

Sylvan School District

**INDEPENDENT CONTRACTOR AGREEMENT
FOR SPECIAL SERVICES
SYLVAN AND COLEMAN F. BROWN ELEMENTARY SCHOOLS**

This Independent Contractor Agreement for Special Services ("Agreement") is made and entered into on July 1 2020, by and between the Sylvan Union School District, a public school district and a political subdivision of the State of California, Stanislaus County, hereinafter referred to as the "District," and the Boys & Girls Clubs of Stanislaus County, a private non-profit organization hereinafter referred to as the "Contractor" (hereinafter referred to collectively as, "Parties").

RECITALS

WHEREAS, the District has qualified for State of California grant funds ("Funds") pursuant to the After School Safety and Education Program ("Program"), created in the 2002 California voter approved Proposition 49, enacted as Article 22.5 in the California Education Code Section 8482 et. seq. and administered by the California Department of Education; and

WHEREAS, the Program will provide the Funds to the District so that the District may partner with a local non-profit organization to provide services in furtherance of the Program's purpose to deliver literacy and educational enrichment activities for the benefit of students from the ending of each regular school day to 6 p.m.; and

WHEREAS, the Program has been shown to reduce juvenile crime and improve students' grades, attendance and conduct; and

WHEREAS, the Contractor desires to provide Program services for the District's students to include literacy and educational activities; and

WHEREAS, the Contractor is a private non-profit youth service agency organized pursuant to the laws of the State of California; and

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 to provide the Program's academic enrichment and recreational activities for District students of all ages; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform the special Program services for the benefit of District students, and District requires such services on a limited basis.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Contractor shall provide the Program services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").

2. **Term of Agreement.** This Agreement will commence on July 1, 2020, and will continue through June 30, 2021 or until such time as the District no longer receives Funds to deliver the Services for the benefit of District students or the Agreement is terminated in accordance with the terms of this Agreement, whichever comes first.

3. **Program Location.** The Contractor shall provide the Services at the following sites (collectively, "District Facilities"):

- Sylvan Elementary School, 2908 Coffee Road, Modesto CA 95355;
- Coleman Brown Elementary School, 2024 Vera Cruz Drive, Modesto CA 95355

4. **Submittal of Documents.** The Contractor shall not commence the Services under the terms of this Agreement 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 (Attached as Exhibit "B")
X	Insurance Certificates and Endorsements
X	W-9 Form
X	Fingerprinting/Criminal Background Investigation Certification (Attached as Exhibit "C")
X	Tuberculosis Clearance (Attached as Exhibit "D")

5. **Priority of Use.** Throughout the term of this Agreement, District programs, including athletic and recreational programs, shall take precedence and priority over the Contractor's right to use District Facilities. The Contractor's use of District Facilities shall be solely for the Contractor's performance of the Services. Any use of District Facilities for other than the Contractor's performance of the Services is prohibited without the prior written consent of the District.

6. **Compensation.** The District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee of \$237,837 ("Total Compensation"), adjusted for any decreases in State Funding to the ASES program and adjusted downward by the District in an amount each year to cover employment compensation of District employees who will provide the Services. Additionally, Indirect Costs of 3.7% and Administrative Support in the approximate amount of \$10,294 will be deducted from the service fee. Remaining amount of Total Compensation will be paid by the District to the Contractor according to the following terms and conditions.

6.1 Contractor and District agree that District will pay Contractor one (1) ("Advance Payment") in the amount of \$20,000 on or before July 30, 2020, upon the approval and full execution of this Agreement.

6.2 Thereafter, District will pay the remaining balance in equal installments in the amount of \$11,000 on a monthly basis for ten (10) additional months due and payable on the 10th of each month. The final payment will be adjusted to reflect actual district expenses incurred in support of the program.

6.3 All payments will be based on invoices submitted to the District by the Contractor and approved by the District's authorized representative. The Contractor will provide the District with invoices not more frequently than

monthly for Services actually performed, and all invoices must include a report containing the number of students served each day at each site. Payment for the Services shall be made for all undisputed amounts within thirty (30) days after the Contractor submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made.

6.4 The Contractor shall cooperate with the District in preparing documentation and/or submitting information that may be required for purposes of obtaining Funds from the appropriate administering agency for the Program, as requested by the District.

