

Purchase Requisition # R96273

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 14 day of November, by and between the Mt. Diablo Unified School District (hereinafter "District") and Marzano Research (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 4 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 \$ 6,000.00 for Services 235 - 3803 - 10 - 5800 \$ 3,000.00

The basis of the fee for Services shall be as follow 503 - 3803 - 10 - 5800 \$ 3,000.00

- a. \$ _____ per hour, _____ - _____ - _____ - _____ \$ _____
- b. \$ _____ per day, or _____ BUDGET CODE(S)
- c. \$ _____ per engagement.

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 February 13, 2017. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other 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.

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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 ____ 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 hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
8. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. EXCEPTION: Contracts of less than \$5,000 need only provide general liability insurance of \$1,000,000 per occurrence.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability/Errors & Omissions Liability, if applicable: \$1,000,000 per occurrence.

If the contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the contractor.

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The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

INSURANCE REQUIREMENTS	
No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance section 8 are hereby waived or modified as follows:	
Limits:	_____
Other:	_____
The initials of the Superintendent, or his/her designee, and the General Counsel, are <u>required</u> to waive or modify any insurance requirements in this Agreement:	
_____ Superintendent	_____ General Counsel

- 9. **Ownership of Designs and Plans.** Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. **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	CONTRACTOR
Mt. Diablo Unified School District	Name: <u>MAZZARD Research</u>
1936 Carlotta Drive	Attn: <u>Beth Watson</u>
Concord, CA 94519-1397	Address: <u>12577 EAST CALEY AVE</u>
Attn: Superintendent	<u>PERMANENT, CO 80111</u>
	Phone: <u>303-766-9199</u>
	Fax: <u>303-694-1778</u>
	Tax ID #: <u>26-2730032</u>

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

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the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.

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

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: *Jonathan Eagan* 12/8/16
 Signature of Principal/Budget Administrator Date
 Title: Jonathan Eagan, Assistant Superintendent Middle School
 Print Name and Title

Marrano Research
 Name of Company/Organization or Independent Contractor/Consultant
 By: *Beth Watson*
 Signature of Contractor/Consultant Date
 Title: Beth Watson, VP of Business Development
 Print Name and Title

Authorized and Approved by:

Jonathan Eagan 12/8/16
 Superintendent or Designee Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

Christine Ibarra 12/8/16
 Originator's Signature Date
Christine Ibarra, School Support Administrator
 Print Name of Originator and Title

Wing C/Middle School Support
 Site/Department Originating this Contract

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

<i>Distribution</i>	
<i>original:</i>	<i>Fiscal Services for payment</i>
<i>copy:</i>	<i>Contractor</i>
<i>copy:</i>	<i>Originator/Budget Administrator</i>

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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

Effective October 20, 2016, Foothills Middle School ("Host") and Marzano Research LLC ("Marzano Research") agree that Marzano Research will provide an Associate to disseminate information to Host in exchange for \$6,000.00(USD). The parties agree as follows:

Services: Marzano Research agrees to provide a speaker, Mike Ruyle ("Associate"), to disseminate information for Host on the topic of Proficiency Scales on February 13, 2017. The one day workshop will be divided into two segments with one session occurring at Foothill Middle School, and the other session occurring at Diablo Valley Middle School.

Session 1 - 8:00 - 11:00 am: Foothill Middle School
Session 2 - 12:00 - 3:00 pm: Diablo View Middle School

From Marzano:

Travel Arrangements and Expenses: The total contract amount includes all travel, lodging, and other incidental expenses incurred by Associate.

Intellectual Property: Host acknowledges that Marzano Research or Associate owns the copyrights to all tangible or electronic presentation materials, handouts, and/or program books used in conjunction with the services performed under this Agreement, and that no materials will be developed specifically for Host. Marzano Research or Associate shall retain all copyrights owned prior to entering this Agreement, and Host may not reproduce any materials not designated reproducible without the express written permission of Marzano Research. Host is responsible for the reproduction of all handouts and other print materials related to the services, and Host will notify the Associate directly of any deadlines for reproduction.

Audio/Video Equipment: Host will provide audio/video equipment and technical support for the sessions.

Recording of Presentation: All audio and video recording is prohibited.

Confidentiality: Marzano Research will keep confidential any information or data not generally known to the public it encounters in performing under this Contract. Marzano Research will require any subcontractors it may hire to keep such data confidential, and proof thereof will be made available upon Host's request.

Termination: If Host terminates this Contract within 90 days of the workshop for any reason but Force Majeure, Host shall reimburse Marzano Research for any reasonable business expenses incurred in anticipation of performance of this Contract that exceed the amount of the deposit. Marzano Research may terminate this Contract if Marzano Research has not received a purchase order within 30 days of the effective date of this Contract.

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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

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Force Majeure: If events beyond the parties' control, such as acts of God, disaster, war, curtailment or interruption of transportation facilities, acts of terrorism, State Department or other governmental or international agency travel advisory, civil disturbance, interruption or cessation of electrical power, strikes, disease, epidemic, or any other cause beyond the parties' control which makes it impossible for to perform under this Contract, then Marzano Research agrees to offer services at a later date, provided such can be rescheduled with Host. Marzano Research shall have an affirmative duty to notify Host immediately of any circumstance or event that will prevent Marzano Research from performing under this Contract.

