws.

Part A – Statutory Limits

Part B - \$1,000,000/\$1,000,000/\$1,000,000 Employers Liability

- D. **Errors & Omissions (E & O)/Malpractice (Professional Liability)** coverage, **including Sexual Molestation and Abuse coverage, unless that coverage is afforded elsewhere in the Commercial General Liability policy by endorsement or separate policy,** with the following limits:

\$1,000,000 per occurrence
 \$1,000,000 general aggregate

- E. CONTRACTOR, upon execution of this Master Contract and periodically thereafter upon request, shall furnish the LEA with certificates of insurance evidencing such coverage. The certificate of insurance shall include a ten (10) day non-renewal notice provision. The Commercial General Liability and Automobile Liability policy shall name the LEA and the District's Board of Education as additional insured. Premiums on all insurance policies shall be paid by CONTRACTOR and shall be deemed included in CONTRACTOR's obligations under this contract at no additional charge.

- F. Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the LEA. At its option, the LEA may require the CONTRACTOR, at the CONTRACTOR's sole cost, to: (a) cause its insurer to reduce to levels specified by the LEA or eliminate such deductibles or self-insured retentions with respect to the LEA, its

officials and employees, or (b) procure a bond guaranteeing payment of losses and related investigation.

- G. For any claims related to the services, the CONTRACTOR's insurance coverage shall be primary insurance as respects the LEA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by the LEA, its subsidiaries, officials and employees shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- H. All Certificates of Insurance shall reference the contract number, name of the school or agency submitting the certificate, and the location of the school or agency submitting the certificate on the certificate.

If the LEA or CONTRACTOR determines that changes in insurance coverage obligations under this section is necessary, either party may reopen negotiations to modify the insurance obligations.

16. INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent allowed by law, CONTRACTOR shall defend, indemnify and hold harmless LEA and its directors, officers, agents, employees and guests against any claim or demand arising from any actual or alleged act, error, or omission by CONTRACTOR or its directors, officers, agents, employees, volunteers or guests arising from CONTRACTOR's duties and obligations described in this Agreement or imposed by law.

To the fullest extent allowed by law, LEA shall defend, indemnify and hold harmless CONTRACTOR and its directors, officers, agents, employees and guests against any claim or demand arising from any actual or alleged act, error, or omission by LEA or its directors, officers, agents, employees, volunteers or guests arising from LEA's duties and obligations described in this Agreement or imposed by law.

17. INDEPENDENT CONTRACTOR

Nothing herein contained shall be construed to imply a joint venture, partnership or principal-agent relationship between the LEA and CONTRACTOR. CONTRACTOR shall provide all services under this Agreement as an independent contractor, and neither party shall have the authority to bind or make any commitment on behalf of the other. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture or relationship of principal and agent, master and servant, or employer and employee between the parties or any affiliates of the parties, or between the LEA and any individual assigned by CONTRACTOR to perform any services for the LEA.

If the LEA is held to be a partner, joint venturer, co-principal, employer or co-employer of CONTRACTOR, CONTRACTOR shall indemnify and hold harmless the LEA from and against any and all claims for loss, liability, or damages arising from that holding, as well as any expenses, costs, taxes, penalties and interest charges incurred by the LEA as a result of that holding. If CONTRACTOR is held to be a joint venturer, employer, or co-principal of the LEA, then the LEA shall indemnify and hold harmless the CONTRACTOR.

18. SUBCONTRACTING

CONTRACTOR shall not enter into any subcontracting relationship without first obtaining the written approval of the LEA. CONTRACTOR shall incorporate all of the provisions of this Master Contract in all subcontracts, unless written approval for any change is first obtained by the LEA. Furthermore, when CONTRACTOR enters into subcontracts for the provision of special education and/or related services (including without limitation transportation) for any LEA student,

CONTRACTOR shall cause each subcontractor to procure and maintain insurance during the term of each subcontract. Such subcontractor's insurance shall comply with the provisions of Section 15. Each subcontractor shall furnish the LEA with original endorsements and certificates of insurance effecting coverage required by Section 15. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the LEA. All endorsements are to be received and approved by the LEA before the subcontractor's work commences. The Commercial General Liability and Automobile Liability policies shall name the LEA and the LEA/District Board of Education as additional insured.

As an alternative to the LEA's forms, a subcontractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Master Contract. All Certificates of Insurance shall reference the LEA contract number, name of the school or agency submitting the certificate, indication if nonpublic school or nonpublic agency, and the location of the school or agency submitting the certificate. In addition, all sub-contractors must meet the requirements as contained in Section 45 (Clearance Requirements) and Section 46 (Staff Qualifications) of this Master Contract.

19. CONFLICTS OF INTEREST

CONTRACTOR shall provide to the LEA a copy of its current bylaws and a current list of its Board of Directors (or Trustees), if it is incorporated. CONTRACTOR and any member of its Board of Directors (or Trustees) shall avoid any relationship with the LEA that constitutes or may constitute a conflict of interest pursuant to California Education Code section 56042 including, but not limited to, employment with LEA, provision of private party assessments and/or reports, and attendance at IEP team meetings acting as a student's advocate. Pursuant to California Education Code section 56042, an attorney or advocate for a parent of an individual with exceptional needs shall not recommend placement at CONTRACTOR's facility if the attorney or advocate is employed or contracted by the CONTRACTOR, or will receive a benefit from the CONTRACTOR, or otherwise has a conflict of interest.

Unless CONTRACTOR and the LEA otherwise agree in writing, the LEA shall neither execute an ISA with CONTRACTOR nor amend an existing ISA for a LEA student when a recommendation for special education and/or related services is based in whole or in part on assessment(s) or reports provided by CONTRACTOR to the LEA student without prior written authorization by LEA. This paragraph shall apply to CONTRACTOR regardless of when an assessment is performed or a report is prepared (i.e. before or after the LEA student is enrolled in CONTRACTOR's school/agency) or whether an assessment of the LEA student is performed or a report is prepared in the normal course of the services provided to the LEA student by CONTRACTOR. To avoid a conflict of interest, and in order to ensure the appropriateness of an Independent Educational Evaluation (hereinafter referred to as "IEE") and its recommendations, the District may, in its discretion, not fund an IEE by an evaluator who provides ongoing service(s) or is sought to provide service(s) to the student for whom the IEE is requested. Likewise, the LEA may, in its discretion, not fund services through the evaluator whose IEE the District agrees to fund. When no other appropriate assessor is available, the LEA may request and if CONTRACTOR agrees, the CONTRACTOR may provide an IEE.

When the CONTRACTOR is a nonpublic agency, the CONTRACTOR acknowledges that its authorized representative has read and understands Education Code section 56366.3 which provides, in relevant part, that no special education and/or related services provided by CONTRACTOR shall be paid for by the LEA if provided by an individual who was an employee of the LEA within the three hundred and sixty five (365) days prior to executing this Master Contract. This provision does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to ten months of the school year by the LEA.

20. NON-DISCRIMINATION

CONTRACTOR shall not unlawfully discriminate on the basis of race, religion, sex, national origin, age, sexual orientation, or disability in employment or operation of its programs.

EDUCATIONAL PROGRAM

21. FREE AND APPROPRIATE PUBLIC EDUCATION

LEA shall provide CONTRACTOR with a copy of the IEP including the Individualized Transition Plan (hereinafter referred to as “ITP”) of each LEA student served by CONTRACTOR. CONTRACTOR shall provide to each LEA student special education and/or related services (including transition services) within the nonpublic school or nonpublic agency consistent with the LEA student’s IEP and as specified in the ISA. If CONTRACTOR is a nonpublic school, CONTRACTOR shall not accept a LEA student if it cannot provide or ensure the provision of the services outlined in the student’s IEP.

Unless otherwise agreed to between CONTRACTOR and LEA, CONTRACTOR shall be responsible for the provision of all appropriate supplies, equipment, and/or facilities for LEA students, as specified in the LEA student’s IEP and ISA. CONTRACTOR shall make no charge of any kind to parents for special education and/or related services as specified in the LEA student’s IEP and ISA (including, but not limited to, screenings, assessments, or interviews that occur prior to or as a condition of the LEA student’s enrollment under the terms of this Master Contract). CONTRACTOR may charge a LEA student’s parent(s) for services and/or activities not necessary for the LEA student to receive a free appropriate public education after: (a) written notification to the LEA student’s parent(s) of the cost and voluntary nature of the services and/or activities; and (b) receipt by the LEA of the written notification and a written acknowledgment signed by the LEA student’s parent(s) of the cost and voluntary nature of the services and/or activities. CONTRACTOR shall adhere to all LEA requirements concerning parent acknowledgment of financial responsibility as specified in the LEA Procedures.

