

SERVICES AGREEMENT
between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
and
THE NAPA VALLEY UNIFIED SCHOOL DISTRICT

This Services Agreement ("**Agreement**"), effective June 1, 2019 ("**Effective Date**"), is by and between The Regents of the University of California, a California public corporation ("**University**"), on behalf of its Lawrence Hall of Science at its Berkeley campus, and the Napa Valley Unified School District ("District"), having a principal place of business at 2425 Jefferson Street, Napa, CA 94558. "**Party**" hereinafter refers to each Party individually, or collectively as "**Parties.**"

BACKGROUND

- A. The University has the experience and capabilities necessary to perform the services contemplated by this Agreement and the performance of such services is consistent with its educational, research, and public service activities; and
- B. District would like the University to provide the services as set forth in this Agreement.
- C. In consideration of the mutual covenants, terms and conditions in this Agreement, the Parties agree to the following:

AGREEMENT

1. Scope of Work.

The University will perform the services and, if applicable, provide the deliverables set forth in the attached Exhibit A, incorporated by reference and made a part of this Agreement.

2. Fees.

The fees or rates for the services to be rendered by the University are set forth in Exhibit A. District will pay the University within 30 days from the date of University's invoices. Past due payments will accrue a 1% service charge per month. University will submit all invoices to District's representative listed in Section 15 (**Notice**). All payments from District to the University will be made by check payable to "The Regents of the University of California" to an address specified in the invoice or by wire transfer to an account specified in the invoice. Payment, unless set forth otherwise, includes all applicable taxes, expenses, travel, meals, administrative support, office charges and materials. No other charges will be paid by District.

3. Term and Termination.

3.1. This Agreement commences on the Effective Date and terminates on June 15, 2020 ("**Term**"), unless earlier terminated in accordance with the terms of this Agreement.

3.2. This Agreement may be terminated by either Party in the event the other Party is in breach of any material term of this Agreement and has failed to cure such breach within 30 days after notice thereof. District's failure to pay any undisputed payment when due under this Agreement will constitute a "material breach" of this Agreement for the purposes of this provision.

3.3. University may terminate this Agreement with or without cause upon 30 days' written notice to District. District will pay the University for all services rendered and expenses incurred as of the date the notice of termination was sent.

3.4. All provisions which, by their nature, extend beyond the Term will survive termination of this Agreement, including but not limited to, Sections **4 (Copyright)**, **5 (University Name, Trademarks and Logos)**, **6 (Disclaimer of Warranty)**, **7 (Limitations of Liability)**, **8 (Indemnification)**, **9 (Insurance)**, and **10 (Confidentiality)**.

4. Copyright.

All rights to a Party's pre-existing copyrighted or copyrightable materials (or derivative works thereof) will be retained by such Party. All copyright rights to any works created in the performance of this Agreement ("**Works**") will vest with the University as a "work made for hire" under U.S. copyright law. If it is determined that the University is not the owner of such Works under the "work made for hire" doctrine, District hereby irrevocably assigns to the University all right, title, and interest (including copyright rights) to and in such Works. The University grants to District a non-transferable, royalty-free, non-exclusive license to use the Works solely for internal business purposes. District will not use the Works for any other purpose without the prior written consent of the University.

5. University Name, Trademarks and Logos.

5.1. District will not use the name of the University of California ("**UC**"), any abbreviation thereof, any name of which "University of California" is a part, or any trademarks or logos of the University ("**University Marks**"), in any commercial context (including, without limitation, on products, in media (including websites), and in advertisements), or in cases when such use may imply an endorsement or sponsorship of District, its products or services. All such uses of the University's name and trademarks must receive prior written consent from The Regents of the University of California through the Office of Business Contracts and Brand Protection, who can be reached at bcbp@berkeley.edu. At all times, District agrees to comply with California Education Code Section 92000.

5.2. University Marks are and will remain exclusively the property of the University. District will not, either directly or indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and District hereby expressly waives any right which it may have in University Marks. District recognizes the University's exclusive ownership of University Marks.

6. Disclaimer of Warranty.

Except as expressly set forth otherwise in this Agreement, the University makes no warranties, either express or implied, as to the services, the deliverables, or the results provided under this agreement, including, but not limited to, warranties of merchantability, fitness for a particular purpose, and non-infringement. District acknowledges that the services, the deliverables, and the results are provided on an "as is" basis and without warranties of any kind. District further acknowledges that it uses such services, deliverables, and results at its own risk.

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Approved for form 10/5/2018 OLA:MW; RS:LD

BCMS # 15374

The University will bear no responsibility for the success or failure of the services, deliverables, or results.

7. Limitations of Liability.

Neither Party shall be liable for any indirect, consequential, incidental, special, punitive, or exemplary damages of any kind arising out of or in any way related to this agreement, whether in warranty, tort, contract, or otherwise, including, without limitation, loss of profits or loss of good will, whether or not the other Party has been advised of the possibility of such damages and whether or not such damages were foreseeable.

