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SEP 22 2015

Purchase Requisition # R88313

[Handwritten signature]

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

On File
W-9
Insurance

**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 17 day of Sept. 2015, by and between the Mt. Diablo Unified School District (hereinafter "District") and Exploring New Horizons (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 \$ <u>38,808.00</u> for Services	<u>142</u> - <u>0343</u> - <u>10</u> - <u>5800</u>	\$ <u>38,808.00</u>
The basis of the fee for Services shall be as follow	_____ - _____ - _____ - _____	\$ _____
a. \$ _____ per hour,	_____ - _____ - _____ - _____	\$ _____
b. \$ _____ per day, or		
c. \$ _____ per engagement.		

BUDGET CODE(S)

Check One:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

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

3. Term and Termination. This Agreement will become effective on November 9, 2015. 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 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:	Exploring new Horizons
Attn:	Tracey Weiss
Address:	PO Box 1514
	Felton, CA 95018
Phone:	831-338-3013
Fax:	831-533-7800
Tax ID #:	94-2618650

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

Exploring New Horizons Outdoor Schools

By: Rich Gorton 9/17/15
Signature of Principal/Budget Administrator Date

Name of Company/Organization or Independent Contractor/Consultant
Tracey Weiss
By: 749374173120400 9/18/2015
Signature of Contractor/Consultant Date

Title: Rich Gorton, Principal
Print Name and Title

Title: Tracey Weiss Executive Director
Print Name and Title

Authorized and Approved by:

Mary-Kristine Dwyer 9/22/15
Superintendent or Designee Date

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

Rich Gorton 9/17/15
Originator's Signature Date

Hidden Valley Elementary
Site/Department Originating this Contract

Rich Gorton, principal
Print Name of Originator and Title

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

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

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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

to provide a 5 day residential outdoor school experience with Exploring New Horizons
Dates: November 9-13, 2015

fee for services:

\$10,000 deposit to be paid on October 16, 2015

balance to be paid after camp experience is completed, on November 13, 2015

fee is based on \$308 per student with 126 students attending.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/30/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bozeman Office PayneWest Insurance, Inc. 1283 North 14th Avenue Bozeman, MT 59715	CONTACT NAME:	
	PHONE (A/C, No, Ext): (406) 586-3351	FAX (A/C, No): (406) 586-0437
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Philadelphia Indemnity	18058
INSURED Exploring New Horizons, Inc. PO Box 1514 Felton, CA 95018	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		X	PHPK1366862	08/01/2015	08/01/2016	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 20,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	*OMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			PHPK1366862	08/01/2015	08/01/2016	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			PHUB507998	08/01/2015	08/01/2016	EACH OCCURRENCE	\$ 3,000,000
							AGGREGATE	\$ 3,000,000
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

Mt. Diablo USD
Elementary Education
1936 Carlotta Dr
Concord, CA 94519

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Julie Nygren

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Name Of Additional Insured Person(s) Or Organization(s): Mt. Diablo USD, Elementary Education</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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SEP 28 2015

SERVICE AGREEMENT

SESS/ABUSD

THIS AGREEMENT (the "Agreement") is entered into as of the date of both parties signing this agreement, by and between **EXPLORING NEW HORIZONS**, a California nonprofit public benefit corporation ("ENH"), and **HIDDEN VALLEY ELEMENTARY SCHOOL**, a California Public School District (the "School"). ENH and the School are collectively referred to herein as the "Parties."

WHEREAS, ENH is exempt from federal income tax under Internal Revenue Code Section 501(c) (3) and corresponding provisions of state law;

WHEREAS, the charitable purposes of ENH include conducting outdoor education for grade school children as part of their regular school education curriculum; and

WHEREAS, ENH's provision of services to the School pursuant to this Agreement will fall within the scope of ENH's charitable purposes;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, ENH shall provide on behalf of the School an outdoor education program for the School's students (the "Program"), to be conducted at the Loma Mar Campus of Exploring New Horizons Outdoor Schools in Loma Mar, California (the "Program Location") for the period of **NOVEMBER 9-13, 2015** (the "Term"). ENH shall provide the following services (the "Services") in connection with the Program:

- a. Orientation Meetings. Prior to the commencement of the Term, ENH shall conduct at the School location, or such other location mutually agreed upon by the Parties, and at times mutually acceptable to the Parties, one orientation meeting regarding the Program. The School shall cooperate with ENH in organizing the orientation meeting and inviting students, teachers, counselors and parents to such meetings.
- b. Counselors. Prior to the commencement of the Term, ENH may, in its sole discretion, interview candidates and select from such candidates individuals to serve as counselors for the Program for the duration of the Term.
- c. Activities. ENH shall organize and conduct the outdoor educational activities.
- d. Supplies. ENH shall provide all materials and supplies required to implement the Program.
- e. Room and Board. ENH shall provide for the duration of the Term housing and meals for all students, classroom teachers and counselors, whose numbers are estimated to be as follows:

