

SAN RAFAEL CITY SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the 26th Day of March 2018, between the San Rafael City School District ("District") and Challenge Day ("Contractor") (together, "Parties").

WHEREAS, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District is in need of such special services and advice; and

WHEREAS, the Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Contractor shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):
2. **Term.** Contractor shall commence providing services under this Agreement on October 16, 2018 and will diligently perform as required and complete performance by October 24, 2018.
3. **Submittal of Documents.** The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certificate
<u> X </u>	Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> </u>	W-9 Form
<u> </u>	_____
<u> </u>	_____

4. **Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Thirteen Thousand Nine Hundred Dollars (\$13,900). District shall pay Contractor according to the following terms and conditions:
 - 4.1. Payment for the Work shall be made for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District

for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, except as follows:
6. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.
7. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:
8. **Standard of Care.** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public school districts.
9. **Originality of Services.** 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.
10. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
11. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the

Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

12. Termination. SEE ADDENDUM A

12.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.

12.2. **With Cause by Contractor.** Contractor may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Contractor; or

12.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

12.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceed(s) the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

12.4. At the time of any termination of the contract, all District employee data shall be returned to the District and all District employee information shall be purged from the contractor's system and records.

13. **Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

14. **Insurance.**

14.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of Section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 14.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 14.2.4. All policies shall be written on an occurrence form.
- 14.3. **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 to the District.
15. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

16. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
17. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
18. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The Contractor shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code Section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

21. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 21.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
- 21.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
22. **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 contract 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.
23. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
24. **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 overnight delivery service, or facsimile transmission, addressed as follows:

District

San Rafael City School District
310 Nova Albion Way
San Rafael, CA 94903
ATTN: Mayra Perez, Deputy
Superintendent

Contractor

Challenge Day
2520 Stanwell Dr. Suite 160
Concord, CA. 94520
ATTN: Liu Su'a-Falevai

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 business day next 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.

25. **Integration/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.

26. 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 the county in California in which the District's administrative offices are located.

27. 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.

28. 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.

29. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

San Rafael City School District

Date: _____, 20____

By: _____

Print Name: Mayra Perez

Its: Deputy Superintendent

Challenge Day

Date: March 8, 2018

By: Liu Su'a-Falevai

Print Name: Liu Su'a-Falevai

Its: Share Manager

AGREEMENT for Challenge Day Program

THIS AGREEMENT is effective 1/25/2018 by and between Davidson Middle School (the "Client") and CHALLENGE DAY (the "Vendor"), a California 501(c)3 nonprofit corporation located at 2520 Stanwell Drive, Suite 160, Concord CA, 94520. For the purposes of this agreement Client shall mean all employees of Client, and Vendor shall mean all employees and subcontractors of Vendor.

Witnessed, that the Client and the Vendor for the consideration hereinafter named agree as follows:

Article 1: Statement of Services

- A. Commencing on 10/16/2018 Vendor shall supply services, people and materials for the following:
See Attached List of Days, Addendum A
- B. This agreement applies to all services performed by Vendor or on behalf of Vendor under this agreement, whether performed in anticipation of or following the execution of this agreement.

Article 2: Compensation for Services

As full compensation for direct and indirect labor costs, overhead and profits, the Vendor shall be paid at the following rates for delivering the program, services and material ("Services") as contemplated by this agreement. Such rates shall only cover services that are performed by bona fide employees of the Vendor, or its subcontractors unless otherwise approved by Client's Representative.

- A. Rates for Services will be as follows:
Client to Pay \$3575 per day less scholarship of \$100 for a net of \$3475 per day, subject to Terms of Scholarship, attached to this Agreement not including reimbursable expenses (outlined below) which will be invoiced separately.
Program(s) provided under this agreement are limited to a minimum of forty (40) and maximum of one hundred (100) student participants per day. Any breach of contract pertaining to student numbers will result in an additional charge. Client will be billed an additional sum of \$300 when there are more than 100 but less than 120 participating students. Students participants must be recruited from the contracted school (Client) only. Vendor reserves the right to cancel Program(s) without prior notice, according to terms of Cancellation and Termination article, if there are less or more than the agreed upon student participants.
- B. Expenses: Client will pay in advance (or reimburse Vendor) for necessary, reasonable and documented travel expenses actually incurred as follows:
 - 1) Ground Transportation: Ground transportation to Client's site.
 - i. Mileage over thirty (30) miles from Vendor's office to Client's event venue will be billed to the Client at \$0.56 cents per mile, round trip.

