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MICHELLE HUTCHINS
Superintendent of Schools

SERVICE

EXCELLENCE

INNOVATION

TEAMWORK

SE3430.00c

Revised 04/2022

Consultant Services Agreement

This Agreement ("Agreement"), made this ___ day of _____, 20___, by and between the Mendocino County Office of Education, a political subdivision of the State of California ("Mendocino County Office of Education") and _____, a duly qualified consultant in the area(s) of _____ ("Consultant").

Mendocino County Office of Education and Consultant hereby agree as follows:

1. Scope of Services:

Consultant agrees to provide services to Mendocino County Office of Education as set forth in **Attachment A**.

2. Contract Documents:

The contract documents consist of the Agreement for Consulting Services, the following General Provisions, any attachments, and completed insurance forms.

3. Compensation:

As full compensation for all services contemplated by this Agreement, Consultant shall be paid as set forth in **Attachment B**.

4. Term of Agreement:

The term of this Contract shall be from _____ to _____ inclusive, subject to the provisions of Section 11 of the General Provisions.

In witness whereof, the parties hereto have executed this Agreement on the day and year first written above.

s/ _____

Michelle Hutchins
County Superintendent

s/ _____

Consultant

Name: _____

Title: _____

GENERAL PROVISIONS

1. Consultant's Warranty: Mendocino County Office of Education has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Mendocino County Office of Education shall not operate as a waiver or release.
2. Status of Consultant: The parties intend that Consultant, in performing the services herein specified, shall act as an independent consultant and shall have control of the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Mendocino County Office of Education and is not entitled to participate in any pension plans, insurance, bonus or similar benefits Mendocino County Office of Education provides its employees.
3. Conflict of Interest: Consultant represents that it presently has no interest which would conflict in any manner or degree with the performance of services contemplated by this Agreement, and Consultant further represents that, during the performance of this Agreement, no such conflict of interest shall exist. If Consultant participates in the planning, development, or negotiation of a contract or other matter for the Mendocino County Office of Education, Consultant may not subsequently acquire a financial interest in that contract in violation of Government Code section 1090.
4. Project Management Extra (Changed) Work: The Project Manager for this Agreement is _____. The Project Manager is authorized to approve modifications (changed work) to the Scope of Services (Attachment A) only when the changes do not result in an increase in Compensation as agreed upon in Attachment B. Only the County Superintendent or County Superintendent appointed designee may authorize extra (and/or changed) work. Mendocino County Office of Education personnel are without authorization to either order extra (and/or changed) work or waive contract requirements. Failure of the Consultant to secure proper authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work.
5. Nondiscrimination: Consultant shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, handicap or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
6. Transfer of Rights: Consultant assigns to Mendocino County Office of Education all rights throughout the work in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications now or later prepared by Consultant in connection with the project, if any.
7. Ownership of Work Product: Mendocino County Office of Education shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, correspondence or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement by Mendocino County Office of Education or upon completion of the work pursuant to this Agreement.
8. Indemnification:
 - (a) Consultant shall indemnify, defend with counsel acceptable to Mendocino County Office of Education, and hold harmless to the full extent permitted by law, Mendocino County Office of Education and its elected or appointed officials, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the project or its failure to comply with any of its obligations contained in these contract

documents, except such Liability caused by the sole negligence or willful misconduct of the Mendocino County Office of Education. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

(b) Consultant shall be liable to Mendocino County Office of Education for any loss or damage to Mendocino County Office of Education property arising from or in connection with Consultant's performance hereunder.

9. Insurance and License(s): Consultant, at its expense, shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work herunder by the Consultant, his agents, representative, or employees. Consultant shall also require all of its subcontractors, if any, to maintain insurance as indicated below.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

(a) **Required/** **Not Required:** Worker's compensation insurance with statutory limits as required by the Labor Code of the State of California. The policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Mendocino County Office of Education."

(b) **Required/** **Not Required:** Commercial or Comprehensive General Liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Such insurance shall include, but not be limited to: premises and operations liability, independent consultant's liability, and personal injury liability. Liability deductible or Self-Insured Retention not to exceed \$5,000. Coverage shall be at least as broad as ISO form CG001.

(c) **Required/** **Not Required:** Automobile liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Such insurance shall include coverage for owned, hired, and non owned vehicles.

(d) **Required/** **Not Required:** Sexual abuse/molestation insurance in an amount no less than \$1,000,000 combined single limit for each occurrence.

(f) **Required:** Professional Liability (Errors and Omissions) Insurance for all activities of the Consultant arising out of or in connection with this Agreement is an amount no less than \$1,000,000 combined single limit for each occurrence endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Mendocino County Office of Education." Architects' and Engineers' coverage is to be endorsed to include contractual liability.

