



**MT. DIABLO UNIFIED SCHOOL DISTRICT**  
1936 Carlotta Drive, Concord, CA 94519 – Phone (925) 682-8000  
**AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT  
AND INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** is made this 1st day of October, by and between the Mt. Diablo Unified School District (hereinafter “District”) and Fieldman, Rolapp & Associates, Inc. and d/b/a Applied Best Practices (hereinafter “Contractor”).

**RECITALS**

**WHEREAS**, District is a school district in the County of Contra Costa, State of California, and has its principal place of business at 1936 Carlotta Drive, Concord, CA 94519. District desires to engage the services of Contractor and to have said Contractor render services in accordance with the terms and conditions provided in this Agreement.

**WHEREAS**, District is authorized to enter into this Agreement pursuant to *Government Code Section 53060* or *Public Contract Code Section 20111*, or both, as set forth below.

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

**AGREEMENT**

1. **Performance of Services.**

- (a) Contractor agrees to perform the services described on **Exhibit A** (hereinafter “Services”), attached hereto and incorporated herein, 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 basis set forth below. Contractor shall be responsible for all expenses incurred in association with the performance of the Services. This Agreement is **NOT TO EXCEED \$** 5,000.00.

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

*District staff to check the applicable box.*

\$ \_\_\_\_\_ per hour       \$ \_\_\_\_\_ per day       \$ \_\_\_\_\_ per engagement

*District staff to enter the complete Budget Code(s).*

(a)	<u>01</u>	-	<u>0000</u>	-	<u>0000</u>	-	<u>7200</u>	-	<u>5290000C</u>	-	<u>500</u>	-	<u>002</u>	-	<u>5890</u>	-	\$	<u>5,000.00</u>
(b)	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	\$	_____
(c)	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	_____	-	\$	_____

3. **Payment Schedule.** The Contractor shall submit to the District an invoice as further set forth below. The District shall review the payment request and, as soon as practical, shall: (i) pay the requested amount; or (ii) inform the Contractor that all or some part of the request is disputed.

Contractor shall submit invoices in accordance with the following schedule:

*District staff to check applicable box.*

- Partial Payments.** Contractor shall invoice District on a monthly basis for work performed in the preceding month pursuant to this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.
- Scheduled Payments.** District shall submit payment to the Contractor per the schedule detailed in “Exhibit A” see page 8 of this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed in accordance with the relevant timeline.
- Payment in Full.** Contractor shall invoice District on completion of the Services. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.

4. **Term and Termination.**

- (a) **Term.** This Agreement will become effective on October 1, 2024 and shall expire on September 30, 2027, or when terminated as set forth below.
- (b) **Termination for Cause.** 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.
- (c) **Termination for Convenience.** The District may terminate this Agreement at any time by giving thirty (30) days written notice to the Contractor. 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.

5. **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.

The parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor’s personnel shall only perform work that is outside the usual course of the District’s business; and (3) Contractor’s personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

6. **Fingerprinting and Criminal Records Check of Contractor's Employees.** Contractor shall comply with the provisions of *California Education Code Section 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 *Section 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 Board of Education of the District that such employee has not been convicted of a felony, as defined in *Section 45125.1*. If required by District, Contractor shall provide to District the fingerprinting certification attached hereto as **Exhibit B** prior to commencing work under this Agreement.
7. **Rules and Regulations.** All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education, including any rules and regulations related to COVID-19 or other global pandemics, and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor during the performance of Services pursuant to this Agreement.
8. **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 the Services 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.
9. **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, its 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 Minimums shall be at least as broad as:**

*District staff to check the appropriate boxes.*

(a) **Commercial General Liability (CGL):**

**Agreements under \$25,000.** Insurance Services Office Form CG 0001 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** 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 (with aggregate limit no less than **\$2,000,000**).

**Agreements of \$25,000 or more.** Insurance Services Office Form CG 0001 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 (with aggregate limit no less than **\$4,000,000**).

(b) **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.

**For sole proprietors and small businesses** using personal vehicles, evidence of personal auto insurance may be accepted by the District as an alternative provided that such personal auto insurance provides coverage for business uses of the insured vehicle.

(c) **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. All California employers must provide workers' compensation benefits to their employees under *California Labor Code Section 3700*.

**If the Contractor is a sole proprietor with no employees**, it may be exempt from this requirement provided the Contractor is self-insured as certified in **Exhibit C**. If the Contractor employs one or more employees, it must provide this type of insurance coverage. The District shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees.

(d) **Other Coverages When Applicable.** (District staff to check applicable box(es)).