Article 3: Limit of Expenditure

The maximum expenditure authorized hereunder for any service, Excluding reimbursable expenses as indicated shall be \$13900.

Article 4: Invoicing & Payment

Below please find your payment schedule. Adhering to this payment schedule will confirm your requested Challenge Day(s).

- A. Client's requested days will not be confirmed until the 1st installment payment and an authorized Purchase Order for the full invoice amount has been received and credited to your school or organization's account by our administrative offices. All installments are welcomed as early as contracts are completed.
- B. If client's scheduled days are cancelled due to non-payment, client will be required to resubmit their request to host a future Challenge Day. Rescheduling days due to cancellation does not in any way guarantee the cancelled client precedence over other clients waiting for existing or future booking opportunities.
- C. Booking requests made within 90 days of the event date will be confirmed only if scheduling permits and if the contract is accompanied by no less than the 1st installment (and an approved Purchase Order for full invoice amount made payable no later than 30 days after the event.) Payment, Purchase Order and Contract are expected within 5 business days when booking within the 90 day period.
- D. Accounts that have not paid within 30 days of the program date and that have not submitted and received approval for a payment plan are subject to a .05% monthly finance charge. (6% annual finance charge).

Your requested program date is 10/16/2018.

Balance for program(s) at \$3475 per day: \$13900

Schedule of Installments

Installment	Payment Due Date	Payment Amount	Balance Remaining
=====	=====	=====	=====
1st installment	7/18/2018	\$6950	\$6950
2nd installment	8/17/2018	\$6950	\$0

To expedite clarity on any questions, concerns, or issues that may arise regarding payments; please list the information requested below for any/all parties that may be involved in the payment process.

Department

Name

Title

Phone/Ext.

Email

Article 5: Personnel to Be Provided

Client's Representative, hereinafter referred to as the Coordinator, shall be present at each of the program days. The Coordinator shall be **Anne Carmin** or such person or persons as may be designated by the Client.

Vendor must have phone contact regarding final logistics with Coordinator no later than 28 days prior to first scheduled program day. Vendor reserves the right to cancel if Coordinator or alternate Client Representative cannot be reached, subject to the termination section below.

If Coordinator is not a school counselor, Client must also provide a counselor who will attend the entire program day(s) and coordinate any necessary follow-up support for youth participants.

In addition, Client must provide a minimum of one adult for every four (4) youth participants (e.g. 100 youth, 25 adults). If Client is unable to provide a 1 to 4 ratio of adults to student participants, the Client must reduce the number of student participants to meet the required ratio. Vendor reserves the right to cancel the program at the Client's expense if these conditions are not met.

The Coordinator will:

- A. Use the Challenge Day Coordinator's Handbook and other program materials, provided by Vendor to Client, as guides for coordinating participation and logistics for the program day(s).
- B. Act as primary contact with the Challenge Day office regarding all logistics for program day(s).
- C. Attend a phone meeting with Challenge Day Client Manager named below five (5) to six (6) weeks prior to first program day. The purpose of this meeting is to review the Challenge Day Coordinator's Handbook and all arrangements and logistics.
- D. Maintain weekly e-mail and/or phone contact with the Challenge Day Client Manager from six (6) weeks prior to first program day to one (1) week after the last program day.
- E. Take responsibility for ensuring that all personnel, facilities, tools and equipment are provided as written in this agreement and the Challenge Day Coordinator's Handbook.
- F. Be available to speak with Challenge Day staff the day prior to the first program day to review last-minute logistics.
- G. Attend each program day in its entirety and/or assign an alternate coordinator to attend each program day in its entirety. If an alternate coordinator is assigned, the alternate coordinator must agree to assume all coordinator responsibilities regarding event participants, logistics and personnel for that day.

Article 6: Facilities to Be Provided

All work hereunder shall be performed on Client's premises or at sites designated by Client. Client to secure a private enclosed room large enough for the activities of the participants, including Adult Participants (50' x 50' minimum; 20' ceiling height). Private room is defined as one which will be free of interruptions for the duration of the program, where loud sounds such as cheering will not disturb occupants in adjoining rooms, any windows at or below eye level have been covered, and participants must be able to eat lunch in the same site of the program. Site must be confirmed three (3) weeks prior to the event(s).