Voluntary services and/or activities not necessary for the LEA student to receive a free appropriate public education shall not interfere with the LEA student’s receipt of special education and/or related services as specified in the LEA student’s IEP and ISA unless the LEA and CONTRACTOR agree otherwise in writing.

22. GENERAL PROGRAM OF INSTRUCTION

All nonpublic school and nonpublic agency services shall be provided consistent with the area of certification specified by CDE Certification and as defined in California Education Code section 56366 et seq.

When CONTRACTOR is a nonpublic school, CONTRACTOR’s general program of instruction shall: (a) be consistent with LEA’s standards regarding the particular course of study and curriculum; (b) include curriculum that addresses mathematics, literacy and the use of educational, assistive technology and transition services; (c) be consistent with CDE’s standards regarding the particular course of study and curriculum; (d) provide the services as specified in the LEA student’s IEP and ISA. LEA students shall have access to: (a) State Board of Education (SBE) - adopted standards-based, core curriculum and the same instructional materials for kindergarten and grades 1 to 8, inclusive; and provide standards – aligned core curriculum and instructional materials for grades 9 to 12, inclusive, used by a local education agency (LEA), that contracts with the nonpublic school: (b) college preparation courses; (c) extracurricular activities, such as art, sports, music and academic clubs; (d) career preparation and vocational training, consistent with transition plans pursuant to state and federal law and; (e) supplemental assistance, including individual academic tutoring, psychological counseling, and career and college counseling. CONTRACTOR’s general program of

instruction shall be described in writing and a copy provided to LEA prior to the effective date of this Master Contract.

When CONTRACTOR serves LEA students in grades nine through twelve inclusive, LEA shall provide to CONTRACTOR a specific list of the course requirements to be satisfied by the CONTRACTOR leading toward graduation or completion of LEA's diploma requirements. CONTRACTOR shall not award a high school diploma to LEA students who have not successfully completed all of the LEA's graduation requirements, including, but not limited to, passing the California High School Exit Exam (CAHSEE) per state guidelines.

When CONTRACTOR is a nonpublic agency and/or related services provider, CONTRACTOR's general program of instruction and/or services shall be consistent with LEA and CDE guidelines and certification, and provided as specified in the LEA student's IEP and ISA. The nonpublic agency providing Behavior Intervention services shall develop a written treatment plan that specifies the nature of their nonpublic agency service for each student within thirty (30) days of enrollment and shall be provided in writing to the LEA. School-based services may not be unilaterally converted by CONTRACTOR to a substitute program or provided at a location not specifically authorized by the IEP team. Except for services provided by a contractor that is a licensed children's institution, all services not provided in the school setting require the presence of a parent, guardian or adult caregiver during the delivery of services, provided such guardian or caregiver have a signed authorization by the parent or legal guardian to authorize emergency services as requested. LCI contractors shall ensure that appropriate and qualified residential or clinical staff is present during the provision of services under this Master Contract. CONTRACTOR shall immediately notify LEA in writing if no parent, guardian or adult caregiver is present. CONTRACTOR shall provide to the LEA a written description of the services and location provided prior to the effective date of this Master Contract. Contractors providing Behavior Intervention services must have a trained Behavior Intervention Case Manager (BICM) or trained equivalent on staff. It is understood that Behavior Intervention services are limited per CDE Certification and do not constitute as an instructional program.

When CONTRACTOR is a nonpublic agency, CONTRACTOR shall not provide transportation nor subcontract for transportation services.

23. INSTRUCTIONAL MINUTES

When CONTRACTOR is a nonpublic school, the total number of instructional minutes per school day provided by CONTRACTOR shall be at least equivalent to the number of instructional minutes per school day provided to LEA students at like grade level, attending LEA schools and shall be specified in the LEA student's ISA developed in accordance with the LEA student's IEP.

For LEA students in grades pre-kindergarten through 12, unless otherwise specified in the LEA student's IEP and ISA, the number of instructional minutes, excluding breakfast, recess, lunch, and passing time, shall be at least:

310 instructional minutes for LEA students in grades pre-kindergarten through five inclusive.

314 instructional minutes for LEA students in grades six through twelve inclusive.

The total number of annual instructional minutes shall be at least equivalent to the total number of annual instructional minutes provided to LEA students attending LEA schools in like grade levels unless otherwise specified in the LEA student's IEP.

When CONTRACTOR is a nonpublic agency and/or related services provider, the total number of minutes per school day provided by CONTRACTOR shall be specified in the LEA student's ISA developed in accordance with the LEA student's IEP.

24. CLASS SIZE

When CONTRACTOR is a nonpublic school, CONTRACTOR shall ensure that class size shall not exceed a ratio of one teacher per twelve (12) students unless CONTRACTOR and the LEA agree otherwise, in writing.

In the event a nonpublic school is unable to fill a vacant teaching position responsible for direct instruction to students, and the vacancy has direct impact on the California Department of Education Certification of that school, the nonpublic school shall develop a plan to assure appropriate coverage of students by first utilizing existing certificated staff. The nonpublic school and the LEA may agree to one 30 school day period per contract year where class size may be increased to assure coverage by an appropriately credentialed teacher. Such an agreement shall be in writing and signed by both parties. This provision does not apply to a nonpublic agency.

CONTRACTOR providing special education instruction for individuals with exceptional needs between the ages of three and five years, inclusive, shall also comply with the appropriate instructional adult to child ratios pursuant to California Education Code sections 56440 et seq.

25. CALENDARS

When CONTRACTOR is a nonpublic school, CONTRACTOR shall submit to the LEA a school calendar with the total number of billable days not to exceed 180 days, plus extended school year billable days equivalent to the number of days determined by the LEA's extended school year calendar. Billable days shall include only those days that are included on the submitted and approved school calendar, and/or required by the IEP (developed by the LEA) for each student. CONTRACTOR shall not be allowed to change its school calendar and/or amend the number of billable days without the prior written approval of the LEA. Nothing in this Master Contract shall be interpreted to require the LEA to accept any requests for calendar changes.

Unless otherwise specified by the students' IEP, educational services shall occur at the school site. A student shall only be eligible for extended school year services if such are recommended by his/her IEP Team and the provision of such is specifically included in the ISA. Extended school year shall consist of 20 instructional days, unless otherwise agreed upon by the IEP Team convened by the LEA. Any days of extended school year in excess of 20 billable days must be mutually agreed to, in writing, prior to the start of the extended school year. School calendar and Extended School Year (ESY) billable days shall not exceed 210 days.

Student must have actually been in attendance during the regular school year and/or during extended school year and actually received services on a billable day of attendance in order for CONTRACTOR to be eligible for payment. It is specifically understood that services may not be provided on weekends/holidays and other times when school is not in session, unless agreed to by the LEA, in writing, in advance of the delivery of any nonpublic school service. Any instructional days provided without this written agreement shall be at the sole financial responsibility of the CONTRACTOR.

CONTRACTOR shall observe the same legal holidays as the LEA. Those holidays are Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, New Year's Day, may include Martin Luther King, Jr. Day, Cesar Chavez Day, President's Day, Memorial Day and Independence Day. With the approval of the LEA, CONTRACTOR may revise the date upon which CONTRACTOR closes in observance of any of the holidays observed by LEA.