**Professional Liability/Errors & Omissions Liability.** \$1,000,000/occurrence, \$2,000,000/aggregate. **Applicable for contractors with professional training providing a specialized advanced service, physicians, accountants, architects, engineers, and brokers**

**Sexual Abuse and Molestation Coverage.** \$3,000,000/occurrence. **Applicable if the Contractor will be alone with students**

**Cyber Insurance.** Not less than \$2,000,000 per claim to be maintained for the duration of the Agreement and three years following its termination. **Applicable if the Contractor will be using, storing, or accessing, the District's private, confidential, or protected information**

(e) The District reserves the right to require that Contractor maintain and provide evidence of additional insurance coverages as may be necessary or desirable given the nature of the Services. 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.

(f) **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 and to the Sexual Abuse and Molestation policy, if applicable, 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.

(g) **Primary Coverage.** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as it 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.

(h) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be cancelled, 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 9, are hereby waived or modified follows (note, a waiver for one type of insurance does not constitute waiver for all):

Limits: \_\_\_\_\_

Other: \_\_\_\_\_

Initials of the Superintendent, or designee, are **required** to waive or modify any Insurance requirements in this Agreement:

\_\_\_\_\_  
Superintendent or Designee Date

- 10. **Originality; Ownership of Designs and Plans.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services. 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.
- 11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Contractor agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District’s administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in *Chapter 1* (commencing with *Section 900*) and *Chapter 2* (commencing with *Section 910*) of *Part 3 of Division 3.6 of Title 1 of Government Code* as a condition precedent to the Contractor’s right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
- 12. **Limitation of District Liability.** Other than as provided in this Agreement, District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on Agreement or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 13. **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:
  - i. Any notice personally given or sent by 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.

**DISTRICT**

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

**CONTRACTOR**

Bus. Name:	<u>Fieldman, Rolapp &amp; Associates, Inc. and d/b/a Applied Best Practices</u>
Attn:	<u>Rachel Chang-Kwei</u>
Address:	<u>19900 MacArthur Blvd. #1100, Irvine, CA 92612</u>
Phone:	<u>(949) 660-7316</u>
Fax:	<u>(949) 474-8773</u>
Email:	<u>rchang@fieldman.com</u>

14. **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.
15. **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.
16. **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.
17. **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.
18. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
19. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
20. **Incorporation of Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated herein by reference.
21. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
22. **Conflicts of Interest.** Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services under this Agreement. Contractor is aware of *Government Code Section 1090* and the *Political Reform Act* and will disclose any potential conflicts and/or submit a Form 700 as applicable.
23. **Required Documents.** Prior to the commencement of the Services, Contractor shall provide to District evidence of the required insurance coverages as set forth above, a W-9 Form, and executed copies of the following Exhibits:
  - (a) **Exhibit A** – Description of Services, Timelines, and Partial Payment Schedule
  - (b) **Exhibit B** – Fingerprinting Certification
  - (c) **Exhibit C** – Workers’ Compensation Certification
  - (d) **Exhibit D** – Data Privacy Addendum (if applicable)

The District reserves the right to require the Contractor to provide additional documents that may be necessary or desirable in light of the nature of the Services.

PURCHASE REQUEST # \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last written below.

MT. DIABLO UNIFIED SCHOOL DISTRICT

Fieldman, Rolapp & Associates, Inc. and d/b/a Applied Best Practices  
\_\_\_\_\_  
Company/Organization Name or Independent Contractor/Consultant

By: Adrian Vargas 10/1/24  
Signature of Principal/Budget Administrator Date

By: Rachel Chang-Kwei 10/1/24  
Signature of Contractor/Consultant Date

Title: Adrian Vargas, CBO  
Print Name and Title

Title: Rachel Chang-Kwei, Senior Vice President  
Print Name and Title

By: \_\_\_\_\_  
Signature of District Administrator (if applicable) Date

Title: \_\_\_\_\_  
Print Name and Title

**THIS AGREEMENT IS AUTHORIZED AND APPROVED:**

By: Adrian Vargas 10/1/24  
Signature of Superintendent or Designee Date

Title: Adrian Vargas, CBO  
Print Name and Title

**AGREEMENT ORIGINATOR. Prior to commencement of the Services, sign and forward completed original contract packet to Purchasing.**

By: \_\_\_\_\_ Date \_\_\_\_\_ Site/Department Originating this Contract \_\_\_\_\_

\_\_\_\_\_  
Print Name of Originator and Title

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PURCHASE REQUEST # \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF SERVICES, TIMELINES,  
AND PARTIAL PAYMENT SCHEDULE (if applicable)**  
*(Note that all payments are generated from an invoice.)*

See Appendices Enclosed



**APPENDIX A  
TO  
EXHIBIT A**

**Scope of Services**

**A. General Services.**

The Contractor shall perform all the duties and services specifically set forth herein and shall provide such other services as it deems necessary or advisable, or are reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards and practice of professional financial advisors prevailing at the time such services are rendered to the District.

The District may, with the concurrence of Contractor, expand this Agreement to include any additional services not specifically identified within the terms of this Agreement. Any additional services may be described in an addendum to this Appendix A and are subject to the fees described in Appendix C herein.