Article 7: Changes

Client may, during the term of this agreement, request additions to the services furnished by the Vendor. Client reserves the right to cancel any scheduled services consistent with the terms of Cancellation and Termination article. Vendor shall not be obligated to make changes without its written acknowledgment of acceptance of such changes.

Article 8: Cancellation And Termination

- A. If Client schedules program days with Vendor and cancels ninety one (91) days or more prior to the scheduled date of program, no fee is due.
- B. If Client schedules program days with the Vendor and cancels sixty one (61) to ninety (90) days prior to the scheduled date of the program then Client will pay Vendor 1st installments for the days cancelled, plus any travel costs or fees incurred by the Vendor on behalf of the Client.
- C. If Client schedules program days with the Vendor and cancels sixty (60) days prior to the scheduled date of the program then Client will pay Vendor all installments for the days cancelled, plus any travel costs or fees incurred by the Vendor on behalf of the Client.
- D. Vendor must have phone contact regarding final logistics with Client's representative no later than 28 days prior to the first scheduled program day. Vendor reserves the right to cancel if Client cannot be reached, subject to Cancellation and Termination clauses B and C.
- E. If program days are canceled due to weather outside of listed items in Force Majeure Article, Client will pay Vendor any travel costs or fees incurred by the Vendor on behalf of the Client for the dates listed in **Addendum A**. If openings exist, program days may be rescheduled to a date or dates within one (1) calendar year from the original date(s). If the event is to be rescheduled Client will pay Vendor additional travel costs incurred for rescheduled event.
- F. Client may terminate this agreement at any time subject to the provisions of cancellation indicated above in clauses A through E.

Article 9: Choice of Law

The laws of the State of California shall govern this agreement and all transactions under it. Vendor agrees to submit to the jurisdiction of any court wherein an action is commenced against Client based on a claim for which Vendor has agreed to indemnify Client under this Agreement.

Article 10: Entire Agreement

The provisions of this agreement supersede all contemporaneous oral agreements and all prior oral and written communications (including the School Coordinator Program Packet) and understanding of the parties with respect to the subject matter of this Agreement. This agreement is the entire agreement between the parties.

Article 11: Force Majeure

Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, or other similar causes beyond the control and without the fault or negligence of the delayed or non performing party or its subcontractors.

Article 12: Insurance

Vendor shall maintain in full force and effect, at its cost and expense, liability insurance in the aggregate amount of \$1,000,000.

Article 13: Disputes

Any controversy, dispute or claim arising out of or relating to the interpretation of this Agreement shall be subject to a thirty (30) day negotiation period between the parties in which key business people for the parties will, in good faith, attempt to resolve the matter.

Article 14: Mediation and Arbitration

If a dispute arises out of or relates to this Agreement, or its breach, and the parties have not been successful in resolving such dispute through negotiation, the parties agree to attempt to resolve the dispute through mediation by submitting the dispute to a sole mediator selected by the parties or, at any time at the option of either party, to mediation by the American Arbitration Association ("AAA"). If not thus resolved, it shall be referred to a sole arbitrator selected by the parties within thirty (30) days of the mediation or, in absence of such election, to final and binding arbitration by a sole arbitrator under the AAA Arbitration Rules ("Rules") in effect on the date of this Agreement. The mediation and arbitration, including arguments and briefs, shall be in the English language in the State of California, United States of America. The arbitrator may not limit, expand or otherwise modify the terms of this Agreement or award exemplary or punitive damages or attorney's fees. The arbitrator shall apply the substantive law of the State of California. The award shall be in United States dollars. Judgment upon the award rendered in the arbitration may be entered in any court having jurisdiction thereof. Each party shall bear its own expenses (including attorney's fees) and an equal share of the expense of the mediator and arbitrator and the fees of the AAA. The parties and their representatives, other participants and the mediator and arbitrator shall hold the existence, content and result of the mediation and arbitration in confidence. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation or arbitration. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate or arbitrate.

Article 15: Tools and Equipment

Unless otherwise specifically provided for in this agreement, Vendor shall provide all tools and equipment ("equipment") for performance of this Agreement. Should the Vendor actually use any equipment owned or rented by Client, Vendor accepts the equipment "as is" and the Vendor shall have the risk of damage to such equipment as long as damage is sustained as a result of Vendor's actions. Vendor agrees not to remove the equipment from Client's premises, and to use equipment only for the services covered under this agreement. In addition to one chair per participant (chairs must be lightweight and without arms), Client must provide the equipment and supplies specified in the Challenge Day Coordinator's Handbook.