When CONTRACTOR is a nonpublic agency, CONTRACTOR shall be provided with a LEA-developed/approved calendar prior to the initiation of services. CONTRACTOR herein agrees to observe holidays as specified in the LEA-developed/approved calendar. CONTRACTOR shall

provide services pursuant to the LEA-developed/approved calendar; or as specified in the LEA student's IEP and ISA. Unless otherwise specified in the LEA student's ISA, CONTRACTOR shall provide related services to LEA students on only those days that the LEA student's school of attendance is in session and the LEA student attends school. CONTRACTOR shall bill only for services provided on billable days of attendance as indicated on the LEA calendar unless CONTRACTOR and the LEA agree otherwise, in writing. Student must have actually been in attendance and/or received services on a billable day of attendance in order for CONTRACTOR to be eligible for payment. It is specifically understood that services may not be provided on weekends/holidays and other times when school is not in session, unless agreed to by the LEA, in writing, in advance of the delivery of any nonpublic agency service provided by CONTRACTOR. Any instructional days provided without this written agreement shall be at the sole financial responsibility of the CONTRACTOR.

26. DATA REPORTING

CONTRACTOR shall agree to provide to the LEA, all data related to students who are served by the CONTRACTOR. This shall include any and all data related to any section of this Master Contract. CONTRACTOR agrees to provide all the information in the format required by the LEA. It is understood that all nonpublic schools and nonpublic agencies shall utilize the Special Education Information System (SEIS) or comparable program/system approved by the LEA/SELPA for all IEP development and progress reporting. Additional progress reporting may be required by the LEA. The LEA shall provide the CONTRACTOR with appropriate software, user training and proper internet permissions to allow adequate access so that this information may be compiled.

The LEA shall provide the CONTRACTOR with approved forms and/or format for such data including but not limited to invoicing, attendance reports and progress reports. The LEA may approve use of CONTRACTOR-provided forms at their discretion.

27. LEAST RESTRICTIVE ENVIRONMENT/DUAL ENROLLMENT

CONTRACTOR and the LEA shall both follow all LEA policies and procedures that support Least Restrictive Environment ("LRE") options (and/or dual enrollment options if available and appropriate) for students to have access to the general curriculum and to be educated with their nondisabled peers to the maximum extent appropriate.

CONTRACTOR shall ensure that LRE placement options are addressed at all IEP team meetings regarding students for whom ISAs have been or may be executed. This shall include IEP team consideration of supplementary aids and services and goals and objectives necessary for placement in the LRE and necessary to enable students to transition to less restrictive settings.

When an IEP team has determined that a student should be transitioned into the public school setting, CONTRACTOR shall assist the LEA in implementing the IEP team's recommendations and/or activities to support the transition.

28. STATEWIDE ACHIEVEMENT TESTING AND HIGH SCHOOL EXIT EXAMINATION

Where CONTRACTOR is a nonpublic school, CONTRACTOR is subject to the alternative accountability system developed pursuant to Education Code section 52052, in the same manner as public schools and each LEA student placed with CONTRACTOR by the LEA shall be tested by qualified staff of CONTRACTOR in accordance with that accountability program. LEA shall provide test administration training to CONTRACTOR's qualified staff; CONTRACTOR shall attend LEA test training and comply with completion of all coding requirements as required by LEA. Contractor shall report the test results to the CDE as required by Education Code section 56366(a)(8)(A).

Where CONTRACTOR is a nonpublic school, CONTRACTOR shall administer all statewide achievement tests and the California High School Exit Examination as mandated by the LEA and pursuant to the LEA, state and federal guidelines.

29. LEA MANDATED ATTENDANCE AT MEETINGS

CONTRACTOR shall attend LEA mandated meetings when legal mandates, and/or LEA policy and procedures are reviewed, including but not limited to the areas of: curriculum, high school graduation, standards-based instruction, behavior intervention, cultural and linguistic needs of students with disabilities, dual enrollment responsibilities, LRE responsibilities, transition services, and standardized testing. The LEA shall provide CONTRACTOR with reasonable notice of mandated meetings. **Attendance at such meetings shall not constitute a billable service hour(s).**

30. POSITIVE BEHAVIOR INTERVENTIONS

CONTRACTOR shall comply with the requirements of Title 5 of the California Code of Regulations sections 3001(c)-(f) and 3052(l)(1-8) regarding positive behavior interventions including, but not limited to: the completion of functional analysis assessments; the development, implementation, monitoring, supervision, modification, and evaluation of behavior intervention plans; and emergency interventions. It is understood that the LEA may require additional requirements for staff qualifications beyond what is required in Title 5 Regulation, 3064 and 3065. Such requirements will be provided in writing to the behavior intervention agency prior to entering into any contract for services. Failure to maintain adherence to staff qualification requirements shall constitute sufficient cause for contract termination. Behavior intervention agencies shall provide the LEA with all training protocols for behavior intervention staff employed by a nonpublic agency who do not possess a license, credential or recognized certification as part of their Master Contract application. Behavior intervention nonpublic agencies shall provide certification that all behavior aides who do not possess a license, credential or recognized certification have completed required training protocols within ten days of the start of providing behavior intervention services to a LEA student. Failure to do so shall constitute sufficient cause for termination.

CONTRACTOR shall designate an individual employed, contracted, and/or otherwise hired by CONTRACTOR as a “behavior intervention case manager” as that term is defined in Title 5 of the California Code of Regulations section 3001(e). CONTRACTOR shall maintain a written policy in compliance with Title 5 of the California Code of Regulations section 3052(i) and (k) regarding emergency interventions and Behavioral Emergency Reports. Evidence of such training shall be submitted to the LEA at the beginning of the school year and within 6 days of any new hire. CONTRACTOR shall ensure that all of its staff members are trained annually in crisis intervention and emergency procedures as related to appropriate behavior management strategies.

CONTRACTOR shall not authorize, order, consent to, or pay for any of the following prohibited interventions, or any other intervention similar to or like the following: (a) any intervention that is designed to, or likely to, cause physical pain; (b) releasing noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the LEA student’s face; (c) any intervention which denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities; (d) any intervention which is designed to subject, used to subject, or likely to subject the LEA student to verbal abuse, ridicule, or humiliation, or which can be expected to cause excessive emotional trauma; (e) restrictive interventions which employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used as a short term emergency intervention by CONTRACTOR’s trained and qualified personnel as allowable by applicable law and regulations; (f) locked seclusion except as allowable by applicable law and regulations; (g) any intervention that precludes adequate supervision of individual; and (h) any intervention which deprives the LEA student of one or more of his or her senses, pursuant to California Code of Regulations 3052(l) (1-8).

31. STUDENT DISCIPLINE

CONTRACTOR shall maintain and abide by a written policy for student discipline that is consistent with state and federal law and regulations.

When CONTRACTOR seeks to remove a LEA student from his/her current educational placement for disciplinary reasons, CONTRACTOR shall immediately submit a written discipline report to the LEA and a manifestation IEP team meeting shall be scheduled. Written discipline reports shall include, but not be limited to: the LEA student's name; the time, date, and description of the misconduct; the disciplinary action taken by CONTRACTOR; and the rationale for such disciplinary action. A copy of the LEA student's behavior plan, if any, shall be submitted with the written discipline report. CONTRACTOR and LEA agree to participate in a manifestation determination at an IEP meeting no later than the tenth (10th) day of suspension. CONTRACTOR shall notify and invite LEA representatives to the IEP team meeting where the manifestation determination will be made.

32. IEP TEAM MEETINGS

An IEP team meeting shall be convened at least annually to evaluate: (1) the educational progress of each student placed with CONTRACTOR, including all state assessment results pursuant to the requirements of Education Code section 52052; (2) whether or not the needs of the student continue to be best met at the nonpublic school and/or by the nonpublic agency; and (3) whether changes to the student's IEP are necessary, including whether the student may be transitioned to a public school setting. (California Education Code sections 56366(a)(2)(B)(i) and (ii).) If a LEA student is to be transferred from a nonpublic school setting into a regular class setting in a public school for any part of the school day, the IEP team shall document, if appropriate, a description of activities provided to integrate the student into the regular education program, including the nature of each activity as well as the time spent on the activity each day or week and a description of the activities provided to support the transition of the student from the special education program into the regular education program. Except as otherwise provided in the Master Contract, CONTRACTOR and the LEA shall participate in all IEP team meetings regarding LEA students for whom ISAs have been or may be executed. At any time during the term of this Master Contract, a parent, the CONTRACTOR or the LEA may request a review of the student's IEP, subject to all procedural safeguards required by law, including reasonable notice given to, and participation of, the CONTRACTOR in the meeting. Every effort shall be made to schedule IEP team meetings at a time and place that is mutually convenient to the parent(s), the CONTRACTOR and the LEA. CONTRACTOR shall provide to the LEA, at no cost, any and all assessments (including testing protocols) and written assessment reports created by CONTRACTOR and any of its agents or subcontractors, upon request and/or pursuant to LEA policy and procedures.