**B. Community Facilities District Services.**

The Contractor shall provide consulting services related to the negotiation of mitigation agreements and assistance with the formation of community facilities districts ("CFDs"). The Contractor's proposed CFD services may include the following:

- Review proposed development plan
- Review mitigation terms proposed by the developer
- Assist the District with an approach to mitigate the impact on school facilities as a result of the development
- Assist the District with negotiation of the mitigation terms with the developer, as needed
- Ensures the mitigation terms are consistent with the District's CFD Goals and Policies
- Assist the District with communication internally and with the Governing Board and other interested parties
- Facilitate the CFD formation process, if applicable
- Develop a term sheet to be used for a mitigation agreement and other formation documents
- Develop a formation schedule and interested parties list
- Develop independent special tax proformas
- Review CFD formation documents prepared by legal counsel
- Review the boundary map, Rate and Method of Apportionment ("RMA") and special tax pro-forma prepared by the special tax consultant
- Assist in the negotiations with the developer to refine the mitigation agreement, RMA and/or special tax pro-forma
- Provide relevant Municipal Market Data
- Provide relevant updates and summaries to District staff

- Coordinate and participate in meetings and conference calls with the District, finance team and/or the developer
- Attend Governing Board meetings
- Provide additional services at the District's request

**C. Transaction Services.**

The Contractor shall assume primary responsibility for assisting the District in coordinating the planning and execution of each debt issue relating to the Project. Insofar as the Contractor is providing Services which are rendered only to the District, the overall coordination of the financing shall be such as to minimize the costs of the transaction coincident with maximizing the District's financing flexibility and capital market access. The Contractor's proposed debt issuance Services may include the following:

- Analyze Financing Alternatives
- Develop the Financing Schedule
- Monitor the Transaction Process
- Review the Official Statement, both preliminary and final
- Procure and Coordinate Additional Service Providers
- Provide Financial Advice to the District Related to Financing Documents
- Compute Sizing and Design Structure of the Debt Issue
- Plan and Schedule Rating Agency Presentation
- Conduct Credit Enhancement Procurement and Evaluation
- Conduct Market Analysis and Evaluate Timing of Market Entry
- Recommend Award of Debt Issuance
- Provide Pre-Closing and Closing Assistance

Specifically, Contractor will:

1. Analyze Financing Alternatives.

At the onset of the financing transaction process for the Project, the Contractor shall review the District's financing needs and in conjunction with the District's management, will provide an analysis of the financing alternatives of the District in implementing the Project and its proposed form or forms of financing.

Unless previously determined, Contractor shall recommend the method of sale of debt and outline the steps required to achieve efficient market access.

2. Develop the Financing Timetable.

The Contractor shall take the lead role in preparing a schedule and detailed description of the interconnected responsibilities of each team member and update this schedule, with refinements, as necessary, as the work progresses.

3. Monitor the Transaction Process.

The Contractor shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue relating to the Project. The Contractor shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. The Contractor shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.

4. Review the Official Statement.

The Contractor shall review the official statement for each debt issue relating to the Project to ensure that the District's official statement is compiled in a manner consistent with industry standards. Contractor does not undertake any responsibility to review disclosure documents on behalf of owners or beneficial owners of bonds or debt which may arise from the Contractor's work hereunder.

5. Procure and Coordinate Additional Service Providers.

The Contractor may act as District's representative in procuring the services of financial printers for the official statement and related documents, and for the printing of any securities. In addition, the Contractor may act as the District's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if the District directs.

6. Provide Financial Advice to the District Relating to Financing Documents.

The Contractor shall assist the managing underwriters, bond counsel and/or other legal advisors in the review of the respective financing resolutions, notices and other legal documents. In this regard, the Contractor shall monitor document preparation for a consistent and accurate presentation of the recommended business terms and financing structure of each debt issue relating to the Project, it being specifically understood however that the Contractor's services shall in no manner be construed as the Contractor engaging in the practice of law.

7. Compute Sizing and Design Structure of Debt Issue.

The Contractor shall work with the District's staff bond counsel and other professionals of the District to design a financing structure for each debt issue relating to the Project that is consistent with the District's objectives, that coordinates each transaction with outstanding issues and that reflects current conditions in the capital markets.

8. Plan and Schedule Rating Agency Presentation.

The Contractor shall develop a plan for presenting the financing program to the rating agencies. The Contractor shall schedule rating agency visits, if appropriate, to assure the appropriate and most knowledgeable rating agency personnel are available for the presentation and will develop presentation materials and assist the District officials in preparing for the presentations.

9. Conduct Credit Enhancement Evaluation and Procurement.

Upon the District's direction, the Contractor will initiate discussions with bond insurers, letter of credit providers and vendors of other forms of credit enhancements to determine the availability of and cost benefit of securing financing credit support.

10. Conduct Market Analysis and Evaluate Timing of Market Entry.

The Contractor shall provide summaries of current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the District's proposed financing.

a. Competitive Sales.