7. **Local Match Requirement.** The ASES Program requires District to provide a 33% local funding match, which amounts to \$78,486.40 annually. Of this match, District agrees to provide \$35,000 of in-kind contributions to the Program and Services. The balance of the local match requirement, or \$43,487, shall be provided by Contractor. Documentation of the value of all in-kind contributions shall be provided to District at the times and in the form requested by the District.
8. **Expenses.** The District shall not be liable to the Contractor for any costs or expenses paid or incurred by the Contractor in performing Services for the District.
9. **Staffing.** The Contractor shall hire, supervise, train and assign one (1) staff position for every twenty (20) students enrolled in the Boys & Girls Clubs. Current Sylvan School District ASES Employees have first rights to available positions and will be supervised and trained in partnership with the contractor. Staff members to provide Services under this Agreement as follows:
 - Sylvan Elementary School, 105 students;
 - Coleman Brown Elementary School, 105 students;

For each activity/component, there shall not be more than 20 students for each staff person. Prior to commencing the performance of Services pursuant to this Agreement, the Contractor shall require its employees to submit evidence of an examination within the past sixty (60) days to determine that he or she is free of active tuberculosis. The Contractor agrees Contractor's employees who skin test negative shall thereafter be required to take a tuberculosis test at least once every four (4) years pursuant to Education Code Section 49406. As noted in Section 4 above, the Contractor is required to submit a Tuberculosis Clearance certificate in the form attached hereto as **Exhibit "D."**

10. **Plan to Ensure Daily Staffing.** The Contractor shall establish and maintain a qualified substitute staff member system to ensure the staff-to-student ratio will be maintained in the daily delivery of Services despite employee absences.
11. **Security Clearance.** The Contractor shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements, including, but not limited to, those described in Education Code Sections 45125.01 and 45125.1, as applicable. The Contractor's responsibility shall extend to all Program staff and subs, regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent Contractors of the Contractor. The Contractor shall not permit any employee to have any contact with District students until the Contractor has verified in writing to the District's Board of Education ("Board") that such employee has not been convicted of a felony,

as defined in Education Code Section 45125.1. Verification of compliance with this Section shall be provided in writing to the District prior to each individual's commencement of employment or the provision of Services pursuant to the Program and prior to permitting contact with students participating in the Program. As noted in Section 4 above, the Contractor is required to submit a Fingerprinting/Criminal Background Investigation Certification in the form attached hereto as **Exhibit "C."**

- 12. Qualifications and Licenses.** The Contractor shall be responsible for verifying the credentials, certificates, and licenses of Program staff, agents, subcontractors or volunteers or any other evidence of such individual's qualifications and fitness for participation in the Program. All Program staff and volunteers shall be subject to the health screening requirements in current law and District policy for school personnel and volunteers in the District. All staff members who directly supervise students shall, at a minimum, meet the qualifications for paraprofessional in the District. Verification shall extend to motor vehicle licenses and possession of adequate vehicle insurance coverage, if such individuals will be required to provide transportation services as part of their Program duties.
- 13. Staff Performance and Evaluation.** The District will assign a program coordinator to work with the Contractor on the Program ("Program Coordinator"). The Program Coordinator will provide information as he or she deems appropriate for the Contractor's consideration in its evaluation of its assigned employees. At the Program Coordinator's request, the Contractor will dismiss employees whose performance is determined by the District to be incompatible with the goals or requirements of the Program.
- 14. Program Compliance.** Contractor shall be responsible for the following Program and compliance issues:

 - 14.1 Contractor Responsibilities. Contractor shall:

 - 14.1.1 Provide Services in compliance with ASES Grant and applicable laws and regulations, and ensure that the Program contains a balance of components that include Educational Literacy and Enrichment;
 - 14.1.2 Provide and implement program enrollment policies that encourage all students at the site to participate. Such enrollment policies shall not require the Program to serve more students than are funded by the State;
 - 14.1.3 Create and maintain records of participation daily at each site, including but not limited to:

 - i. Name of child and/or any required identification;
 - ii. Date and time of day entering and exiting the Program;
 - iii. Any and all other records required by the ASES Grant or applicable law or regulations
 - 14.1.4 Provide all materials and equipment necessary for the implementation of the Program, unless otherwise agreed to between the parties;
 - 14.1.5 Ensure that no more than the maximum allowable portion of the ASES grant funds are used on administrative costs;
 - 14.1.6 Prepare all required reports for maintenance of grant funding or otherwise necessary, including, without limitation, Attendance Reports, Expenditure Reports, Budgets, Budget Revision Requests, and Evaluation Reports.

