

Purchase Requisition # R81872

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 5 day of September, by and between the Mt. Diablo Unified School District (hereinafter "District") and California Physical Education-Health Project & California Center for Excellence in Physical Education (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 \$ 6,500.00 for Services 000 - 3065 - 36 - 5800 \$ 6,500.00

The basis of the fee for Services shall be as follow _____ - _____ - _____ - _____ \$ _____

- 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 9/5/14. 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.

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: See Exhibit C

The initials of the Superintendent, or his/her designee, and the General Counsel, are **required** 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

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

CONTRACTOR

Name: Calif. Center for Excellence in Physical Ed.
Attn: Dianne Wilson-Graham
Address: 107 N. Reino Road, #112
Thousand Oaks, CA 91320
Phone: 805-807-2075
Fax: _____
Tax ID #: 27-1327967

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

CALIFORNIA CENTER FOR EXCELLENCE
IN PHYSICAL EDUCATION
Name of Company/Organization or Independent Contractor/Consultant

By: [Signature] 9/14/14
Signature of Principal/Budget Administrator Date

By: [Signature] 9/11/14
Signature of Contractor/Consultant Date

Title: Julie Braun Martin
Print Name and Title

Title: DIANNE WILSON-GRANHAM
Print Name and Title

Authorized and Approved by:

Superintendent or Designee Date

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

[Signature] 9/15/14
Originator's Signature Date
Johanna Sikes
Print Name of Originator and Title

School Support
Site/Department Originating this Contract

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

Distribution
original: Fiscal Services for payment
copy: Contractor
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**

Two Day Professional Development Program which includes each of the following:

- * Overview of the Common Core State Standards with clear information on which Common Core standards are the responsibility of physical education teachers.
- * Context and rationale for the work of physical education teachers.
- * Hands-on professional learning activities for teacher to link their content with CCSS content in the most effective way.
- * Sample lessons that demonstrate student learning of the content of physical education and the CCSS.

Year 1 2014-2015 Physical Education and the Common Core State Standards Program

Day 1: October 17, 2014

Day 2: January 26, 2015

Year 2 2015-2016 Physical Education and the Common Core State Standards Program

Day 1: Date to be determined

Day 2: Date to be determined

Purchase Requisition # _____

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:		California Physical Education-Health Project
Services to be performed under the Agreement:		2-Day Professional Development Program for 2014-15 + 2 days for 2015-16
Schools/Locations where services will be performed:		
Total amount to be paid by the District under this Agreement:		\$ 3,250.00 each year
Term of Agreement:		See Exhibit A
Check the applicable box(es) and fill in any blanks.		
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."

Dianne Wilson-Graham

 Independent Contractor/Consultant Signature

 Superintendent or Designee's Signature

DIANNE WILSON - GRAHAM

 Print Name
 Independent Contractor/Consultant

 Date
 9/11/14

 Print Name
 Superintendent or Designee's Signature

 Date

Exhibit C

California Physical Education Professional Development Series is a partnership of the California Physical Education-Health Project and the California Center for Excellence in Physical Education. These two educational organizations have been long standing, trusted partners for more than six years.

For this agreement with the Mt. Diablo Unified School District, the California Center for Excellence in Physical Education will represent the partnership as the business entity for the agreement, requirements, and payment.

Regarding the insurance requirements of this agreement, provided here (attached) is a Certificate of Insurance naming the Mt. Diablo Unified School District as additional insured for the general liability insurance requirements.

We respectfully request the Mt. Diablo Unified School District waive the insurance requirements for Automobile, Workers Compensation, and Professional Liability for the following reasons:

Automobile – The California Center for Excellence in Physical Education is a non-profit organization that does not own automobiles, therefore eliminating the need for automobile coverage.

Workers Compensation – The California Center for Excellence in Physical Education does not have any employees and is therefore, exempt from requirements for Workers Compensation.

Professional Liability – The California Center for Excellence in Physical Education is a non-profit organization committed to supporting high quality instruction in K-12 physical education and as such, commits all funding to that mission. Professional development programs would be cost prohibitive for schools if professional liability insurance were included in the overhead expense.

Agreement

Between

California Physical Education Professional Development Series

A partnership of the California Physical Education-Health Project and the California Center for Excellence in Physical Education

And

Mt Diablo Unified School District

Year 1 2014-2015 Physical Education and the *Common Core State Standards* Program

Day 1 October 17, 2014

Day 2 January 26, 2015

Year 2 2015-2016 Physical Education and the *Common Core State Standards* Program

Day 1 Date to be determined

Day 2 Date to be determined

Description

Two Day Professional Development Program which includes each of the following:

- Overview of the Common Core State Standards with clear information on which Common Core standards are the responsibility of physical education teachers.
- Context and rationale for the work of physical education teachers.
- Hands-on professional learning activities for teacher to link their content with CCSS content in the most effective way.
- Sample lessons that demonstrate student learning of the content of physical education and the CCSS.

Cost for Each Two Day Program

Costs for this program include each of the following: facilitator(s), facilitators travel expenses, program, and program materials for each participating teacher.

Program for 35 teachers	\$ 3,050.00
Program for 40 teachers	\$ 3,250.00

Cancellation Policy

Mt Diablo USD must notify Dianne Wilson-Graham at least 14 days in advance (October 3, 2014 and January 12, 2015) of expected attendance OR if there is a need to cancel the program. A cancellation fee of \$ 1,000.00 will be due and payable immediately if the Mt Diablo USD does not notify by the dates listed above. If the participant count increases after October 3, 2014, costs for additional participants shall be \$100 each.

Facility Specifications

Mt Diablo USD will provide meeting space, AV equipment, and enrollment of the participants. The facility shall include:

- Room set with tables and chairs (rather than desks).
- Flip chart with stand and marking pens
- Sign in sheets for participating teachers (copy to be given to program facilitators each day)
- LCD projector and screen

Insurance

A Certificate of Insurance naming Mt. Diablo USD as additionally insured is included with this Agreement.

Invoice

Upon completion of each day 2 session, an invoice will be delivered to Mt Diablo Unified School District. Payment is expected within 30 days. Invoice will be sent to: Julianna Sikes

Mt. Diablo Unified School District
 1936 Carlotta Ave
 Concord, CA 94519
sikesj@mdusd.org

Dianne Wilson-
 Graham

Digitally signed by Dianne Wilson-Graham
 DN: cn=Dianne Wilson-Graham, o=CPE-HP, ou,
 email=cpehp.executivedirector@yahoo.com, c=US
 Date: 2014.09.04 09:09:42 -0700'

Dianne Wilson-Graham
 California Physical Education-Health Project
 California Physical Education Professional Development Series

Julianna Sikes 9/4/14

 Agent, Mt. Diablo Unified School District
Julianna Sikes
School Support

Please return signed agreement to:
 California Center for Excellence in Physical Education
 107 N. Reino Road, # 112
 Thousand Oaks, CA 91320