For all types of competitive sale of debt, the Contractor shall undertake such activities as are generally required for sale of securities by competitive bid including, but not limited to the following:

- Review and comment on terms of Notice of Sale Inviting Bids
- Provide advice on debt sale scheduling
- Provide advice on the use of electronic bidding systems
- Contact potential bidders
- Coordinate bid opening with the District officials
- Verify bids received and make recommendations for acceptance
- Provide confirmation of issue sizing, based upon actual bids received, where appropriate
- Coordinate closing arrangements with the successful bidder(s)

b. Negotiated Sales.

In the case of a negotiated sale of debt, the Contractor shall perform an evaluation of market conditions preceding the negotiation of the terms of the sale of debt and will assist the District with the negotiation of final issue structure, interest rates, interest cost, reoffering terms and gross underwriting spread and provide a recommendation on acceptance or rejection of the offer to purchase the debt. This assistance and evaluation will focus on the following areas as determinants of interest cost:

- Size of financing

- Sources and uses of funds
- Terms and maturities of the debt issue
- Review of the rating in pricing of the debt issue
- Investment of debt issue proceeds
- Distribution mix among institutional and retail purchasers
- Interest rate, reoffering terms and underwriting discount with comparable issues
- Redemption provisions

c. Private or Direct Placement

In the case of a private placement or direct placement of debt with a commercial bank or other similar institution, the Contractor will provide assistance and advice to the District in negotiating the terms of the debt, including the size, structure, interest rates, prepayment terms and compensation to lender, if any. The Contractor will provide a recommendation on the acceptance or rejection of the terms of the placement. The Contractor cannot provide a specific list of potential lenders and cannot serve as placement agent for the financing, but can assist the District with implementing a financing with a lender or lenders selected by the District without advice from the Contractor.

11. Recommend Award of Debt Issuance.

Based upon activities outlined in Task 10(a), 10(b) and 10(c) above, the Contractor will recommend accepting or rejecting offers to purchase the debt issue. If the District elects to award the debt issue, the Contractor will instruct all parties and help facilitate the actions required to formally consummate the award.

12. Provide Pre-Closing and Closing Activities.

The Contractor shall assist in arranging the closing of each financing. The Contractor shall assist counsel in assuming responsibility for such arrangements as they are required, including arranging for or monitoring the progress of bond printing, qualification of issues for book-entry status, signing and final delivery of the securities and settlement of the costs of issuance.

**D. Continuing Disclosure Consulting Services.**

1. Annual Report - General Obligation Bonds, Certificates of Participation and Revenue Bonds.

The Contractor shall assume primary responsibility for assisting the District in connection with the preparation and filing of continuing disclosure annual reports, reporting of significant event notices and any other applicable disclosure notices for the District in connection with its General Obligation Bonds, Certificates of Participation and Revenue Bonds Disclosure Obligations. Such services shall include, but not limited to:

- Determine the required categories of information and provide a template of tables to complete, list of data to provide and/or questions to be answered in preparation of the continuing disclosure annual report;
- Coordinate and order from outside vendors specific data not accessible to the District, if necessary;
- Determine if previous continuing disclosure filings and material event notices have been disseminated and filed through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Dataport (herein, "EMMA");
- Review and supplement any information, in addition to the information required by a continuing disclosure undertaking, which might be necessary;
- Assist the officers or employees of the District designated with responsibility for continuing disclosure to assemble information necessary for the annual report;
- Format or assist in formatting such material into a final form for the continuing disclosure annual reports any other applicable disclosure notices; and
- Submit the continuing disclosure annual report through EMMA and provide a certificate of such submission(s) to the District.

*UNDER THIS SERVICE ARRANGEMENT, THE CONSULTANT IS NOT RESPONSIBLE FOR PREPARATION OR CONTENT OF AUDITED FINANCIAL STATEMENTS AND BUDGET REPORTS.*

## 2. Annual Report - Special Tax Bonds and Related Financings.

The Contractor shall assume primary responsibility for assisting the District in connection with the filing of continuing disclosure annual reports, reporting of significant event notices and any other applicable disclosure notices for the District in connection with its Special Tax Bonds and Tax Allocation Bonds Disclosure Obligations. Such services shall include, but not limited to:

- Determine and request from the District the required categories of information and provide a list of data to provide and/or questions to be answered in preparation of the continuing disclosure annual report
- Determine if previous continuing disclosure filings and material event notices have been disseminated and filed through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Dataport (herein, "EMMA")
- Assist the officers or employees of the District designated with responsibility for continuing disclosure to assemble information necessary for the annual report;
- Receive from the District and format or assist in formatting such material into a final form for the continuing disclosure annual reports any other applicable disclosure notices
- Submit the continuing disclosure annual report through EMMA and provide a certificate of such submission(s) to the District

*UNDER THIS SERVICE ARRANGEMENT, THE CONSULTANT IS NOT RESPONSIBLE FOR PREPARATION OR CONTENT OF AUDITED FINANCIAL STATEMENTS AND BUDGET REPORTS.*

### 3. Reporting of Significant Event Notices.

The Contractor will assist the District in connection with the preparation and filing of reporting of significant event notices, including any rating change(s) as necessary in connection with the Securities.