(g) **Required:** Business and/or Other License(s). Consultant represents and warrants that Consultant will comply with all federal, state, and local laws requiring business licenses, other license(s), and certificates required to carry out the services to be performed under this Agreement.

Minimum Limits of Insurance

Consultant Shall maintain limits no less than:

1. General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products/Completed Operations Aggregate
	\$1,000,000	Personal & Advertising Injury
	\$1,000,000	Each Occurrence
2. Automobile Liability	\$1,000,000	Per Accident for Bodily Injury & Property Damage
3. Worker's Compensation: Employer's Liability	Statutory \$1,000,000	As required by the State of California Per Accident for Bodily Injury or Disease
4. Professional Liability, E&O or Educators Legal Liability	\$1,000,000	Per Occurrence
5. Sexual Abuse or Molestation:	\$1,000,000	Each Incident

Any insurance proceeds available to Consultant that are broader than or in excess of the specified minimum insurance coverage and/or limits shall be available to Mendocino County Office of Education as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Contract or Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy of proceeds available to the Named Insured, whichever is greater.

Policy Obligations: Consultant's indemnity and other obligations shall not be limited by the foregoing insurance and license requirements.

Material Breach: If Consultant, for any reason, fails to maintain coverage or have the license(s) which are required pursuant to this Agreement, the same shall be deemed a material breach of contract. Mendocino County Office of Education, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from the breach. Alternatively, Mendocino County Office of Education may purchase such required insurance coverage or license(s) and, without further notice to Consultant, Mendocino County Office of Education may deduct from sums due to Consultant any premium or other costs advanced by Mendocino County Office of Education for such insurance or license(s). These remedies shall be in addition to any other remedies available to Mendocino County Office of Education.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by Mendocino County Office of Education. At the option of Mendocino County Office of Education, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to Mendocino County Office of Education, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to Mendocino County office of Education guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The general liability and auto liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured:** To the fullest extent permitted by law, the Mendocino County Office of Education, its elected or appointed officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. **Primary Insurance:** For any claims related to this project, the Consultant's insurance coverage shall be primary insurance with respect to the Mendocino County Office of Education, its elected or appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Mendocino County Office of Education, its elected or appointed officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be required to contribute with it.
3. **Abuse/Molestation:** Evidence the Consultants insurance includes coverage for physical abuse molestation claims.
4. **Waiver of Subrogation:** Consultant hereby grants to Mendocino County Office of Education a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Mendocino County Office of Education by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Mendocino County Office of Education has received a waiver of subrogation endorsement from the insurer.

Notice of Cancellation

Each Insurance policy required above shall state that coverage shall not be canceled, or reduced without thirty (30) days written notice given to MCOE by certified mail.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise acceptable by Mendocino County Office of Education and admitted to do business in the state of California, or accepted by the Surplus Lines Association to do business in California. If Consultant is a Public Entity, coverage maintained in whole or in part in the form of participation by the Consultant in a joint powers authority or other program providing pooled property and liability coverage is acceptable.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

Mendocino County Office of Education reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Proof of Insurance

Consultant shall furnish the Mendocino County Office of Education with certificates and endorsements affecting coverage required by the agreement/contract. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Mendocino County Office of Education before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

The Mendocino County Office of Education reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Renewal Policy: It is the sole responsibility of the Contractor to provide insurance certificates through the life of the contract.

Mail all certificates and endorsements to:

Mendocino County Office of Education

Attn: Kiley Heath

2240 Old River Rd.

Ukiah, CA 95482

kheath@mcoe.us

707-467-5025

10. Method and Place of Giving Notice, Submitting Bills and Making Payments: All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notice, bills and payments sent by mail shall be addressed as follows:

Mendocino County Office of Education

Att: Robyn Ruiz

2240 Old River Rd.

Ukiah, CA 95482

robyn@mcoe.us

707-467-5039

and when so addressed, shall be deemed given upon receipt via United States Mail, postage prepaid, provided it is forwarded certified, or registered with proof of receipt. In all other instances, notices, bills, and payments shall be deemed given at the time of actual personal delivery. Changes may be made in names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

11. Termination:

(a) Mendocino County Office of Education may terminate this Agreement without cause by giving thirty (30) calendar days written notice to the Consultant. In the event Mendocino County Office of Education elects to terminate the Agreement without cause, it shall pay Consultant for the reasonable value of services satisfactorily rendered to such date.

(b) If either party fails to perform any of its obligations hereunder, within the time and in the manner hereunder provided or otherwise violates any of the terms of the Agreement, either party may terminate this Agreement by giving written notice of such termination, stating the reason for such termination. In such event, Consultant shall be entitled to receive payment for all services satisfactorily rendered.

