**SAN RAFAEL CITY SCHOOL DISTRICT**

**INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the 15**th day of October 2019** between the San Rafael City School District ("District") and **Wellness in the Schools, Inc.** ("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 "Memorandum of Understanding and Exhibit A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):

**2. Term**. Contractor shall commence providing services under this Agreement on January 01, 2020 and will diligently perform as required and complete performance by **June 30, 2022.**

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:

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

4. **Compensation**. District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Twenty-One Thousand Dollars** ($21,000.00). 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 noted in attached Services.

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.

8. **Equipment and Facilities**: Contractor agrees at all times during its use and occupancy of the premises to comply with all applicable ordinances, laws and regulations affecting the use and occupancy including but not limited to Board Policy #1330, Use of School Facilities

9. **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.

10. **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.

11. **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.

12. **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.

13. **Termination**. At any time prior to the expiration of the term of this Agreement pursuant to the attached MOU, either party may terminate this Agreement upon thirty (30) days written notice to the other party. Upon termination, District will 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.

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

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

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

    13.1.3. 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.

14. **Indemnification**. To the furthest extent permitted by California law, both Parties shall, at their sole expense, defend, indemnify, and hold harmless the other, 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.

15. **Insurance**.

15.1. 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.

15.1.1. **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)

15.1.2. **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.

15.1.3. **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 |

15.2. **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:

15.2.1. 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."

15.2.2. 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.

15.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds 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.

15.2.4. All policies shall be written on an occurrence form.

15.3. **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.

16. **Assignment**. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

17. **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.

18. **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.

19. **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.

20. **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).

21. **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.

22. **Tuberculosis Clearance.** Contractor shall insure any employees, agents or representatives providing services shall have been found free of tuberculosis pursuant to Ed. Code 49406.

23. **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:

    23.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.

    23.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

24. **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.

25. **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.

26. **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** | **Contractor** |
|---|---|
| San Rafael City School District | Wellness in the Schools |
| 310 Nova Albion Way | 31 West 125th Street, 5th Floor |
| San Rafael, CA 94903 | New York, NY 10027 |
| ATTN: Douglas Marquand | ATTN: Marty Hillis |
| Title: Assistant Superintendent | |

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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. 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** | **Wellness in the Schools** |
|---|---|
| Date: _____, 20___ | Date: _____, 20___ |
| By: _____ | By: _____ |
| Print Name: Douglas Marquand | Print Name: |

Attachment follows (3 pages): *Memorandum of Understanding and Exhibit A*

**Memorandum of Understanding**

This Memorandum of Understanding (this "MOU") is entered into as of September 23, 2019 (the "Execution Date") between Wellness in the Schools, Inc. ("WITS") and San Rafael City School District ("the "District" and collectively, the "Parties").

WHEREAS, WITS is a non-profit 501(c)(3) organization dedicated to children's environmental health, nutrition and fitness;

WHEREAS, WITS has agreed to provide the nutrition program described below (the "Program") at the School during the Term as defined below; and

WHEREAS, the District has authorized the WITS volunteers and chefs to operate the Programs in the District at the school locations identified by the District.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the Parties, the Parties agree as follows:

1. Programs: WITS shall implement the Program as defined in Exhibit A. Through the Program, WITS shall work with the School's wellness committee to improve the school lunch experience. WITS will also provide support to parents, students, and staff in order to help the School obtain what it needs for an optimal experience.

2. Location and Hours: WITS will use, and the District will provide, space within the District to operate the Program. The Program will be conducted within the District's schools during or after school hours, as agreed to by the Parties. The Program will be offered only on days the School is in session. WITS reserves the right not to offer the Program on the schedule as defined in Exhibit A for personal development and other days as necessary. WITS shall use its best efforts to coordinate these days in advance with the School or give notice of absence.

3. Insurance and Liability: The activities conducted under the Program are sanctioned by the School. Therefore, the School agrees to indemnify, hold harmless and defend WITS, its agents, employees and volunteers from any and all claims, judgements, costs, and expenses, included but not limited to, reasonable attorney's fees, discovery and court costs arising out of or resulting from Program activities at the Schools. At the request of WITS, the School shall provide to WITS evidence of the District's general liability insurance policy naming WITS as an additional insured party.

4. Costs: WITS shall provide the Program in the District as defined in Exhibit A. The District agrees to provide the food and supplies necessary for implementation of the Program in the District, this includes but is not limited to the equipment and supplies needed to do WITS Labs twice per year at each school. Except as set forth in this Section, each Party shall bear its own costs.

5. Term: The term of this MOU shall be from the date of execution and shall extend until the date defined in Exhibit.

6. Termination: At any time prior to the expiration of the term of this MOU as set forth in Section 5 above, either party may terminate this MOU upon thirty (30) days written notice to the other party.

7. Authority: The undersigned superintendent (or other equivalent officer) of the District affirms that he or she has the authority to execute and enter into this MOU on behalf of the District and to authorize WITS to operate the Program at the District.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first written above.

WELLNESS IN THE SCHOOLS, INC.

By: _____
Name: Nancy Easton
Title: Executive Director

_____
Name of District

By: _____
Name:
Title:

Exhibit A

**Program: CookCamp**

| Program Name | Instructor Provided | Days Offered | Hours Offered |
|---|---|---|---|
| CookCamp | 1 Chef | 1 per week | 5 per day |

The WITS Chef will work across 5 schools in the district working a total of 25 hours/week. CookCamp includes WITS Labs at each school two times per year, fall and spring.

**Payment:** The District agrees to pay the following:

Year 1: $3,500.00 (50% prorated due to January start date)
Year 2: $7,000.00
Year 3: $10,500.00

It is understood that the total cost to operate the Program in the District is $35,000 per year but WITS will secure funding for the remaining balance.

**Term:** The Term of this MOU shall be three years from the Execution date or through the end of that year's academic session, whichever is sooner. It is understood that the first year programming will begin in January 2020, but that Programming in years 2 and 3 will be on an academic year schedule.