

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR

THIS AGREEMENT is made this 30th day of August 2022, by and between the Mt. Diablo Unified School District (hereinafter “District”) and The Regents of the University of California on behalf of the Herbert Wertheim School of Optometry and Vision Science (Hereinafter “Contractor”).

District hereby engages Contractor to render services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit “A” (hereinafter “Services”) on page 5 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the services. Contractor may, at Contractor’s own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor’s services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the services on the following basis:

Not to exceed \$ 27,500.00 for Services.

The basis of the fee for Services shall be as follows:

- a. \$ _____ per hour, b. \$ _____ per day, or c. \$ _____ per engagement.

01 – 0000 – 0000 – 3140 – 40300 – 000 – 517 – 017 - 5800 \$27,500.00

BUDGET CODE(S)

Check One:

Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.

Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.

Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on 08/30/2022. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Purchase Requisition # _____

party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of California Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. To the extent Education Code §45125.1 is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1. Contractor shall provide the certification document attached hereto as Exhibit B prior to commencing work under this Agreement.

6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.

7. Indemnification. Contractor shall defend, indemnify, and hold the District, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent the liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Contractor, its officers, agents, or employees. The District agrees to provide the Contractor with prompt notice of any such claim or action and to permit the Contractor to defend any claim or action, and to cooperate fully in such defense. Contractor shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the District, and such consent shall not be unreasonably withheld, conditioned, or delayed. The parties further agree to the indemnification provision set forth in Exhibit C, attached hereto and made a part hereof

8. Insurance. The parties agree to the insurance provisions set forth in Exhibit C, attached hereto and made a part hereof.

9. Ownership of Designs and Plans. The parties agree to the copyright and trademark provisions set forth in Exhibit C, attached hereto and made a part hereof.

10. Limitation of District Liability. The parties agree to the liability provisions set forth in Exhibit C, attached hereto and made a part hereof.

11. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT

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

CONTRACTOR

Bus. Name: The Regents of the University of California on behalf

Attn:

Address:

Phone:

Purchase Requisition # _____

Tax ID #: Berkeley School of Optometry
200 Minor Hall - Attn: Vikki Yu
Berkeley, CA 94720-5200
510-642-0945
510-642-2893
vyu@berkeley.edu
94-6002123

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 12. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 13. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
- 14. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit as awarded by a court of competent jurisdiction, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 15. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 16. Equal Employment Opportunity. It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

The Regent of the University of California on Behalf of Berkeley School of Optometry
Name of Company/Organization or Independent Contractor/Consultant

By:  10/14/2022
Signature of Principal/Budget Administrator Date

By:  10/14/2022
Signature of Contractor/Consultant Date

Title: Felicia Stuckey-Smith, Director, Student Ser

Title: Michèle Huff, Executive Director, BCBP

Print Name and Title

Print Name and Title

Purchase Requisition # _____

Authorized and Approved by:

Superintendent/Designee Date

Prior to commencement of service, sign and forward completed original contract packet to Purchasing.

JS Smith 10/14/2022
Originator's Signature Date

Student Services

Site/Department Originating this Contract

Felicia Stuckey-Smith, Director, Student Services
Print Name of Originator and Title _____

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

Distribution
original: Purchasing with Purchase Order
copy: Contractor
copy: Accounts Payable/Fiscal
copy: Originator/Budget Administrator

EXHIBIT “A”

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

IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE (NOTE THAT ALL PAYMENTS ARE GENERATED FROM AN INVOICE).

The UC Berkeley School of Optometry will provide vision screening to Mt. Diablo Unified School District Kindergarten, 2nd grade and selected pre-school and special education students for the 2022-2023 school year.

Total of schools sites and/or screening dates = 40

EXHIBIT "B"

Contractor REQUIRED to Complete

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION

Name of Contractor:	The Regent of the University of California on behalf of Berkeley School of Optometry
Services to be performed under the Agreement:	Vision screening for Kindergarten, 2nd gr. selected pre-school and special education
School(s) and Specific Location(s) where services will be performed:	District Wide
Term of Agreement:	August 30, 2022 - June 30, 2023
<i>Check the applicable box(es) and fill in any blanks.</i>	
1	<input type="checkbox"/> The Contractor hereby certifies that it has completed the criminal background check requirements of Education Code (EC) section 45125.1 and that none of its employees that may come into contact with District students have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c). The following employees have successfully completed fingerprinting and criminal check clearance in accordance to law: (attach and sign additional pages, as needed)
2	<input type="checkbox"/> The Contractor hereby certifies that its employees/subcontractors will have NO CONTACT with pupils. (No school-site services will be provided.)
3	<input checked="" type="checkbox"/> The Contractor hereby certifies it qualifies for a waiver of the Department of Justice (DOJ) fingerprint and criminal background investigation for the following reason: Contractor and its employees/subcontractors will have LIMITED CONTACT with pupils. (Attach and sign additional page(s) with information about length of time on school grounds, proximity of work area to pupil areas; whether Contractor/its employees will be working by themselves or with others, whether Contractor will be under continued monitoring/surveillance by a District employee (provide name and title of District employee) and any other factors that substantiate limited contact.) [EC 45125.1 (c)]

Certification by Contractor

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



Authorized Contractor Signature

Chris Wilmer, OD

10-14-2022

Print Name

Date

EXHIBIT C

Any other provision to the contrary notwithstanding, the following provisions shall govern the Agreement between The Regents of the University of California on behalf of the School of Optometry ("Contractor") and Mt. Diablo Unified School District ("District") dated August 30, 2022.