- Contractor shall monitor the market from time-to-time for rating changes pertaining to the Securities and notify the District immediately after its confirmation of rating change(s);
- Upon receipt by the District of such notification, the District shall contact the Contractor and give them authorization to assemble a reporting of significant event notice;
- The Contractor will assist the District in assembling the reporting of significant notice into a final form; and
- Submit or confirm submission of the reporting of significant notices through EMMA and provide a certificate of such submission(s) to the District.

*CONSULTANT WILL USE ITS BEST EFFORTS TO MONITOR THE MARKET FOR RATING CHANGES AFFECTING THE SECURITIES, BUT WILL NOT GIVE ASSURANCE OF ITS ABILITY TO ASCERTAIN ANY RATING CHANGE AND WILL NOT BE HELD LIABLE FOR RATING CHANGES WITH RESPECT TO ANY OF THE DEBT OBLIGATIONS WHICH ARE NOT REPORTED.*

### 4. Termination of Reporting Obligation.

The Contractor will assist the District in connection with the preparation and filing of termination of reporting obligation notice as necessary in connection with the full redemption of the Securities. Such services shall include, but not limited to:

- Assist in assembling the termination of reporting obligation notice into a final form; and
- Submit or confirm submission of the termination of reporting obligation notice through EMMA and provide a certificate of such submission(s) to the District.

### 5. Continuing Disclosure Compliance Review Services.

When requested, the Contractor will assist the District with reviewing its compliance with such continuing disclosure obligations it has covenanted with respect to the Securities. Such services shall include, but not limited to:

- Identify all of the debt issuances of the District (the "Transactions") outstanding during the last five fiscal years (the "Continuing Disclosure Filing Cycles") with continuing disclosure reporting requirements.
- Obtain electronic copies of the Official Statements for all the Transactions.

- Identify and review continuing disclosure requirements and only rating change event notices (including ratings of the District, bond insurers and credit facility providers), for each of the Transactions.
- Research and locate continuing disclosure filings made during Continuing Disclosure Filing Cycles based on the following data sources:
  - a. MSRB - EMMA,
  - b. Bloomberg L.P., and
  - c. TM3 - Interactive Data.
- For each Transaction, enter information into a worksheet identifying the submittal date of the continuing disclosure filings and the content requirements of the continuing disclosure filings.
- Prepare a report (the "Report"):
- Outline our findings from each worksheet.
- For each rated Transaction, provide a chronological history of all rating changes (including ratings of the District, bond insurers and credit facility providers), whether an event notice was submitted for such rating change and how many days after such event was a notice submitted.
- Provide suggestive make-up filings with regards to continuing disclosure annual reports and/or event notices limited to rating changes (including the District and bond insurer).
- Participate in discussions with the District and others regarding the Report.
- Assist in drafting any required make-up continuing disclosure filings and notices.

6. CDIAC Annual Reporting.

(i) **SB 1029 Annual Debt Transparency Reports (ADTR).** The Contractor will assist the District in connection with the preparation and filing of CDIAC ADTRs as required by California Senate Bill 1029, Government Code Section 8855(k). Such services shall include, but are not limited to:

- Determine the District's outstanding debt obligations that require an ADTR filing and obtain the respective CDIAC filing ID number for each issue;
- Assist the officers or employees of the District designated with responsibility for continuing disclosure to assemble information necessary for the ADTR;
- Review and supplement any information, in addition to the information required by an ADTR, which might be necessary;
- Format or assist in formatting such material into a final form for the ADTR; and
- Submit the ADTR through CDIAC and provide a certificate of such submission(s) to the District by no later than January 31st of such year(s) an ADTR filing is required.

(ii) **Marks-Roos Authority and/or Local Obligor Yearly Fiscal Status Report (YFSR).** The Contractor will assist the District in connection with the preparation and filing of CDIAC Marks-Roos Authority and/or Local Obligor YFSRs as required by the Marks-Roos Local Bond Pooling Act of 1985, as amended (Section 6584 et seq.), Government Code Section 6599.1(b). Such services shall include, but are not limited to:



- Determine the District's outstanding debt obligations that require a YFSR filing and obtain the respective CDIAC filing ID number and password for each issue;
- Assist the officers or employees of the District designated with responsibility for continuing disclosure to assemble information necessary for the YFSR;
- Review and supplement any information, in addition to the information required by a YFSR, which might be necessary;
- Format or assist in formatting such material into a final form for the YFSR; and
- Submit the YFSR through CDIAC and provide a certificate of such submission(s) to the District by no later than October 30th of such year(s) a YFSR filing is required.