It is understood that the CONTRACTOR shall utilize the Special Education Information System (SEIS) or other comparable program/system as designated by the LEA, for all IEP planning and progress reporting. The LEA or SELPA shall provide training for any nonpublic school and nonpublic agency to assure access to SEIS or the comparable program/system designated for use by the LEA. The nonpublic school and/or nonpublic agency shall maintain confidentiality of all IEP data on SEIS or comparable program/system and shall protect the password requirements of the system. When a student disenrolls from the nonpublic school or stops receiving services from the nonpublic agency, such CONTRACTOR shall discontinue use of SEIS and/or comparable program/system for that student.

Changes in any LEA student's educational program, including instruction, services, or instructional setting, provided under this Master Contract may only be made on the basis of revisions to the student's IEP. In the event that the CONTRACTOR believes the student requires a change of placement, the CONTRACTOR may request a review of the student's IEP for the purposes of

considering a change in the student's placement. Student is entitled to remain in the last agreed upon and implemented placement unless parent agrees otherwise, or unless an interim alternative educational placement is deemed lawful and appropriate by the LEA or OAH.

33. SURROGATE PARENTS

CONTRACTOR shall comply with all LEA surrogate parent assignments.

34. DUE PROCESS PROCEEDINGS

CONTRACTOR shall fully participate in special education due process proceedings including mediations and hearings, as requested by the LEA. CONTRACTOR shall also fully participate in the investigation of any complaint filed with the State of California, the Office for Civil Rights, or any other state and/or federal governmental body or agency. Full participation shall include but in no way be limited to cooperating with LEA representatives to provide complete answers raised by any investigator and/or the immediate provision of any and all documentation that pertains to the operation of CONTRACTOR's program and/or the implementation of a particular student's Individual Service Provider (ISP).

35. COMPLAINT PROCEDURES

CONTRACTOR shall maintain and adhere to its own written procedures for responding to parent complaints. These procedures shall include annually notifying and providing parents of LEA students with appropriate information (including complaint forms) for the following: (1) Uniform Complaint Procedures pursuant to Title 5 of the California Code of Regulations section 4600 et seq.; (2) Nondiscrimination policies pursuant to Title 5 of the California Code of Regulations section 4960 (a); (3) Sexual Harassment Policies pursuant to California Education Code 231.5(a)(b)(c); (4) Student Grievance Procedure pursuant to Title IX 106.8 (a)(d) and 106.9 (a); and (5) Notice of Privacy Practices in compliance with Health Insurance Portability and Accountability Act (HIPPA). CONTRACTOR shall include verification of these procedures to the LEA.

36. LEA STUDENT PROGRESS REPORTS/REPORT CARDS AND ASSESSMENTS

Unless the LEA requests in writing that progress reports be provided on a monthly basis, CONTRACTOR shall provide to parents at least four written progress reports/report cards. At a minimum, progress reports shall include progress over time towards IEP goals and objectives. A copy of the progress reports/report cards shall be maintained at the CONTRACTOR's place of business and shall be submitted to the LEA within 10 days of the LEA's request.

CONTRACTOR shall also provide a LEA representative access to supporting documentation used to determine progress on any goal or objective, including but not limited to log sheets, observation notes, data sheets, pre/post tests, rubrics and other similar data collection used to determine progress or lack of progress on approved goals, objectives, transition plans or behavior support plans. The LEA may request copies of such data at any time within five years of the date of service. CONTRACTOR agrees to maintain the information for at least five years and also shall provide this data supporting progress within 5 business days of request. Additional time may be granted as needed by the LEA.

CONTRACTOR shall complete academic or other assessment of the LEA student one month prior to the LEA student's annual or triennial review IEP team meeting for the purpose of reporting the LEA student's present levels of performance at the IEP team meeting as required by state and federal laws and regulations and pursuant to LEA policies, procedures, and/or practices. CONTRACTOR shall maintain supporting documentation such as test protocols and data collection, which shall be made available to LEA within 5 business days of request.

CONTRACTOR is responsible for all assessment costs regarding the updating of goals and objectives, progress reporting and the development of present levels of performance. All assessments shall be provided by the LEA unless the LEA specifies in writing a request that CONTRACTOR perform such additional assessment. Any assessment costs may be added to the ISA and/or approved separately by the LEA at the LEA's sole discretion.

It is understood that all billable hours must be in direct services to pupils as specified in the ISA. For nonpublic agency services, supervision provided by a qualified individual as specified in Title 5 Regulation, subsection 3065, shall be determined as appropriate and included in the ISA. Supervision means the direct observation of services, data review, case conferencing and program design consistent with professional standards for each professional's license, certification, or credential.

CONTRACTOR shall not charge the LEA student's parent(s) or LEA for the development or provision of progress reports, report cards, and/or any assessments, interviews, or attendance at any meetings, including but not limited to IEP meetings. It is understood that all billable hours have limits to those specified on the ISA consistent with the IEP. It is understood that copies of data collection notes, forms, charts and other such data are part of the pupil's record and shall be made available to the LEA upon written request.

37. TRANSCRIPTS

When CONTRACTOR is a nonpublic school, CONTRACTOR shall prepare transcripts at the close of each semester, or upon LEA student transfer, for LEA students in grades nine through twelve inclusive. CONTRACTOR shall submit all transcripts on LEA approved forms to the LEA student's school of residence, for evaluation of progress toward completion of diploma requirements as specified in LEA Procedures. CONTRACTOR shall submit to the LEA names of LEA students and their schools of residence for whom transcripts have been submitted as specified by the LEA.

38. LEA STUDENT CHANGE OF RESIDENCE

Upon enrollment, CONTRACTOR shall notify parents in writing of their obligation to notify CONTRACTOR of the LEA student's change of residence. CONTRACTOR shall maintain, and provide upon request by LEA, documentation of such notice to parents. Within five (5) school days after CONTRACTOR becomes aware of a LEA student's change of residence, CONTRACTOR shall notify the LEA, in writing, of the LEA student's change of residence.

If CONTRACTOR had knowledge or should reasonably have had knowledge of the LEA student's change of residence boundaries and CONTRACTOR fails to follow the procedures specified in this provision, the LEA shall not be responsible for the costs of services delivered after the LEA student's change of residence.

39. WITHDRAWAL OF LEA STUDENT FROM PROGRAM

CONTRACTOR shall immediately report, by telephone, to the LEA Representative responsible for overseeing nonpublic schools and nonpublic agencies, and any other required representative from the California Department of Education, when a LEA student is withdrawn from school and/or services. CONTRACTOR shall confirm such telephone call on LEA approved forms and submit to the LEA and the Department of Education, if required, within five (5) business days of the withdrawal. CONTRACTOR shall assist LEA to verify and clear potential dropouts three times per year, as required by the 2001 Elementary and Secondary Education Act (No Child Left Behind; NCLB), as documentation of graduation rate is one of the indicators of Adequate Yearly Progress (AYP).

40. PARENT ACCESS

CONTRACTOR shall provide for reasonable parental access to LEA students and all facilities including, but not limited to, the instructional setting, recreational activity areas, meeting rooms and LEA student living quarters. CONTRACTOR shall comply with any known court orders regarding parental visits and access to LEA students.

CONTRACTOR, if operating a program with a residential component, shall cooperate with a parent's reasonable request for LEA student visits in their home during, but not limited to, holidays and weekends. CONTRACTOR shall ensure that parents obtain prior written authorization for therapeutic visits from the CONTRACTOR and the LEA.

41. SERVICES AND SUPERVISION AND PROFESSIONAL CONDUCT

If CONTRACTOR provides services on a LEA public school campus, CONTRACTOR shall comply with Penal Code section 627.1 et seq., as well as all other LEA and campus-specific policies and procedures regarding visitors to/on school campuses. CONTRACTOR shall be responsible for the purchase and provision of the supplies and assessment tools necessary to implement the provision of CONTRACTOR services on LEA public school campuses.

It is understood that the public school credentialed classroom teacher is responsible for the educational program.