8. Indemnification.

8.1. Each Party will defend, indemnify, and hold the other Party, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent acts of the Party, its officers, agents, or employees. The Party seeking indemnification agrees to provide the other Party with prompt notice of any such Claim and to permit the indemnifying Party to defend any claim or action, and to cooperate fully in such defense. The indemnifying Party will not settle or consent to the entry of any judgment in any Claim without the consent of the other Party, and such consent will not be unreasonably withheld, conditioned, or delayed.

8.2. If District is providing any materials to University in the performance of this Agreement, pursuant to Section 12 (**Materials Provided by District**) below, District will indemnify, defend, and hold harmless the University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that District Materials (defined in Section 12 below) or the University's use of District Materials constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The University retains the right to participate in the defense against any such suit or action, and District will not settle any such suit or action without the University's consent.

9. Insurance.

9.1. The Parties will keep in full force and effect during the Term, at each Party's own expense, insurance or in the case of the University, self-insurance with coverages as follows ("Insurance"):

A. Commercial Form General Liability Insurance with minimum limits as follows:

i. Each Occurrence	\$1,000,000
ii. Products/Completed Operations Aggregate	\$2,000,000
iii. Personal and Advertising Injury	\$1,000,000
iv. General Aggregate	\$2,000,000

B. Workers Compensation as required by applicable law.

C. If a representative of District will be driving on campus, Business Automobile Insurance with insurance coverage amount of \$1,000,000 per occurrence will be required.

9.2. If the Insurance is written on a claims-made form, it will continue for three (3) years following termination of this Agreement.

9.3. The Insurance will provide for a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement.

9.4. Within thirty (30) days of the execution of this Agreement, each Party will furnish the other Party with a Certificate of Insurance ("**Certificate of Insurance**") evidencing compliance with the insurance provisions of this Agreement. District's Certificate of Insurance will be delivered to University's representative specified in the Section 15 (**Notice**). Each Party is required to give thirty (30) days' advance written notice to such other Party of any modification, change, or cancellation with respect to the Insurance.

9.5. The insurance requirements set forth in this Section will not limit a Party's liability.

10. Confidentiality.

"**Confidential Information**" is defined as non-public information that (i) a Party considers confidential or proprietary; and (ii) is marked "Confidential" or "Proprietary." If a Party discloses Confidential Information orally, the disclosing Party will indicate its confidentiality at the time of disclosure and will confirm such in writing within ten (10) days of the disclosure. Unless otherwise mandated by law, court order, or Public Records Act request, each Party will not disclose the other Party's Confidential Information to any third party, and each Party will only use the other Party's Confidential Information to the extent necessary to perform this Agreement. The receiving Party's confidentiality and use obligations will extend for a period of one (1) year from the date of receipt of the disclosing Party's Confidential Information.

11. Export Control and Biohazardous Materials.

If any of the materials and/or information provided to the University by District ("**Export Materials**") are: export-controlled under the International Traffic in Arms Regulations (22 CFR 120-130), the United States Munitions List (22 CFR 121.1), or Export Administration Regulations (15 CFR 730-774); controlled on a military strategic goods list; Select Agent(s) under 42 CFR Part 73, et seq.; or subject to regulations governing access to such Export Materials, District will provide the University contact in Section 15 (**Notice**) with written notification that identifies such Export Materials, including their export classification, prior to disclosure.

12. Materials Provided by District.

In the event the University is producing deliverables or providing services that require District to furnish or supply the University with parts, goods, data, specifications, components, programs, practices, methods, Export Materials, or other property under this Agreement (collectively, "**District Materials**"), District warrants that District Materials will: (1) conform to the requirements of this Agreement, including all descriptions, specifications, and attachments made a part hereof, and (2) will not infringe any third party rights. The University's acceptance of District Materials will not relieve District from its obligations under this warranty.

13. Data Security and Privacy.

The Parties do not anticipate providing or exchanging any personally identifiable information or data identifiable to an individual ("**Protected Information**") in the performance of this Agreement. In the event that any Protected Information is revealed, shared or exchanged,

each Party agrees to comply with all applicable local, state, federal and international laws regarding Protected Information, and the Parties will agree that supplemental agreements may be required to govern such use.

14. Miscellaneous.

14.1. Governing Law. This Agreement will be governed by and interpreted according to the laws of the State of California, without regard to its conflict of laws provisions. Parties agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought will be exclusively in the County of Alameda.

14.2. Relationship of the Parties. In the performance of this Agreement, the Parties, and their officers, agents and employees, will act as independent contractors. Nothing in this Agreement will create, or be construed to be, a joint venture, association, partnership, franchise or other form of business relationship. At no time will the employees, agents or assigns of one Party be considered the employees of the other Party for any purpose, including but not limited to workers' compensation purposes.