7. Additional Services.

The District may, with the concurrence of the Contractor, expand this Agreement to include any additional services not specifically identified within the terms of this Agreement. Any additional services may be described in an addendum to this Appendix A and are subject to fees to be negotiated outside of this Agreement.

**APPENDIX B  
TO  
EXHIBIT A**

**Definition of Debt Obligations**

The District must inform the Contractor of its intent to include additional Debt Obligations under this Agreement in writing.

	<u>Issuance Name</u>	<u>Annual Filing Deadline</u>	<u>Dated Date</u>	<u>Last CUSIP</u>	<u>Date of Last CUSIP</u>
	<b><u>General Obligation Bonds</u></b>				
1.	General Obligation Bonds, 2010 Election, 2010 Series A	Not later than 240 days after end of fiscal year	9/30/2010	621196XE9	8/1/2035
2.	General Obligation Bonds, 2010 Election, 2010 Series B	Not later than 240 days after end of fiscal year	9/30/2010	621196XT6	8/1/2027
3.	General Obligation Bonds, 2010 Election, 2011 Series C	Not later than 290 days after end of fiscal year	4/12/2011	621196XV1	8/1/2025
4.	General Obligation Bonds, 2010 Election, 2015 Series F	Not later than 290 days after end of fiscal year	7/15/2015	621196H98	8/1/2025
5.	General Obligation Bonds, Election of 2010, Series G	Not later than nine months after end of fiscal year	11/16/2016	621196K86	8/1/2031
6.	2021 Refunding General Obligation Bonds, Series A	Not later than nine months after end of fiscal year	10/7/2021	621196M27	8/1/2031
7.	General Obligation Bonds 2018 Election, Series B	Not later than nine months after end of fiscal year	4/6/2022	621196R48	8/1/2042
8.	2022 Refunding General Obligation Bonds, Series B	Not later than nine months after end of fiscal year	5/5/2022	621196P32	6/1/2037
9.	2023 Refunding General Obligation Bonds	Not later than nine months after end of fiscal year	5/4/2023	621196S54	6/1/2031
	<b><u>Certificates of Participation</u></b>				
10.	2018 Certificates of Participation	Not later than nine months after end of fiscal year	10/10/2018	621204DC7	9/1/2026

**APPENDIX C  
TO  
EXHIBIT A**

**Compensation and Expenses**

**A. Transaction Based Compensation**

For Services referenced in Section C of Appendix A, the Contractor will be compensated a fee of \$62,500 per debt series, which shall be contingent on, and payable at, the closing of the debt issue(s) undertaken to finance the Project.

**B. Continuing Disclosure Consulting Services Compensation**

For services referenced in Section D(1), D(2) D(3) and D(4) of Appendix A, the Contractor will be compensated a fee of \$2,500 per year.

For services referenced in Section D(5) and Section D(7) of Appendix A, the Contractor will be compensated at hourly rates.

For services referenced in Section D(6) of Appendix A, the Contractor will be compensated at \$250 per CDIAAC ID number/filing per year.

**C. Hourly Compensation**

The table below reflects the rates in effect as of the date of execution of this Agreement.

<u>Personnel</u>	<u>Hourly Rate</u>
Executive Officer .....	\$395.00
Principal .....	\$385.00
Executive / Senior Vice President.....	\$375.00
Vice President.....	\$320.00
Assistant Vice President .....	\$295.00
Senior Associate.....	\$265.00
Associate .....	\$235.00
Analyst.....	\$130.00
Administrative Assistant.....	\$95.00

Hourly compensation will be billed on a monthly basis and are due thirty (30) days from invoice date. Invoices not paid within sixty (60) days are subject to a two percent (2.00%) late fee for every month payment is late.

**D. Expenses**

Expenses will be billed for separately and will cover, among other things, financial, demographic and/or tax data from outside vendors, travel, lodging, subsistence, overnight courier, conference call, internet posting, computer, and fax transmission charges. Advances made on behalf of the District for costs of preparing, printing or distributing disclosure

materials or related matter whether by postal services or electronic means, may also be billed through to the District upon prior authorization.

**E. Limiting Terms and Conditions**

The above compensation is based on completion of work orders within six months of the District's authorization to proceed, and assumes that the District will provide all necessary information in a timely manner.

The fee referenced in Appendix C, presumes attendance at up to any number of meetings in the District's offices or such other location within a 25-mile radius of the District place of business as the District may designate. Preparation for, and attendance at, Governing Board meetings on any basis other than "by appointment" may be charged at our normal hourly rates referenced in Section C above.

**F. Abandonment**

If, once commenced, the services of the Contractor are terminated prior to completion of our final report for any reason, the Contractor will be compensated for professional services and reimbursed for expenses incurred through the time of receive notification of such termination at the standard hourly rates shown above.