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- i. 121 Students;
- ii. 5 Classroom teachers; and
- iii. 13 Counselors

f. Transportation. ENH shall provide for all students, classroom teachers and counselors (i) bus transportation for trips from the Program Location to any off-site locations scheduled as part of the Program, and (ii) a van to transport materials and supplies as required by the Program and to serve as an on site emergency vehicle. The School shall be responsible for arranging, and ENH shall not be responsible for, all other transportation for participating students, classroom teachers and counselors to and from the Program Location. Transportation support can be provided at an additional fee. Inquire with ENH staff to organize.

2. Fees; Payment.

a. The School shall pay ENH for the Services in an amount equal to (i) the number of students enrolled in the Program multiplied by (ii) **\$308 per student** (the "Fee"), *provided that a minimum of 108 students are enrolled in the Program prior to the beginning of the Term. [Minimum number equals to 90% of the estimated enrollment number].* If the School fails to enroll this minimum number of students, the Fee shall be calculated as if the minimum number of students indicated above were enrolled in the Program; if the School does not agree to pay this Fee, ENH may in its discretion either negotiate a new per-student fee based on the fixed expenses that ENH reasonably expects to incur in conducting the Program, or terminate this Agreement. If ENH terminates this Agreement pursuant to this clause, ENH shall return all amounts previously paid by the School, less a termination fee equal to twenty-five percent (25%) of the Fee, and ENH shall have no obligation to provide the Program or the Services.

b. **The School shall pay ENH the Fee as follows:**

DS
RG

- i. **The sum of \$33,264 no later than OCTOBER 19, 2015; and**
- ii. **The balance of the Fee no later than ten (10) days after the School's receipt of an invoice from ENH.**

b. The School shall remit all deposits and payments to:

**Exploring New Horizons
PO Box 1514
Felton, California 95018**

d. For purposes of calculating the termination fee in Section 2(a), Section 8(a) or Section 8(b), or the Cancellation Amount in Section 8(b), the Fee shall be determined based on (i) the number of students enrolled in the Program on the date of termination, or on the date of cancellation, as applicable, or (ii) the minimum number of students set forth in Section 2(a), whichever number is greater.

3. Default. If the School fails to make any payment pursuant to Section 2 within ten (10) days after the date on which such payment was due, ENH may in its discretion (a) continue to conduct the Program, in which case ENH shall have the right to enforce all its rights and remedies granted by this Agreement, including, without limitation, the right to collect the Fee, or (b) cancel or suspend the Program, in which case ENH shall be entitled to recover from the School any amount necessary to compensate ENH for all detriment proximately caused by the School's failure to perform its obligations under this Agreement, including without limitation the

amount ENH would have earned by providing services to another organization or organizations during the Term. At ENH's discretion, unpaid installments of the Fee under the terms of this Agreement may bear interest from the date due at the maximum rate then allowable by law. ENH's remedies are not exclusive and are cumulative with any other remedies allowed by law.

4. Representations and Warranties. Each Party represents and warrants that (i) it is duly organized, validly existing and in good standing under the laws of its state of incorporation, (ii) it has the legal right, power and authority to execute, deliver and perform its obligations under this Agreement, and (iii) all approvals requisite to the valid and binding execution, delivery and performance of this Agreement by such Party have already been obtained and are in full force and effect.

5. Independent Status of ENH. The School shall not have any right to direct or control the Program or the means, manner, or details by which ENH provides the Services. ENH may, in its sole discretion, employ and supervise such counselors, Program staff and other employees or agents as ENH deems necessary or convenient to perform the Services. The School may not control, direct, or supervise ENH's employees or agents in the performance of the Services. This Agreement does not create a partnership between the Parties. Nothing in this Agreement shall be deemed to restrict or prohibit ENH from providing services to other organizations that are the same as or similar to the Services described herein.

6. Student Waivers. Prior to the beginning of the Term, the School shall cause a parental guardian of each student participating in the Program to sign a waiver with respect to such participation, and shall cause each executed waiver to be delivered to ENH. No student shall be enrolled or allowed to participate in the Program without first providing such executed waiver to ENH.