14.3. Force Majeure. If any Party fails to timely perform its obligations under this Agreement because of natural disasters, labor disputes, strikes, actions of governmental authority, acts of terrorism, wars, judicial orders or other causes beyond the reasonable control of the Party obligated to perform, then that Party's performance will be excused for the duration of such force majeure event.

14.4. Assignment. Neither Party may assign this Agreement without the written consent of the other Party.

14.5. Severability. In the event any portion of this Agreement is declared illegal, unenforceable, invalid or void by a court of competent jurisdiction, such portion will be severed from this Agreement, and the remaining provisions will remain in full force and effect.

14.6. Integration. This Agreement, including any exhibits, constitutes the entire understanding and agreement between the Parties as to all matters contained herein, and supersedes all prior agreements, representations and understandings of the Parties. The parties may utilize their standard forms of purchase orders, invoices, quotations and other such forms in administering this Agreement, but any of the terms and conditions printed or otherwise appearing on such forms will not be applicable and will be void. Modifications, including additions or revision of any terms and conditions may only be made by a written agreement signed by both Parties that expressly states in the title of such document an intent to amend this Agreement.

14.7. Waiver. No waiver of any provision of this Agreement will be effective unless made in writing and signed by the waiving party. The failure of any Party to require the performance of any term or obligation of this Agreement, or the waiver by any Party of any breach of this Agreement, will not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

14.8. Counterparts. This Agreement may be executed in two or more counterparts, which may be transmitted via facsimile or electronically, each of which will be deemed an original and all of which together will constitute one instrument.

14.9. Headings. Article and Section headings used in this Agreement are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

15. Notice.

All notices under this Agreement must be in writing, and must be mailed or delivered by hand or recognized overnight delivery service to the Party to whom such notice is being given. Any such notice will be considered to have been given when received by the Party to whom notice is given or upon receipt by the sending Party of written confirmation of refusal of delivery by the Party to whom notice is sent.

University's representative for all purposes will be:

Name: Susan Gregory, Deputy Director

Address: Lawrence Hall of Science, 1 Centennial Drive, Berkeley, CA 94720-5200

Phone: (510) 642-2829

Email: contracts@berkeley.edu

District's representative for all purposes shall be:

Name: Damon Wright, Executive Director of Secondary Education

Address: Napa Valley Unified School District, 2425 Jefferson Street, Napa, CA 94558

Phone: (707) 253-3815 ext. 4842

Email: dwright@nvusd.org

16. Representation on Authority of Parties/Signatories

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the duly authorized Parties have executed this Agreement as of the Effective Date.

NAPA VALLEY UNIFIED SCHOOLDISTRICT

By: _____
Name: _____
Title: _____
Date: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: Shauna Brown
Name: Shauna Brown
Title: Senior Business Contracts Officer
Date: May 10, 2019

EXHIBIT A

I. PARTIES

District:

Full Legal Name: Napa Valley Unified School District

Address (principal place of business): 2425 Jefferson Street, Napa, CA 94558

District Programmatic Contact: Damon Wright, Executive Director of Secondary Education

Phone Number: (707) 253-3815 ext. 4842

Email: dwright@nvusd.org

University:

Department: Lawrence Hall of Science, University of California, Berkeley

Address: 1 Centennial Drive, Berkeley, CA 94720-5200

University Programmatic Contact: Vanessa Lujan, BaySci Director

Phone Number: (510) 643-0311

Email: vlujan@berkeley.edu

II. STATEMENT OF WORK

Services: University will provide:

A. District Planning for Science = 3 meetings

- i. Facilitate planning on design and implementation of the District's science program and vision with the goals of increasing science leadership capacity throughout the district and school sites, and improving the quality and quantity of K-12 science instruction district-wide.
- ii. Collaborate with the District's science leadership team on the overall district K-12 science engagement strategy.

B. District Leadership Seminars = 3 days

- i. Develop a district Science Leadership Team focused on long-range planning for K-12 science, identifying critical elements for an effective science program and thinking about supporting science instruction in concrete ways via a district science action plan,
- ii. Respond to District needs through consultation and customized support through these leadership seminars.

C. Technical Assistance = 3 days

Deliver customized support and differentiated professional development offerings for leaders, principals, and teacher leaders informed by the analysis of student assessments, classroom practice and levels of school-wide implementation.

District Responsibilities: Recruitment of participants for the District Science Leadership Team, district planning meetings, and technical assistance days, as applicable.

III. FEES AND PAYMENT SCHEDULE

Fees (i.e., Rates/Cost): \$45,000 total

Payment Schedule:

\$15,000 on Oct 1, 2019

\$15,000 on Feb 1, 2020

\$15,000 on May 1, 2020