**APPENDIX D  
TO  
EXHIBIT A**

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to all material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. With respect to all aspects of the relationship between Contractor and the District, Contractor adheres to its fiduciary duty to the District, which includes a duty of loyalty to the District in performing all municipal advisory activities for the District. The duty of loyalty obligates Contractor to deal honestly and with the utmost good faith with the District and to act in the District's best interest without regard to any interest Contractor has or may have. Contractor has a wide range of clients so our success and profitability are not dependent on maximizing short-term revenue generated from individual recommendations to our clients but is instead dependent on long-term profitability based on a foundation of integrity, quality and adherence to our fiduciary duty. Furthermore, Contractor's supervisory structure provides strong safeguards against individual representatives of Contractor violating their duty due to personal interests.

Contractor makes the following representations to the District with regard to the Services:

- A. Other than the compensation described in this Agreement, we have no other interest, direct or indirect, that would interfere with or impair in any matter or degree the performance of our obligations. During our work on the Services, we do not intend to acquire or obtain any such interest, direct or indirect. If any such interest is acquired or obtained, we will immediately advise the District.
- B. We have not provided any gift or consideration to any officer, employee or agent of the District to either obtain the Agreement or any assignment from the District, including the Services. Neither our firm, nor its officers or employees will provide any such gift or consideration to any officer, employee or agent of the District to influence decisions with regard the Services or our obligations under the Agreement.
- C. Our compensation for the Services is contingent on the completion of the Project. While this form of compensation is customary in the market for financial services to municipal entities, this may present conflict of interest as we would have an incentive to recommend to the District the Project even if it is unnecessary or provides insufficient benefit or advise the District to increase the size of the Project. This potential conflict is mitigated by Contractor's fiduciary duty to the District.
- D. The District has employed Contractor, through Applied Best Practices ("ABP"), with regard to the performance of its continuing disclosure obligations. This relationship has the potential to result in a conflict of interest by creating an incentive for Contractor to recommend to the Client a course of action that would increase the District's business activity with ABP or conversely that would discourage a course of action that would decrease the District's business activity with ABP. The conflict is mitigated by Contractor's fiduciary duty to the District. Moreover, if Contractor makes a recommendation that could influence the level of business with ABP, Contractor will consider alternatives to the recommendation, which will be disclosed to the District.

- E. Contractor has clients that operate within and outside the District's boundaries that may engage Contractor to provide services with respect to projects that could potentially be in conflict with the District's interests on the same project or a similar project or in conflict with particular tax or enterprise revenues of the District. In such instances, Contractor will manage and mitigate this potential conflict of interest by adherence to Contractor's fiduciary duty to the District.

### **Information Regarding Legal Events and Disciplinary Actions**

MSRB Rule G-42 requires that municipal advisors provide their clients disclosures of legal or disciplinary events material to the evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Contractor sets out required disclosures and related information below:

- A. In 2023, the U.S. Securities and Exchange Commission (the "SEC") accepted offers of settlement from Fieldman and a principal (the "Settlement"). Neither the firm nor the principal admitted or denied the findings described in the Settlement. For more information about the Settlement, please review the Regulatory Action Disclosure included in Fieldman's Form MA and Form MA-I for the principal (which is cross-referenced in Form MA). There are no other legal or disciplinary events material to the Client's evaluation of Fieldman or the integrity of Fieldman's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I with the SEC. There has been no other material change or addition to the legal or disciplinary event disclosures on any Form MA or MA-I filed with the SEC.

Fieldman's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <https://www.sec.gov/edgar/browse/?CIK=0001612429>.

### **Contents of Client Brochure**

The MSRB requires us to provide you with the following information: Contractor is registered as a "Municipal Advisor" pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the SEC and the MSRB.

The MSRB has made available on its website ([www.msrb.org](http://www.msrb.org)) a municipal advisory client brochure that describes the protections that may be provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

**EXHIBIT B**  
**FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION**  
*(Contractor REQUIRED to complete.)*

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”). Contractor certifies that:

Contractor’s employees or subcontractors will have CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. “Contractor certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1.

List or attach, all Employee name(s) that have successfully completed the fingerprinting and criminal background check clearance in accordance with law: \_\_\_\_\_

--OR--

Contractor’s employees or subcontractors will have NO CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor’s services under this Agreement.


WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

**Megan’s Law (Sex Offenders).** Contractor shall verify and continue to verify that the employees of Contractor that will be on the project site and the employees of the subcontractor(s) that will be on the project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

**MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:**

By signing below I certify under penalty of perjury that the information contained on this certification form and attached employee list(s) is accurate. I understand that it is the Contractor’s sole responsibility to maintain, update, and provide the District with current “Fingerprint and Criminal Background Check Certification,” along with the employee list, throughout the duration of Contractor provided services.

**CONTRACTOR**

By:   
Name: Rachel Chang-Kwei  
Title: Senior Vice President  
Date: 10/1/24

**EXHIBIT C**  
**WORKERS' COMPENSATION CERTIFICATION**  
*(Contractor REQUIRED to complete.)*

*Labor Code Section 3700* (workers' compensation and insurance) in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of *Section 3700* of the *Labor Code* which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code.