7. Disciplinary Action. ENH may remove any student from the Program who, in ENH's sole discretion, creates a significant disciplinary problem for the Program staff or who otherwise disrupts the Program. ENH shall not be responsible for transporting such student from the Program Location in the event of removal from the Program. The School shall not be entitled to any refund of any portion of the Fee for any student who leaves the Program for disciplinary reasons.

8. Cancellation.

- a. In the event the School cancels its participation in the Program more than one hundred twenty (120) days prior to the beginning of the Term, the School shall promptly notify ENH in writing of such cancellation. ENH shall refund all amounts paid by the School to ENH under this Agreement, less a termination fee of twenty-five percent (25%) of the Fee, calculated as set forth in Section 2(d) above.
- b. In the event the School cancels its participation in the Program less than one hundred twenty (120) days prior to the beginning of the Term, the School shall promptly notify ENH in writing of such cancellation and shall pay to ENH at the time of such notice of cancellation the sum of ninety percent (90%) of the Fee (the "Cancellation Amount"). The School may set off against the Cancellation Amount any payments already made by the School to ENH pursuant to Section 2. If ENH arranges to conduct the Program for another organization or organization(s) during all or part of the Term, thus filling the vacancy created by the School's cancellation, and the School has paid the Cancellation Amount in full, ENH shall refund to the School the lesser of (i) the total amount paid by the other organization or organizations for ENH's services during the Term, or (ii) the

Cancellation Amount, less a termination fee of twenty-five percent (25%) of the Fee, calculated as set forth in Section 2(d) above.

- c. If ENH is unable to perform the Services due to unavoidable causes such as fire damage to the Program Location or other loss of facilities prior to the beginning of the Term, ENH shall notify the School and shall refund all portions of the Fee previously deposited by the School to ENH. If such damage or loss of facilities occurs at any point during the Term such that ENH is unable to continue conducting the Program, ENH shall notify the School, and the School shall be responsible for paying only the amount of the Fee proportionate to the period of the Term during which ENH actually provided the Services.

9. Insurance. ENH shall provide accident and health coverage for all students, classroom teachers and counselors participating in the Program. The School shall maintain such general liability insurance as the School is required by law to maintain and shall include ENH as additional insured on such policy. Upon request of either Party, the other Party shall provide certificates of such insurance.

10. Waivers. The failure of either Party to exercise any of its rights under this Agreement shall not be deemed to be a waiver of such rights.

11. No Assignment. This Agreement shall not be assignable by either Party without the prior written consent of the other Party.

12. Notice. All notices, requests, waivers, approvals, consents, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered personally, or three days after being deposited with the United States Postal Service, or one day after being deposited for delivery with a nationally recognized overnight delivery service, with all charges, fees and first-class postage prepaid, properly addressed, as follows:

If to the School, at the following address (please fill in appropriate information):

School:	<u>Hidden Valley</u>	Contact:	<u>Rich Gorton</u>
Address:	<u>500 Glacier Drive, Martinez, CA 94553</u>	Phone:	<u>(925) 228-9530</u>
		Email:	<u>gortonr@mdusd.org</u>

If to ENH, at the following address:

Exploring New Horizons	Michelle Parr
PO Box 1514	(831) 600-7543
Felton, California 95018	<u>michelle@exploringnewhorizons.org</u>

13. Arbitration. The Parties agree that, with respect to all controversies, claims, disputes or counterclaims arising out of or relating to this Agreement, the Services or the Program, whether it involves a disagreement about the meaning, interpretation, application, or validity of this Agreement, and whether based on statute, tort, contract, common law, or otherwise (a "Dispute"), to attempt to resolve the Dispute by good faith negotiation. If the Parties are unable to resolve the Dispute by good faith negotiation, either Party may refer the matter to binding arbitration. The arbitration shall take place in the County of Santa Cruz, State of California in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

14. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, or for interpretation of any of its provisions, including without limitation an arbitration pursuant to Section 13, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and court costs, from the other party.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Entire Agreement; Amendments. This Agreement shall supersede any prior oral or written understandings or communications between the Parties and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both Parties hereto.

17. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision hereof.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

EXPLORING NEW HORIZONS,
A California non-profit public benefit
Corporation

DocuSigned by:
[Signature]
By: _____
7A0825ACE1EA43A...
Title: Executive Director
Date: 9/8/2015

HIDDEN VALLEY ELEMENTARY SCHOOL
A California Public School

DocuSigned by:
[Signature]
By: _____
7A0825ACE1EA43A...
Title: Principal
Date: 9/22/2015

Marylouise Herf
9/28/15