It is understood that all employees, subcontractors and volunteers of any certified nonpublic school or agency shall adhere to customary professional standards when providing services. All practices shall be within the scope of professional responsibility as defined in the professional code of conduct for each profession. Reports regarding student progress shall be consistent with the provision of the Master Contract.

CONTRACTOR, if providing services in a student's home as specified in the ISP, shall assure that at least one parent of the child or an adult caregiver with written and signed authorization to make decisions in an emergency is present during the provision of services. The names of any adult caregiver other than the parent shall be provided to the LEA prior to the start of any home based services, including written and signed authorization in emergency situations. The parent shall inform the LEA of any changes of caregivers and provide written authorization for emergency situations. The adult caregiver cannot also be an employee or volunteer associated with the nonpublic school/nonpublic agency service provider. All problems and/or concerns reported to parents, both verbal and written shall also be provided to the LEA.

42. LICENSED CHILDREN'S INSTITUTION CONTRACTORS

If CONTRACTOR is a licensed children's institution, CONTRACTOR shall adhere to all legal requirements regarding educational placements for LCI students as stated in Education Code sections 56366(a)(2)(C) and 56366.9, Health and Safety Code section 1501.1(b), (AB1858, AB490 (Chapter 862, Statutes of 2003)) and the procedures set forth in the LEA Procedures. An LCI shall not require that a pupil be placed in its nonpublic school as a condition of being placed in its residential facility.

If CONTRACTOR is a nonpublic, nonsectarian school that is owned, operated by, or associated with a LCI, CONTRACTOR shall provide to the LEA, on a quarterly basis, a list of all LEA students, including those identified as eligible for special education. For those identified special education students, the list shall include: 1) special education eligibility at the time of enrollment and 2) the educational placement and services specified in each student's IEP at the time of enrollment.

Unless placement is made pursuant to an Office of Administrative Hearings order or a lawfully executed agreement between the LEA and parent, the LEA is not responsible for the costs associated

with nonpublic school placement until the date on which an IEP team meeting is convened, the IEP team determines that a nonpublic school placement is appropriate, and the IEP is signed by the LEA student's parent or another adult with educational decision-making rights.

43. STATE MEAL MANDATE

When CONTRACTOR is a nonpublic school, CONTRACTOR and LEA shall satisfy the State Meal Mandate under California Education Code sections 49530, 49530.5 and 49550.

44. MONITORING

CONTRACTOR shall allow representatives from the LEA access to its facilities for the purpose of monitoring each LEA student's instructional program. LEA shall have access to observe each LEA student at work, observe the instructional setting, interview CONTRACTOR, and review each LEA student's records and progress. Such access shall include unannounced monitoring visits. When making site visits, LEA shall initially report to CONTRACTOR's site administrative office. CONTRACTOR shall be invited to participate in the review of each student's progress.

If CONTRACTOR is also a LCI, the LEA shall annually evaluate whether CONTRACTOR is in compliance with Education Code section 56366.9 and Health and Safety Code section 1501.1(b).

The State Superintendent of Public Instruction ("Superintendent") shall monitor CONTRACTOR'S facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standard focused instructional materials used on a three-year cycle, as follows: (1) CONTRACTOR shall complete a self-review in year one; (2) the Superintendent shall conduct an onsite review in year two; and (3) the Superintendent shall conduct a follow-up visit in year three.

CONTRACTOR shall fully participate in the CDE On-Site and Self Review and if applicable, District Validation Review. This review will address programmatic aspects of the nonpublic school/agency, compliance with relevant state and federal regulations, and Master Contract compliance. CONTRACTOR shall complete and submit a Nonpublic School/Agency Self-Review Assessment submitted as specified by the LEA.

CONTRACTOR understands that the LEA reserves the right to institute a program audit with or without cause. The program audit may include, but is not limited to, a review of core compliance areas of health and safety; curriculum/instruction; related services; and contractual, legal, and procedural compliance.

When CONTRACTOR is a nonpublic school, CONTRACTOR shall collect all applicable data and prepare the applicable portion of a School Accountability Report Card in accordance with California Education Code Section 33126.

PERSONNEL

45. CLEARANCE REQUIREMENTS

CONTRACTOR shall comply with the requirements of California Education Code section 44237, 35021.1 and 35021.2 including, but not limited to: obtaining clearance from both the California Department of Justice (hereinafter referred to as "CDOJ") and clearance from the Federal Bureau of Investigation (hereinafter referred to as "FBI") for all of CONTRACTOR's employees and volunteers who will have or likely may have any direct contact with LEA students. CONTRACTOR hereby agrees that CONTRACTOR's employees and volunteers who will have or likely may have direct contact with LEA students shall not come in contact with LEA students until both CDOJ and FBI clearance are ascertained. CONTRACTOR shall further certify in writing to the LEA that none

of its employees, volunteers, or subcontractors who will have or likely may have any direct contact with LEA students have been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h), unless despite the employee's conviction of a violent or serious felony, he or she has met the criteria to be eligible for employment pursuant to California Education Code section 44237(i) or (j). Clearance certification shall be submitted to the LEA. In addition, CONTRACTOR shall make a request for subsequent arrest service from the CDOJ as required by California Penal Code section 11105.2.

46. STAFF QUALIFICATIONS

CONTRACTOR shall ensure that all individuals employed, contracted, and/or otherwise hired by CONTRACTOR to provide classroom and/or individualized instruction or provide related services hold a license, certificate, permit, or other document equivalent to that which staff in a public school are required to hold to render the service consistent with Education Code section 56366.1(n)(1) and are qualified pursuant to Title 34 of the Code of Federal Regulations sections 200.56 and 200.58, and Title 5 of the California Code of Regulations sections 3001(y), 3064 and 3065. Such qualified staff may only provide related services within the scope of their professional license, certification or credential and ethical standards set by each profession and not assume responsibility or authority for another related services provider or special education teacher's scope of practice.

Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

CONTRACTOR shall comply with personnel standards and qualifications regarding instructional aides and teacher assistants respectively pursuant to Federal requirements and California Education Code sections 45340 et seq. and 45350 et seq. Specifically, all paraprofessionals, including, but not limited to instructional aides and teacher assistants, employed, contracted, and/or otherwise hired by CONTRACTOR to provide classroom and/or individualized instruction or related services, shall possess a high school diploma (or higher) degree; or met a rigorous standard of quality and can demonstrate, through a formal state or local assessment (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or (ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate. CONTRACTOR shall comply with all laws and regulations governing the licensed professions, including but not limited to, the provisions with respect to supervision.

47. VERIFICATION OF LICENSES, CREDENTIALS AND OTHER DOCUMENTS

CONTRACTOR shall submit to the LEA and SELPA a staff list, and copies of all current and required licenses, certifications, credentials, permits and/or other documents which entitle the holder to provide special education and/or related services by CONTRACTOR and all individuals employed, contracted, and/or otherwise hired or sub-contracted by CONTRACTOR. CONTRACTOR shall ensure that all licenses, certifications, credentials, permits or other documents are on file at the office of the County Superintendent of Schools. CONTRACTOR shall notify the LEA in writing within thirty (30) days when personnel changes occur which may affect the provision of special education and/or related services to LEA students as specified in the LEA Procedures. CONTRACTOR shall provide the LEA with the verified dates of fingerprint clearance, Department of Justice clearance and Tuberculosis Test clearance for all employees, approved subcontractors and/or volunteers prior to such individuals starting to work with any student.

CONTRACTOR shall monitor the status of licenses, certifications, credentials, permits and/or other documents for CONTRACTOR and all individuals employed, contracted, and/or otherwise hired by CONTRACTOR. CONTRACTOR shall immediately, and in no circumstances longer than three (3) calendar days, provide to the LEA updated information regarding the status of licenses, certifications, credentials, permits and/or other documents of any known changes.

48. STAFF ABSENCE

When CONTRACTOR is a nonpublic school and CONTRACTOR's classroom teacher is absent, CONTRACTOR shall provide an appropriately credentialed substitute teacher in the absent teacher's classroom in accordance with California Education Code section 56061. CONTRACTOR shall provide to the LEA documentation of substitute coverage on the LEA substitute teacher log. Substitute teachers shall remain with their assigned class during all instructional time. The LEA shall not be responsible for any payment for instruction and/or services when an appropriately credentialed substitute teacher is not provided.