- 14.1.7 Hire, supervise and evaluate personnel as needed to supplement existing District staff during the term of this Agreement, in coordination and consultation with the Program Coordinator
- 14.1.8 Provide training to all staff persons providing Services.
- 15. **Documentation of Hours Worked.** Staff of the Contractor shall maintain records of hours worked at their respective District Facility and shall sign in and out daily on a time log maintained by the District's Program Coordinator.
- 16. **Coordination with the School Staff.** Staff of the Contractor shall communicate with the Program Coordinator regarding any issues or conflicts that might arise concerning the use of space, equipment, student safety and security, or other items covered by this Agreement.
- 17. **District Facility Usage.** The District Facilities to be used are classrooms, the cafeteria, and playground at each site. In light of COVID19 distancing requirements, the Contractor will be allowed to use additional space as needed and in coordination with the District, in order to comply with applicable State/County guidelines. The Contractor will leave District Facilities and school equipment at each site in the same condition in which the Contractor found them; reasonable wear and tear expected. If the Contractor fails to return the District Facilities and school equipment to their original condition, the Contractor shall be responsible for whatever costs may be involved in restoring the District Facilities and school equipment to that condition. District Facilities shall be available until 6 pm every school day. Custodial services shall be provided by the District up to the District's local match requirement, after which point additional custodial support may be purchased by Contractor.
 - 17.1 **Computer Accounts.** Certain members of the Contractor's staff may be assigned a District computer account to use for Program-related purposes. District equipment shall be used by the Contractor in accordance with applicable law and District policy and procedure. Only the staff person actually assigned the District computer account may use said account. No sharing of District computer accounts amongst the Contractor staff is permitted.
- 18. **Materials/Nutrition.** The 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:
 - 18.1 The District will be responsible for providing snacks through the federal "After School Snack Program." District will package and deliver snacks to the sites, but Contractor will be responsible for coordinating snack breaks, handing out food, and accounting for consumption of snacks by participating students.
- 19. **Field Trips.** The Contractor shall sponsor and must obtain advance approval from the Program Coordinator for any field trips or other off-site travel planned for students in the Program. Signed parental/guardian permission forms with appropriate release of liability for the District and the Contractor in substantially the form attached hereto as **Exhibit "E"** must be obtained in advance for each participating student. Any activity organized by the Contractor shall be considered an activity in the sole control and direction of the Contractor. The Contractor shall assume all responsibility for the care and control of students while participating in any activity, whether on-site or off-site that is offered as part of the Program.
- 20. **Parental Visits.** The Contractor shall provide for reasonable parental access to all of District's Facilities being used by the Contractor to the extent allowed by

applicable law. The Contractor shall ensure that parental visits are in agreement with applicable court orders, if any.

21. **Medications.** The Contractor shall ensure that medications are distributed and/or administered to students participating in the Program only when there is a written statement on file with both the Contractor and the District from a licensed physician detailing the type, administration, method, amount, and time schedule of how the medication is administered. The Contractor shall not distribute or administer any prescribed medication to any student unless pursuant to a written statement by the student's parent on file with both the Contractor and the District. The Contractor shall keep a written log of medication dispensation and/or administration. Any change in medication dispensation or administration (such as method, amount, and schedule) by the Contractor must be previously authorized in writing by a licensed physician and parent on file with the Contractor and the District.
22. **Accidents and Incidents.** The Contractor shall complete a written accident report and provide it to the District when a student has suffered an injury that requires medical attention of a licensed medical professional. The Contractor shall complete a written accident report and provide it to the District when the Contractor becomes aware of circumstances that require notification be made to other agencies. The circumstances may include, without limitation, allegations of molestation, child abuse, and injuries resulting from physical restraint. The Contractor assures the District that all staff members, including volunteers, are familiar with child and dependent adult abuse reporting obligations and procedures as specified in the California Penal Code. The Contractor shall maintain confidential reports of suspected child abuse and general concerns regarding the health and safety of a student that may impair the student's educational program, including the need for mental health services, and shall inform the District by facsimile or U.S. mail within twenty-four (24) hours of when the Contractor becomes aware of those circumstances.
23. **Acknowledgement of Receipt of Policies and Procedures.** All Contractor staff providing Services related to the operation of the Program will be provided a copy of the following District policies and procedures and must acknowledge, in writing that they have read and agree to abide by the District policies and procedures listed below:
- Use of District Facilities, space, and equipment
 - Student discipline (school discipline, search and seizure, suspension, and expulsion)
 - Site emergency plan and protocol (e.g., lockdown, shelter in place, contacts for emergency)
 - Release of students from school's custody (release to parent/guardian, late pick-up policy, sign-in/sign-out process)
 - After School Programs including early release provisions
 - Safety (e.g., students who walk home, visitors/outside, School Safety Plan, accident procedures)
 - Child abuse and neglect
 - Privacy rights of parents and students
 - Health care
 - Emergency medical information
 - Administration and storage of medication
 - Pupil records
 - Emergencies

- Alcohol and other drug policies
- Student wellness and child nutrition
- Registration of visitors/outside and disruption of service
- Parental notifications and consent
- Nondiscrimination and complaints
- Special education and Section 504 of the Rehabilitation Act
- Use of District technology and electronic systems

All rules and regulations of the Board and all Federal, State and local laws, ordinances, and regulations, are to be observed strictly by the Contractor and all those using District Facilities and grounds with the Contractor's permission or pursuant to this Agreement.