Notices: All notices to be given under this Contract shall be sent by certified mail to Marzano Research LLC, 555 N. Morton St., Bloomington, Indiana 47404, and to Mount Diablo Unified School District, 1936 Carlotta Drive, Concord, CA 94519, or to such address as may be given by either party in writing. Notice shall be deemed given on the date of mailing.

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EXHIBIT B
Contractor REQUIRED to Complete
CRIMINAL BACKGROUND CHECK CERTIFICATION

Mt. Diablo Unified School District
 Consultant/Independent Contractor Agreement - Criminal Background Check

Name of Independent Consultant/Contractor:		Marzano Research
Services to be performed under the Agreement:		Speaker Mike Ruyle to disseminate information on the topic of Proficiency Scales.
Schools/Locations where services will be performed:		Session 1- 8-11 am: Foothill Middle School Session 2- 12-3 pm: Diablo View Middle School
Total amount to be paid by the District under this Agreement:		\$ 6,000.00
Term of Agreement:		February 13, 2017
<i>Check the applicable box(es) and fill in any blanks.</i>		
1	<input checked="" type="checkbox"/>	I certify that none of my employees, nor myself, will have more than limited contact (as defined by the District) with District students during the term of the Agreement. Therefore, we have not been fingerprinted.
2A	<input type="checkbox"/>	If this box is checked, then Box 2B also applies and must be checked to indicate these employees have been fingerprinted. The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed):
2B	<input type="checkbox"/>	I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of these employees have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

Certification by Contractor/Consultant

"I certify 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."

Beth Watson
 Independent Contractor/Consultant Signature
Beth Watson, Marzano Research
 Print Name Date
 Independent Contractor/Consultant 11-16-16

Jonathan Egan
 Superintendent or Designee's Signature
Jonathan Egan
 Print Name Date
 Superintendent or Designee's Signature 12/8/16

WORKSHOP SPECIFICATIONS

Please provide the following information about your workshop and return this form to your Marzano Research rep, along with the signed contract within 90 days of the PD date. The earlier received the better for planning purposes.

Today's Date: December 7, 2016 Marzano Research Rep: James McMurphy

HOST INFORMATION					
Host Organization: Mt. Diablo Unified School District		Host Work Phone #: 925-682-8000 ext 4044			
Host Name: Christine Ibarra/April Bush		Host Cell Phone #: 707-246-6518/925-788-6490			
Host Position/Title: School Support Admin/Principal		Host Email Address: ibarrac@mdusd.org/bushaa@mdusd.org			
Resources purchased: <input type="checkbox"/> Yes OR <input checked="" type="checkbox"/> No		If resources purchased, list title(s)			
Please provide information about recent PD (topic and presenter)					
PRESENTER/WORKSHOP INFORMATION					
Topic: Proficiency Scales			Speaker: Mike Ruyle		
Workshop Date(s): February 13, 2017			Workshop Start/End Times: 8:00-11:00am and 12:00-3:00		
Location of Workshop: (Please list for both segments)					
Address: Session 1: Foothill Middle School, 2775 Cedro Lane, Walnut Creek, CA 94598 (925-939-8600)					
Session 2: Diablo View Middle School, 300 Diablo View Lane, Clayton, Ca 94517 (925-672-0898)					
Lunch time: <input type="checkbox"/> offsite OR <input checked="" type="checkbox"/> on-site AND approx. time/length: 1 hour, including travel time			Break times (if known): #1 #2		
AUDIENCE INFORMATION – Please enter anticipated number of attendees for each category					
# of District-Level Administrators	# of Secondary Principals	# of Primary Principals	# of Secondary Teachers	# of Primary Teachers	# of Others
Session 1: 0 Session 2: 2	Session 1: 1 Session 2: 9	0	Session 1: 42 Session 2: approx. 50	0	Admin Staff: 2 VPs Describe Other Attendees:
TOTAL Number of Anticipated Attendees					
3 – 5 DESIRED SESSION OUTCOMES FOR ON-SITE TRAINING					
Teacher will have a deeper understanding of the use of proficiency scales and how they are connect to learning goals, essential standards, and common formative assessment.					
TRAVEL INFORMATION					
Nearest Airport: Oakland International Airport			Distance from Airport to Workshop Site: 30 miles		
Recommended Hotel: Embassy Suites by Hilton Walnut Creek or Renaissance Club Sport Walnut Creek Hotel			If reservation made, include confirmation number		

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Liability Insurance

Endorsement

Policy Period OCTOBER 1, 2016 TO OCTOBER 1, 2017

Effective Date OCTOBER 1, 2016

Policy Number 3590-58-35 EUC

Insured SOLUTION TREE INC

Name of Company FEDERAL INSURANCE COMPANY

Date Issued OCTOBER 21, 2016

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured

**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

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Liability Endorsement (continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 CARLOTTA DRIVE
CONCORD, CA 94519
SEPTEMBER 14-16, 2015
NOVEMBER 16-18, 2015
JANUARY 26-28, 2016

All other terms and conditions remain unchanged.

Authorized Representative