When CONTRACTOR is a nonpublic agency and/or related services provider, and CONTRACTOR's service provider is absent, CONTRACTOR shall provide a qualified (as defined in section seven (7) of this agreement and as determined by the LEA) substitute, unless the LEA provides appropriate coverage in lieu of CONTRACTOR's service providers. It is understood that the parent of a student shall not be deemed to be a qualified substitute for his/her student. The LEA will not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider within thirty (30) calendar days from the date on which the services should have been provided. CONTRACTOR shall not "bank" or "carry over" make up service hours under any circumstances, unless otherwise agreed to in writing by CONTRACTOR and an authorized LEA representative.

1. STAFF PROFESSIONAL BEHAVIOR WHEN PROVIDING SERVICES AT SCHOOL OR SCHOOL RELATED EVENTS OR AT SCHOOL FACILITY AND/OR IN THE HOME

It is understood that all employees, subcontractors, and volunteers of any certified nonpublic school or nonpublic agency shall adhere to the customary professional and ethical standards when providing services. All practices shall only be within the scope of professional responsibility as defined in the professional code of conduct for each profession as well as any LEA professional standards as specified in Board policies and/or regulations when made available to the CONTRACTOR. Reports regarding student progress shall be consistent with the provision of this Master Contract.

For services provided on a public school campus, sign in/out procedures shall be followed by nonpublic agency providers working in a public school classroom along with all other procedures for being on campus consistent with school and LEA policy. It is understood that the public school credentialed classroom teacher is responsible for the instructional program, and all nonpublic agency service providers shall work collaboratively with the classroom teacher, who shall remain in charge of the instructional program.

For services provided in a pupil's home as specified in the IEP, CONTRACTOR must assure that the parent or an LEA-approved responsible adult is present during the provision of services. All problems and/or concerns reported to parents, both verbal and written shall also be provided to the LEA.

HEALTH AND SAFETY MANDATES

50. HEALTH AND SAFETY

CONTRACTOR shall comply with all applicable federal, state, local, and LEA laws, regulations, ordinances, policies, and procedures regarding student and employee health and safety. CONTRACTOR shall comply with the requirements of California Education Code sections 35021 et seq., 49406, and Health and Safety Code section 3454(a) regarding the examination of CONTRACTOR's employees and volunteers for tuberculosis. CONTRACTOR shall provide to the

LEA documentation for each individual volunteering, employed, contracted, and/or otherwise hired by CONTRACTOR of such compliance before an individual comes in contact with an LEA student.

CONTRACTOR shall comply with OSHA Blood Borne Pathogens Standards, 29 Code of Federal Regulations (CFR) section 1910.1030, when providing medical treatment or assistance to a student. CONTRACTOR further agrees to provide annual training regarding universal health care precautions and to post required notices in areas designated in the California Health and Safety Code.

51. FACILITIES AND FACILITIES MODIFICATIONS

CONTRACTOR shall provide special education and/or related services to LEA students in facilities that comply with all applicable federal, state, and local laws, regulations, and ordinances related, but not limited to: disability access; fire, health, sanitation, and building standards and safety; fire warning systems; zoning permits; and occupancy capacity. When CONTRACTOR is a nonpublic school, CONTRACTOR shall conduct fire drills as required by Title 5 California Code of Regulations section 550. CONTRACTOR shall be responsible for any structural changes and/or modifications to CONTRACTOR's facilities as required to comply with applicable federal, state, and local laws, regulations, and ordinances.

52. ADMINISTRATION OF MEDICATION

Unless otherwise set forth in the student's ISP, CONTRACTOR shall comply with the requirements of California Education Code section 49423 when CONTRACTOR serves a LEA student that is required to take prescription and/or over-the-counter medication during the school day. CONTRACTOR may designate personnel to assist the LEA student with the administration of such medication after the LEA student's parent(s) provides to CONTRACTOR: (a) a written statement from a physician detailing the type, administration method, amount, and time schedules by which such medication shall be taken; and (b) a written statement from the LEA student's parent(s) granting CONTRACTOR permission to administer medication(s) as specified in the physician's statement. CONTRACTOR shall maintain, and provide to the LEA upon request, copies of such written statements. CONTRACTOR shall maintain a written log for each LEA student to whom medication is administered. Such written log shall specify the LEA student's name; the type of medication; the date, time, and amount of each administration; and the name of CONTRACTOR's employee who administered the medication. CONTRACTOR maintains full responsibility for assuring appropriate staff training in the administration of such medication consistent with student's physician's written orders. Any change in medication type, administration method, amount or schedule must be authorized by both a licensed physician and parent.

53. INCIDENT/ACCIDENT REPORTING

CONTRACTOR shall submit within 24 hours by fax and mail, any accident or incident report to the LEA. CONTRACTOR shall properly submit required accident or incident reports pursuant to the procedures specified in LEA Procedures.

54. CHILD ABUSE REPORTING

CONTRACTOR hereby agrees to annually train all staff members, including volunteers, so that they are familiar with and agree to adhere to its own child and dependent adult abuse reporting obligations and procedures as specified in California Penal Code section 11164 et seq. To protect the privacy rights of all parties involved (i.e. reporter, child and alleged abuser), reports will remain confidential as required by law and professional ethical mandates. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be submitted to the LEA.

55. SEXUAL HARASSMENT/DISCRIMINATION

CONTRACTOR shall have a Sexual and Gender Identity Harassment Policy that clearly describes the kinds of conduct that constitutes sexual harassment and that is prohibited by the CONTRACTOR's policy, as well as federal and state law. The policy should include procedures to make complaints without fear of retaliation, and for prompt and objective investigations of all sexual harassment complaints. CONTRACTOR further agrees to provide annual training to all employees regarding the laws concerning sexual harassment and related procedures.

56. REPORTING OF MISSING CHILDREN

CONTRACTOR assures the LEA that all staff members, including volunteers, are familiar with and agree to adhere to requirements for reporting missing children as specified in California Education Code section 49370. A written statement acknowledging the legal requirements of such reporting and verification of staff adherence to such reporting shall be properly submitted to the LEA. The written statement shall be submitted as specified by the LEA.

FINANCIAL**57. ENROLLMENT, CONTRACTING, SERVICE TRACKING, ATTENDANCE REPORTING, AND BILLING PROCEDURES**

CONTRACTOR shall assure that the nonpublic school or nonpublic agency has the necessary financial resources to provide an appropriate education for the children enrolled and will distribute those resources in such a manner to implement the IEP and ISA for each and every child.

CONTRACTOR shall comply with all LEA procedures concerning enrollment, contracting, attendance reporting, service tracking and billing, including requirements of electronic billing, as specified by the LEA Procedures. CONTRACTOR shall be paid for the provision of special education and/or related services specified in the LEA student's IEP and ISA which are provided on billable days of attendance. All payments by LEA shall be made in accordance with the terms and conditions of this Master Contract and in compliance with the LEA Procedures, and will be governed by all applicable federal and state laws.

CONTRACTOR shall maintain separate registers for the basic education program, each related service, and services provided by instructional assistants, behavior intervention aides and bus aides. Original attendance forms (i.e., roll books for the basic education program service tracking documents and notes for instructional assistants, behavioral intervention aides, bus aides, and each related service) shall be completed by the actual service provider whose signature shall appear on such forms and shall be available for review, inspection, or audit by the LEA during the effective period of this Master Contract and for a period of five (5) years thereafter. CONTRACTOR shall verify the accuracy of minutes of reported attendance that is the basis of services being billed for payment.

CONTRACTOR shall submit invoices and related documents to the LEA for payment, for each calendar month when education or related services were provided. Invoices and related documents shall be properly submitted electronically and in addition, on a LEA form with signatures in the manner prescribed by LEA in the LEA Procedures. At a minimum, each invoice must contain the following information: month of service; specific days and times of services coordinated by the LEA approved calendar unless otherwise specified in the ISP or agreed to by the LEA; name of staff who provided the service; approved cost of each invoice; total for each service and total for the monthly invoice; date invoice was mailed; signature of the nonpublic school/nonpublic agency administrator authorizing that the information is accurate and consistent with the ISA, CDE certificates and staff notification; verification that attendance report is attached as appropriate; indication of any made-up session consistent with this Master Contract; verification that progress reports have been provided

consistent with the ISA (monthly or quarterly unless specified otherwise on the ISA); and the name or initials of each student for when the service was provided.