12. Security. By execution of the Agreement, the Consultant acknowledges that Education Code section 45125.1 applies to contracts where the Consultant or its employees will have interaction with students, outside the immediate supervision and control of the student's parent or guardian or a school employee. Section 45125.1 requires that employees of entities providing such services to school Mendocino County Office of Educations must be fingerprinted by the California Department of Justice for a criminal records check, unless the Mendocino County Office of Education determines that an exemption applies.

(a) Mendocino County Office of Education Determination of Fingerprinting and TB testing Requirement

The Mendocino County Office of Education has considered the Scope of Services being performed by the Consultant under this Agreement and has determined that the Consultant and Consultant's employees:

_____ are subject to the fingerprinting requirements of Education Code sections 45125.1 and Paragraph (b) below, is applicable.

_____ are subject to Tuberculosis ("TB") testing to demonstrate that he/she is free from active Tuberculosis, pursuant to Education Code section 49406.

_____ are not subject to TB testing or the fingerprinting requirements of Education Code section 45125.1, and Paragraph (c) below is applicable.

(b) If the Mendocino County Office of Education has determined that fingerprinting is required, the Consultant expressly acknowledges that: (1) Consultant and all of Consultant's employees who will have interaction with students, outside the immediate supervision and control of the student's parent or guardian or a school employee, must submit or have submitted fingerprints in a manner authorized by the Department of Justice, as set forth in Education Code section 45125.1; (2) Consultant shall not permit any employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony, as defined in Education Code section 45122.1; (3) Consultant shall certify in writing to Mendocino County Office of Education that none of its employees subject to Education Code section 45125.1 have been convicted of a felony, as defined in Education Code section 45122.1; and (4) Consultant shall provide to Mendocino County Office of Education a list of names of its employees who are potentially subject to Education Code section 45125.1. The Consultant is required to fulfill these requirements at its own expense.

(c) Even if the Mendocino County Office of Education has determined that fingerprinting is not required, the Consultant expressly acknowledges that the following conditions shall apply to any work performed by the Consultant and/or Consultant's employees on a school site: (1) Consultant and Consultant's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Consultant and Consultant's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Consultant and Consultant's employees shall not change locations without contacting the school office; (4) Consultant and Consultant's employees shall not use student restroom facilities; and (5) If Consultant and/or Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

(d) Consultant shall comply, as required by law, with the Child Abuse and Neglect Reporting Act as a mandated reporter of suspected child abuse.

13. COVID Protocols: Prior to performing any on-site work under this Agreement, Consultant shall provide Mendocino County Office of Education with proof of vaccination for all individuals who will be performing on-site services on behalf of Consultant. For all such individuals who are unvaccinated, Consultant shall provide Mendocino County Office of Education with weekly negative COVID-19 tests prior to allowing an unvaccinated individual on-site.

In performing services under this Agreement, Consultant agrees to strictly, and without exception, follow all local, state and federal guidelines and protocols regarding COVID, including all Mendocino County Office of Education policies and procedures.

14. Due Performance: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. The Mendocino County Office of Education further reserves the right to audit Consultant's compliance with the terms of this Agreement.

15. Taxes: Consultant agrees to file federal and state tax returns and pay all applicable state and federal taxes on amounts paid pursuant to this Agreement. In case Mendocino County Office of Education is audited for compliance regarding any applicable taxes, Consultant agrees to furnish Mendocino County Office of Education with proof of payment of taxes on those earnings.
16. Dispute Resolution: The parties agree to make a good faith effort to resolve any dispute arising from or relating to this Agreement through mediation prior to commencing litigation. Within sixty (60) days following a written request by either party to mediate a dispute that has not been resolved by informal negotiation, the parties shall mutually agree upon a mediator, schedule a mediation, and shall share the costs of mediation equally, except costs incurred by each party for representation by legal counsel. Pending resolution of the dispute, the Consultant shall continue to work as required by this Agreement.
17. Choice of Law and Venue: This Agreement shall be governed by California law, and venue shall be in the Superior Court of the County of Mendocino, California, and no other place.
18. Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
19. Assignment/Delegation: Neither party shall assign, subcontract, or transfer any interest in this Agreement or any duty hereunder without prior written consent of the other.
20. No Third-Party Beneficiaries: There are no intended third-party beneficiaries to this Agreement.
21. No Waiver of Breach: The waiver by Mendocino County Office of Education of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
22. Force Majeure: If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.
23. Severability: If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.
24. Limitation of Mendocino County Office of Education Liability: The Mendocino County Office of Education's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. In no event shall the Mendocino County Office of Education be liable, in tort or in contract, for special, consequential, indirect or incidental damages arising out of the services performed pursuant to this Agreement.
25. Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
26. Authorization: Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

27. Attachments: The following Attachments, attached hereto, are incorporated herein by reference:

Attachment A – Scope of Services

Attachment B – Compensation