I certify I will comply with all California workers' compensation insurance requirements before commencing the performance of the Services of this Contract.

--OR--

I certify that I am a sole proprietor, have no employees, and am self-insured.

I understand the District will not obtain workers' compensation insurance on my behalf or on behalf of my employees or subcontractors.

**MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE:**

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

**CONTRACTOR**

By: \_\_\_\_\_ 

Name: Rachel Chang-Kwei \_\_\_\_\_

Title: Senior Vice President \_\_\_\_\_

Date: 10/1/24 \_\_\_\_\_

*In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Contract.*



**EXHIBIT D**

**DATA PRIVACY ADDENDUM**

*(Contractor REQUIRED to Complete; Applicable when AGREEMENT involves access to Pupil/Employee Data.)*

This Data Privacy Addendum (“**Data Privacy Addendum**”) to the Agreement Between Mt. Diablo Unified School District and Independent Contractor (“**Independent Contractor Agreement**”) is entered into by and between Contractor and Mt. Diablo Unified School District (“**District**”). To the extent that any term or condition set forth in this Addendum conflicts with the Independent Contractor Agreement, the provisions of this Addendum will control.

**WHEREAS**, in order to provide the services described in the Agreement, the Contractor may receive or create, and the District may provide documents or data related to students (“**Student Data**”) that are covered by several state and federal privacy laws, including: the *Family Educational Rights and Privacy Act (FERPA)*, the *Children’s Online Privacy Protection Act (COPPA)*, *Education Code section 49073.1*, and the *Student Online Personal Information Protection Act (SOPIPA)*. The District and Contractor desire to ensure compliance with applicable state and federal laws, school policies, procedures and regulations.

**NOW, THEREFORE**, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Use.** Contractor shall not use any information in a Student Data<sup>1</sup> for any purpose other than those required or specifically permitted by the Independent Contractor Agreement, and shall comply with all applicable state and federal laws pertaining to Student Data privacy and security. Contractor shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Data Privacy Addendum. Contractor shall not sell or otherwise derive a benefit from sharing information in a Student Data with a third party. Contractor shall enter into written agreements with all subcontractors performing functions pursuant to the Independent Contractor Agreement, whereby the subcontractors agree to protect Student Data in manner consistent with the terms of this Data Privacy Addendum.
2. **Ownership.** All Student Data obtained by Contractor from District continues to be the property of and under the control of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes.
3. **Export.** Contractor shall provide a means by which its employees, when so authorized, can search and export Student Data through reasonable procedures such that the District can respond to a parent, legal guardian or eligible student who seeks to review personally identifiable information on the pupil’s records or correct erroneous information.
4. **Disposition.** The Contractor agrees that upon expiration or termination of services under this Agreement, Contractor shall dispose or delete all Student Data obtained under the Independent Contractor Agreement. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Independent Contractor Agreement authorizes Contractor to maintain Student Data obtained under the Independent Contractor Agreement beyond the time period reasonably needed to complete the disposition.
5. **Security.** Contractor shall maintain adequate administrative, physical, and technical data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized access, disclosure or acquisition by unauthorized persons, and shall not copy, reproduce or transmit data

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<sup>1</sup> “Student Data” includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Pupil Records do not include de-identified information (information that cannot be used to identify an individual pupil) used: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

obtained pursuant to the Agreement except as necessary to fulfill the purpose of the Agreement. Where applicable, the Contractor will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.

- 6. **Prohibited Use.** Contractor shall not use Student Data, or any data derived from Student Data, to perform or deliver targeted advertising to students, and is prohibited from selling or providing Student Data to third parties for any purpose without District’s written consent.
- 7. **Breach Protocol.** Upon becoming aware of any unlawful or unauthorized access to Student Data stored on equipment used by Contractor or in facilities used by Contractor, Contractor will take the following measures:
  - (a) promptly notify the District of the suspected or actual incident within a reasonable amount of time of the incident, not to exceed forty-eight hours, and shall present the information under the following headings: “What Happened,” “What Information was Involved,” “What We are Doing,” “What You Can Do,” and “Persons to Contact for More Information”; and
  - (b) promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; and
  - (c) assist the District in notifying affected users, affected parents, legal guardians of commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. Upon request from District, Contractor shall notify affected parties or reimburse District for actual costs associated with notifying affected parties.
- 8. **Entire Agreement.** This Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter herein. It supersedes, and the terms of this Data Privacy Addendum govern, any and all previous oral and written communications between the parties, their Affiliates, and their respective employees and representatives regarding these matters.
- 9. **Successors Bound.** This Data Privacy Addendum is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

**MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:**

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this Data Privacy Addendum on behalf of Contractor.

**CONTRACTOR**

By: 

Name: Rachel Chang-Kwei

Title: Senior Vice President

Date: 10/1/24