In the event services were not provided, rationale for why the services were not provided shall be included.

Such an invoice is subject to all conditions of this Master Contract. At the discretion of the LEA, an electronic invoice may be required provided such notice has been made in writing and training provided to the CONTRACTOR at no additional charge for such training.

Invoices shall be submitted no later than thirty (30) days after the end of the attendance accounting period in which the services were rendered. LEA shall make payment to CONTRACTOR based on the number of billable days of attendance and hours of service at rates specified in this Master Contract within forty-five (45) days of LEA's receipt of properly submitted hard copy of invoices prepared and submitted as specified in California Education Code Section 56366.5 and the LEA. CONTRACTOR shall correct deficiencies and submit rebilling invoices no later than thirty (30) calendar days after the invoice is returned by LEA. LEA shall pay properly submitted re-billing invoices no later than forty-five (45) days after the date a completely corrected re-billing invoice is received by the LEA.

In no case shall initial payment claim submission for any Master Contract fiscal year (July through June) extend beyond December 31st after the close of the fiscal year. In no case shall any rebilling for the Master Contract fiscal year (July through June) extend beyond six months after the close of the fiscal year unless approved by the LEA to resolve billing issues including rebilling issues directly related to a delay in obtaining information from the Commission on Teacher Credentialing regarding teacher qualification, but no later than 12 months from the close of the fiscal year. If the billing or rebilling error is the responsibility of the LEA, then no limit is set provided that the LEA and CONTRACTOR have communicated such concerns in writing during the 12-month period following the close of the fiscal year. The LEA will not pay mileage for NPA employee.

58. RIGHT TO WITHHOLD PAYMENT

The LEA may withhold payment to CONTRACTOR when: (a) CONTRACTOR has failed to perform, in whole or in part, under the terms of this Master Contract; (b) CONTRACTOR has billed for services rendered on days other than billable days of attendance or for days when student was not in attendance and/or did not receive services; (c) CONTRACTOR was overpaid by LEA as determined by inspection, review, and/or audit of its program, work, and/or records; (d) CONTRACTOR has failed to provide supporting documentation with an invoice, as required by EC 56366(c)(2); (e) education and/or related services are provided to LEA students by personnel who are not appropriately credentialed, licensed, or otherwise qualified; (f) LEA has not received, prior to school closure or contract termination, all documents concerning one or more LEA students enrolled in CONTRACTOR's educational program; (g) CONTRACTOR fails to confirm a student's change of residence to another district or confirms the change or residence to another district, but fails to notify LEA with five (5) days of such confirmation; or (h) CONTRACTOR receives payment from Medi-Cal or from any other agency or funding source for a service provided to a LEA student. It is understood that no payments shall be made for any invoices that are not received by six months following the close of the prior fiscal year, for services provided in that year.

The amount which may be withheld by the LEA with respect to each of the subparagraphs of the preceding paragraph are as follows: (a): the value of the service CONTRACTOR failed to perform; (b): the amount of overpayment; (c): the entire amount of the invoice for which satisfactory documentation has not been provided by CONTRACTOR (d): the amount invoiced for services provided by the individual not appropriately credentialed, licensed, or otherwise qualified; (e): the proportionate amount of the invoice related to the applicable pupil for the time period from the date

of the violation occurred and until the violation is cured; or (f): the amount paid to CONTRACTOR by Medi-Cal or another agency or funding source for the service provided to the LEA student.

If the LEA determines that cause exists to withhold payment to CONTRACTOR, LEA shall, within ten (10) business days of this determination, provide to CONTRACTOR written notice that LEA is withholding payment. Such notice shall specify the basis or bases for the LEA's withholding payment and the amount to be withheld. Within thirty (30) days from the date of receipt of such notice, CONTRACTOR shall take all necessary and appropriate action to correct the deficiencies that form the basis for the LEA's withholding payment or submit a written request for extension of time to correct the deficiencies. Upon receipt of CONTRACTOR's written request showing good cause, the LEA shall extend CONTRACTOR's time to correct deficiencies (usually an additional thirty (30) days), otherwise payment will be denied.

If after subsequent request for payment has been denied and CONTRACTOR believes that payment should not be withheld, CONTRACTOR shall send written notice to the LEA specifying the reason it believes payment should not be withheld. The LEA shall respond to CONTRACTOR's notice within thirty (30) business days by indicating that a warrant for the amount of payment will be made or stating the reason the LEA believes payment should not be made. If the LEA fails to respond within thirty (30) business days or a dispute regarding the withholding of payment continues after the LEA's response to CONTRACTOR's notice, CONTRACTOR may invoke the following escalation policy.

After forty-five (45) business days: The CONTRACTOR may notify the Authorized LEA's Representative of the dispute in writing. The LEA Authorized Representative shall respond to the CONTRACTOR in writing within fifteen (15) business days.

After sixty (60) business days: Disagreements between the LEA and CONTRACTOR concerning the Master Contract may be appealed to the County Superintendent of Schools or the State Superintendent of Public Instruction pursuant to the provisions of California Education Code Section 56366(c)(2).

59. PAYMENT FROM OUTSIDE AGENCIES

CONTRACTOR shall notify the LEA when Medi-Cal or any other agency is billed for the costs associated with the provision of special education and/or related services to LEA students. Upon request, CONTRACTOR shall provide to the LEA any and all documentation regarding reports, billing, and/or payment by Medi-Cal or any other agency for the costs associated with the provision of special education and/or related services to LEA students.

60. PAYMENT FOR ABSENCES

NONPUBLIC SCHOOL STAFF ABSENCE

Whenever a classroom teacher employed by CONTRACTOR is absent, CONTRACTOR shall provide an appropriately credentialed substitute teacher in the absent teacher's classroom in accordance with California Education Code section 56061. CONTRACTOR shall provide to the LEA documentation of substitute coverage pursuant to the LEA Procedures. Substitute teachers shall remain with their assigned class during all instructional time. The LEA will not pay for instruction and/or services unless said instruction or service is provided by an appropriately credentialed substitute teacher.

Whenever a related service provider is absent, CONTRACTOR shall provide a qualified (as defined in section seven (7) of this agreement and as determined by LEA) substitute. The LEA will not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider within thirty (30)

calendar days from the date on which the services should have been provided unless otherwise agreed in LEA student's IEP or ISA.

NONPUBLIC SCHOOL STUDENT ABSENCE

If CONTRACTOR is a nonpublic school, no later than the tenth (10) cumulative day of the LEA student's unexcused absence, CONTRACTOR shall notify the LEA of such absence as specified in the LEA Procedures.

Criteria for a billable day for payment purposes is one day of attendance as defined in California Education Code, sections 46010, 46010.3 and 46307. The LEA shall not pay for services provided on days that a student's attendance does not qualify for Average Daily Attendance (ADA) reimbursement under state law. *Per Diem* rates for students whose IEPs authorize less than a full instructional day may be adjusted on a pro rata basis in accordance with the actual proportion of the school day the student was served. The LEA shall not be responsible for payment of Designated Instruction and Service (DIS) or related services for days on which a student's attendance does not qualify for Average Daily Attendance (ADA) reimbursement under state law, nor shall student be eligible for make-up services.

NONPUBLIC AGENCY STAFF ABSENCE

When CONTRACTOR is a nonpublic agency and CONTRACTOR's service provider is absent, CONTRACTOR shall provide a qualified (as defined in section seven (7) of this Agreement and as determined by the LEA) substitute, unless the LEA provides appropriate coverage in lieu of CONTRACTOR's service providers. The LEA shall not pay for services unless a qualified substitute is provided and/or CONTRACTOR provides documentation evidencing the provision of "make-up" services by a qualified service provider within thirty (30) calendar days from the date on which the services should have been provided. CONTRACTOR shall not "bank" or "carry over" make up service hours under any circumstances, unless otherwise agreed to in writing by CONTRACTOR and the LEA. In the event services were not provided, reasons for why the services were not provided shall be included.