Article 16: Timely Performance

If Vendor has knowledge that anything prevents or threatens to prevent the timely performance of the Services under this Agreement, Vendor shall immediately notify Client thereof and include all relevant information concerning the delay or potential delay.

Article 17: Title to Media / License to Use

Receipt of materials supplied under this agreement represents acceptance of a license to use such materials for "in house" activities sponsored by Client solely for the benefit of Client's employees and students. Such rights are restricted to use by those employees who participate in the program to which the materials are related. License to use any documents and other tangible media of expression ("Training Media") furnished hereunder by Vendor to Client shall pass to Client on full payment of invoice for the services associated with such media. Client expressly agrees that it does not have the right to reproduce or sub-license such media.

Article 18: Ownership of Programs

Vendor's programs or related materials in any form including but not limited to written, video, audio or electronic reproductions, and shall obligate its employees, subcontractors and others working for it, to adhere to the same limitations, without written consent of Vendor. Client agrees to limit its use of programs and materials supplied by Vendor to "in house" activities sponsored by Client solely for the benefit of its employees and students.

Article 19: Right to Use Ideas

The ideas presented in the Vendor's programs may be used by Client and its employees, subcontractors and others working for Client without restriction. However, due to the nature of the exercises, which are protected under Federal copyright law, specific exercises, such as the Power Shuffle, may not be reproduced in any format.

Article 20: No Result or Benefit

The Vendor promises only to deliver the program and does not warrant or promise any result or benefit to Client or those participating.

Article 21: Representations

Vendor represents to Client that the services rendered by the Vendor will be performed in a manner consistent with highest professional standards in its field.

Article 22: Indemnity

- A. The Client shall indemnify and save harmless the Vendor, its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise, directly or indirectly and whether by statute or otherwise, out of any act or omission of the Client, its employee and agencies in the performance by the Client of this Agreement.
- B. The Vendor shall indemnify and save harmless the Client, its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise, directly or indirectly and whether by statute or otherwise, out of any act or omission of the Vendor, its employees and agencies in the performance by the Vendor of this Agreement.
- C. The above indemnifications shall survive the termination of this Agreement.

Article 23: NonWaiver

No agreement or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

Article 24: Severability

If any portions of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or provision, and the rights and obligations of the Vendor and Client shall be construed and enforced accordingly.

Article 25: Notices

Any notice or demand which under the terms of this Agreement or under any statute must or may be given or made by Vendor or Client shall be in writing and shall be given or made by confirmed facsimile, or similar communication, or by certified mail, registered mail, or courier service addressed to the respective parties as follows:

For Davidson Middle School:

Bob Marcucci
280 Woodland Ave.
San Rafael, CA 94901

For Challenge Day:

Liu Su'a-Falevai
Challenge Day
2520 Stanwell Drive, Ste 160
Concord, CA 94520
Fax: 925-969-0256

The effective dates of such notice shall be (1) upon evidence of successful facsimile transmission, or (2) five days following the date mailed for certified or registered letters and two days following the date mailed for overnight letters (courier service), or (3) when delivered, if in person. The above addresses may be changed at any time by giving written notice as provided above.

Article 26: Signatures

By signing below, I agree to the articles of this Agreement and agree to provide support, personnel, facilities, tools and equipment as written above. I attest that I am authorized to make agreements on behalf of Davidson Middle School:

Authorized Signature Name: Mayra Perez, Deputy Superintendent

Signature: _____

Date: _____

By signing below, I attest that I have read and agree to perform the responsibilities of Coordinator, as written above:

Coordinator Name: Anne Carmin

Title: _____

Signature: _____

Date: _____

For Challenge Day:

Share Manager Name: Liu Su'a-Falevai

Signature:  _____

Date: 3/8/17 _____

Addendum A to Agreement for Challenge Day Program

[illegible]

TERMS OF SCHOLARSHIP AGREEMENT for Challenge Day Program

Activities Prior to Challenge Day Program(s)

SCHOLARSHIP: Locked in 2017-2018 pricing of \$3475 per day when day(s) are booked by 1/31/18.