1. Indemnification. The District shall defend, indemnify, and hold the Contractor, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent the liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents, or employees. The Contractor agrees to provide the District with prompt notice of any such claim or action and to permit the District to defend any claim or action, and to cooperate fully in such defense. The District shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Contractor, and such consent shall not be unreasonably withheld, conditioned, or delayed.

2. Insurance.

A. Each party at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force, and maintain insurance or self-insurance as follows:

i. Commercial Form General Liability Insurance with minimum limits as follows:

- a. Each Occurrence \$1,000,000
- b. Products/Completed Operations Aggregate \$2,000,000
- c. Personal and Advertising Injury \$1,000,000
- d. General Aggregate \$2,000,000

ii. workers' compensation as required under California State law.

iii. Business Automobile Insurance with insurance coverage amount of \$1,000,000 per occurrence.

B. If the Insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement.

C. Upon execution of this Agreement, each Party will furnish the other Party with a Certificate of Insurance ("Certificate of Insurance") evidencing compliance with the insurance provisions of this Agreement. The District's Certificate of Insurance shall be delivered to Contractor's representative specified in Section 11. Each Party is required to give thirty (30) days' advance written notice to such other Party of any modification, change, or cancellation with respect to the Insurance.

D. The insurance requirements set forth in this Section shall not limit a Party's liability.

3. Copyright. All rights to a Party's pre-existing copyrighted or copyrightable materials (or derivative works thereof) shall be retained by such Party. All copyright rights to any works created in the performance of this Agreement ("Works") shall vest with the Contractor as a "work made for hire" under U.S. copyright law. In the event that it is determined that the Contractor is not the owner of such Works under the "work made for hire" doctrine, the District hereby irrevocably assigns to the Contractor all right, title, and interest (including copyright rights) to and in such Works. The Contractor grants to the District a nontransferable, royalty-free, non-exclusive license to use and reproduce the Works solely to the extent necessary to perform the obligations and activities of this Agreement. The District will not use the Works for any other purpose without the prior written consent of the Contractor.

4. Trademark/ Contractor Name. The District shall not use the name of the University of California, any abbreviation thereof, any name of which "University of California" is a part, or any trademarks or logos of the

(including websites), and in advertisements), or in cases when such use may imply an endorsement or sponsorship of the District, its products or services. All such uses of the Contractor's name and trademarks must receive prior written consent from The Regents of the University of California through the Office of Business Contracts and Brand Protection, who can be reached at bcbp@berkeley.edu. At all times, the District agrees to comply with California Education code Section 92000.

University Marks are and shall remain exclusively the property of the Contractor. The District shall not, either directly or indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and the District hereby expressly waives any right which it may have in University Marks. The District recognizes the Contractor's exclusive ownership of University Marks.

5. Disclaimer of Warranty.

THE CONTRACTOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SERVICES, THE DELIVERABLES, OR THE RESULTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE DISTRICT ACKNOWLEDGES THAT THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. THE DISTRICT FURTHER ACKNOWLEDGES THAT IT USES SUCH SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. THE CONTRACTOR SHALL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES, DELIVERABLES, OR RESULTS.

6. Limitation of Liability.

THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN WARRANTY, TORT, CONTRACT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF GOOD WILL, WHETHER OR NOT THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. THE CONTRACTOR'S AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES RECEIVED BY THE CONTRACTOR FROM THE DISTRICT PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DISTRICT'S CLAIM. THE DISTRICT EXPRESSLY ACKNOWLEDGES THAT THE CONTRACTOR SHALL HAVE NO LIABILITY WITH RESPECT TO ANY LOSS OF PROPERTY, MATERIALS, DATA, OR INFORMATION THAT THE DISTRICT PROVIDES TO THE CONTRACTOR UNDER THIS AGREEMENT.

7. Materials Provided by the District.

In the event the Contractor is producing deliverables or providing services that require the District to furnish or supply the Contractor with parts, goods, data, specifications, components, programs, practices, methods, Export Materials, or other property under this Agreement (collectively, "District Materials"), the District warrants that District Materials will: 1) conform to the requirements of this Agreement, including all descriptions, specifications, and attachments made a part hereof, and 2) will not infringe any third party rights. The Contractor's acceptance of District Materials shall not relieve the District from its obligations under this warranty.

The District shall indemnify, defend, and hold harmless the Contractor, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that District Materials or the Contractor's use of District Materials constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The Contractor retains the right to participate in the defense against any such suit or action, and the District shall not settle any such suit or action without the Contractor's consent.

8. Force Majeure

If any Party fails to timely perform its obligations (other than payment obligations) under this Agreement because of natural disasters, labor disputes, strikes, actions of governmental authority, acts of terrorism or war, whether actual or threatened, judicial orders, epidemics, quarantine, public health or travel restrictions or other causes beyond the reasonable control of the Party obligated to perform, then that Party's performance will be excused for the duration of such force majeure event. In the event of force majeure, the Parties may agree to alternative methods of performance that mitigate the effect of force majeure, subject to mutual agreement as to the terms thereof (including the payment of additional amounts).

Each Party recognizes, understands and acknowledges that the Parties' performance of the terms of this Agreement may be affected by the COVID-19 pandemic and its international, national, local and institutional legal, regulatory, policy and practical restrictions, limitations, implications and eventualities (collectively, the "COVID-19 Considerations"), and that cancellation or postponement may be required. Neither party will have liability to the other for delays or inability to perform their obligations (other than payment obligations) to the extent caused by the COVID-19 pandemic or compliance with the COVID-19 Considerations. The Parties agree that they may need to address such restrictions, limitations, implications and eventualities, and may settle on alternative methods of performance, subject to mutual agreement as to the terms thereof.