NONPUBLIC AGENCY STUDENT ABSENCE

If CONTRACTOR is a nonpublic agency, it shall notify LEA of the absence of a LEA student no later than the fifth consecutive service day of the student's absence, as specified in the LEA Procedures. The LEA shall not be responsible for the payment of services when a student is absent.

61. INSPECTION AND AUDIT

The CONTRACTOR shall maintain and the LEA shall have the right to examine and audit all of the books, records, documents, accounting procedures and practices and other evidence that reflect all costs claimed to have been incurred or fees claimed to have been earned under this Agreement.

CONTRACTOR shall provide the LEA access to all records including, but not limited to: student records as defined by California Education Code section 49061(b); registers and rollbooks of teachers; daily service logs and notes or other documents used to record the provision of related services; Medi-Cal/daily service logs and notes used to record provision of services provided by instructional assistants, behavior intervention aides, bus aides, and supervisors; absence verification records (parent/doctor notes, telephone logs, and related documents); bus rosters; staff lists specifying credentials held, business licenses held, documents evidencing other qualifications, social security numbers, dates of hire, and dates of termination; staff time sheets; non-paid staff and volunteer sign-in sheets; transportation and other related service subcontracts; school calendars; bell/class schedules when applicable; liability and worker's compensation insurance policies; state nonpublic school and/or agency certifications; by-laws; lists of current board of directors/trustees, if incorporated; other documents evidencing financial expenditures; federal/state payroll quarterly

reports Form 941/DE3DP; and bank statements and canceled checks or facsimile thereof. Such access shall include unannounced inspections by the LEA. CONTRACTOR shall make available to the LEA all budgetary information including operating budgets submitted by CONTRACTOR to the LEA for the relevant contract period being audited.

CONTRACTOR shall make all records available at the office of the LEA or CONTRACTOR's offices (to be specified by the LEA) at all reasonable times and without charge. All records shall be provided to the LEA within five (5) working days of a written request from the LEA. CONTRACTOR shall, at no cost to the LEA, provide assistance for such examination or audit. The LEA's rights under this section shall also include access to CONTRACTOR's offices for purposes of interviewing CONTRACTOR's employees. If any document or evidence is stored in an electronic form, a hard copy shall be made available to the LEA, unless the LEA agrees to the use of the electronic format.

CONTRACTOR shall obtain from its subcontractors and suppliers written agreements to the requirements of this section and shall provide a copy of such agreements to the LEA upon request by the LEA.

If an inspection, review, or audit by the LEA, a state agency, a federal agency, and/or an independent agency/firm determines that CONTRACTOR owes the LEA monies as a result of CONTRACTOR's over billing or failure to perform, in whole or in part, any of its obligations under this Master Contract, the LEA shall provide to CONTRACTOR written notice demanding payment from CONTRACTOR and specifying the basis or bases for such demand. Unless CONTRACTOR and the LEA otherwise agree in writing, CONTRACTOR shall pay to the LEA the full amount owed as result of CONTRACTOR's over billing and/or failure to perform, in whole or in part, any of its obligations under this Master Contract, as determined by an inspection, review, or audit by the LEA, a state agency, a federal agency, and/or an independent agency/firm. CONTRACTOR shall make such payment to the LEA within thirty (30) days of receipt of the LEA's written notice demanding payment.

62. RATE SCHEDULE

The attached rate schedule (Exhibit A) limits the number of LEA students that may be enrolled and the maximum dollar amount of the contract. It may also limit the maximum number of students that can be provided specific services. Per Diem rates for LEA students whose IEPs authorize less than a full instructional day may be adjusted proportionally. In such cases only, the adjustments in basic education rate shall be based on the percentage of a 310-minute instructional day.

Special education and/or related services offered by CONTRACTOR shall be provided by qualified personnel as per State and Federal law, and the codes and charges for such educational and/or related services during the term of this contract, shall be as stated in Exhibit A.

63. DEBARMENT CERTIFICATION

By signing this agreement, CONTRACTOR certifies that:

- (a) CONTRACTOR and any of its shareholders, partners, or executive officers are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and
- (b) Has/have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving

«Requisition_»

stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

The parties hereto have executed this Master Contract by and through their duly authorized agents or representatives. This Master Contract is effective on the 1st day of July 2011 and terminates at 5:00 P.M. on June 30, 2012, unless sooner terminated as provide herein.

CONTRACTOR
«NonPublic_School»

Nonpublic School/Agency

By:

Signature

Date

«Contract_Signer»
Name and Title of Authorized
Representative

LEA
Sacramento City Unified School District

By:

Signature

Date

Jonathan P. Raymond
Superintendent

Notices to CONTRACTOR shall be addressed to:
«Contract_Signer»

Name and Title «NonPublic_School»		
Nonpublic School/Agency/Related Service Provider «Mailing_Address»		
Address «Mailing_City» «State» «Zip»		
City «Phone»	State «Fax»	Zip
Phone «Email_Address»	Fax	
Email		

«Requisition_»

Notices to LEA shall be addressed to:
Rebecca Bryant, Director III, Special Education

Name and Title Sacramento City Unified School District		
LEA 5735 47 th Avenue		
Address Sacramento CA 95824		
City 916-643-9163	State 916-643-9466	Zip
Phone BECKYBR@sac-city.k12.ca.us	Fax	
Email		

EXHIBIT A: RATES

CONTRACTOR _____ **CONTRACTOR NUMBER** _____ **2011-2012**
«NonPublic_School» (CONTRACT YEAR)

Per CDE Certification, total enrollment may not exceed _____ **If blank, the number shall be as determine by CDE Certification.**

Rate Schedule. This rate schedule limits the number of LEA students who may be enrolled and the maximum dollar amount of the contract. It may also limit the maximum number of students who can be provided specific services. Special education and/or related services offered by CONTRACTOR, and the charges for such educational and/or related services during the term of this contract shall be as follows:

Payment under this contract may not exceed _____
Total LEA enrollment may not exceed _____
(per Master Contract Section 62)

- A. Basic Education Program/Special Education Instruction
Basic Education Program/Dual Enrollment

Rate	Period
«Daily_F	Per Day
_____	_____

Per diem rates for LEA students whose IEPs authorize less than a full instructional day shall be adjusted proportionally.

B. Related Services

- | | | | |
|-----|--|----------------------|-------|
| (1) | a. Transportation – Round Trip (NPS only, unless otherwise agreed to by LEA) | «Transpo
rtation» | _____ |
| | b. Transportation – One Way (NPS only, unless otherwise agreed to by LEA) | _____ | _____ |
| | c. Transportation-Dual Enrollment | _____ | _____ |
| | d. Public Transportation | _____ | _____ |
| | e. Parent* | _____ | _____ |
| (2) | a. Educational Counseling – Individual | _____ | _____ |
| | b. Educational Counseling – Group of | _____ | _____ |
| | c. Counseling – Parent | _____ | _____ |
| (3) | a. Adapted Physical Education – Individual | _____ | _____ |
| | b. Adapted Physical Education – Group of _____ | _____ | _____ |
| | c. Adapted Physical Education – Group of _____ | _____ | _____ |
| (4) | a. Language and Speech Therapy – Individual | _____ | _____ |

SCUSD 11-12 (Residential)

		«Requisition_»
	b. Language and Speech Therapy – Group of 2	
	c. Language and Speech Therapy – Group of 3	
	d. Language and Speech Therapy – Per diem	
	e. Language and Speech - Consultation Rate	
(5)	a. Additional Instructional Assistant - Individual (must be authorized on IEP)	
	b. Additional Instructional Assistant – Group of 2	
	c. Additional Instructional Assistant – Group of 3	
(6)	Intensive Special Education Instruction**	
(7)	a. Occupational Therapy – Individual	
	b. Occupational Therapy – Group of 2	
	c. Occupational Therapy – Group of 3	
	d. Occupational Therapy – Group of 4 - 7	
	e. Occupational Therapy - Consultation Rate	
(9)	Physical Therapy	
(10)	a. Behavior Intervention – BII	
	b. Behavior Intervention – BID	
	Provided by: _____	
(11)	Nursing Services	
(12)	Residential Board and Care	
(13)	Residential Mental Health Services	

*Parent transportation reimbursement rates are to be determined by the LEA.

**By credentialed Special Education Teacher.