24. **Anti-Discrimination (employees).** It is the policy of the District that in connection with all work performed under District 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 and District policy. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
25. **Anti-Discrimination (students).** It is the policy of the District that in connection with all work performed under District contracts there be no discrimination against any student who participates in the Program based on actual or perceived race or ethnicity, national origin or nationality, physical or mental disability, religion, sex or gender, color, age, sexual orientation, limited proficiency in English, or anyone associated with a person or group associated with one or more of the above actual or perceived characteristics and therefore the Contractor agrees to comply with applicable Federal and California laws, including, but not limited to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act, and District policy. The Contractor agrees to require compliance by all its employees and subcontractor(s). The District shall make reasonable accommodations or modifications to the Program as necessary to avoid discrimination on the basis of a disability, such as training of Program staff. The Contractor shall implement the reasonable accommodations or modifications of the Program provided by the District, and require compliance by all its employees and subcontractors.
26. **Prohibited Activities.** The following are prohibited in or about the District Facilities or at any time during which Services are being provided under this Agreement, even if Services are being provided off-site: possession or use of tobacco products, intoxicants, or narcotics, the use of profane language, quarreling, fighting, or gambling.
27. **Insurance.**
- 27.1 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.

27.1.1 Commercial General Liability and Automobile Liability

Insurance. Commercial General Liability Insurance and any 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 from performing any portion of the Services. (Form CG 0001 and CA 0001)

27.1.2 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.

27.1.3 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	\$ 2,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 2,000,000
General Aggregate	\$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

27.2 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 coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

27.2.1 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."

27.2.2 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.

27.2.3 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 the Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

27.2.4 All policies shall be written on an occurrence form.

27.3 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.

28. Quality Assurance. The Contractor shall document its provision of agreed upon Services and submit required documentation to the District with each monthly invoice.

29. Records. The Contractor will maintain full and accurate records in connection with this Agreement and will make them available to the District for inspection at any time.

30. Independent Contractor Status. The Contractor, in the performance of this Agreement, shall be and act as an independent contractor. The 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. The 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 the Contractor's employees. In the performance of the Services herein contemplated, the Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the Services, the District being interested only in the results obtained.

31. Compliance With Laws. The Contractor shall observe and comply with all rules and regulations of District's Board and all Federal, State, and local laws, ordinances and regulations. The Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If the Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, the Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon the Contractor's receipt of a written termination notice from the District. If the Contractor performs any Services that are in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, the Contractor shall bear all costs arising therefrom.

32. **Indemnification.** To the furthest extent permitted by California law, the 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, including, without limitation, liability for claims arising out of all field trips, events and like activities, whether on-site or off-site of District's Facilities, by District students participating in the Program, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties or omissions of District in connection with the use of the District Facilities. The District shall have the right to accept or reject any legal representation that the Contractor proposes to defend the indemnified parties.
33. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
34. **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 Contractor shall allow District access during the Contractor's provision of Services for this purpose. The District's evaluation may include, without limitation:
- 34.1 Requesting that District employee(s) evaluate the performance of the Contractor and the Contractor's employees and subcontractors during the provision of Services.
- 34.2 Announced and unannounced observance of the Contractor, the Contractor's employee(s), and/or subcontractor(s).
35. **Limitation of District Liability.** Other than as provided in this Agreement, the District's financial obligations under this Agreement shall be limited to the payment of the compensation set forth in Section 6 of this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall the 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.
36. **Confidentiality.** The Contractor and all the 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. The Contractor understands that student records are confidential and agrees to comply with all State and Federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

- 36.1** Notwithstanding the foregoing, the parties will disclose data, as determined by the District and the Contractor, regarding individuals served by both parties (hereinafter referred to as the "Data"). Data will be shared only after a parent/guardian of the individual whose Data is being shared has signed a release allowing the Data to be shared. The release that is signed by the parent/guardian shall be valid for one (1) year. Upon such a release being signed, the Data will be "de-identified" by the party disclosing the Data and will only include the age, gender, and grade level of the individual(s). Names or other identifiers of the individual(s) will not be disclosed to the other party to ensure that said individual(s) will not be identified. All Data disclosed by one party to the other party shall remain the property of the disclosing party and may not be duplicated, disclosed or used in any way by the other party, without the express written consent of the disclosing party, and subject to compliance with applicable laws, as may be required. Any Data in the possession of either party, together with all copies thereof, shall be immediately returned to the disclosing party upon the disclosing party's request.
- 36.2** Data shared by the parties will only be used for the following purposes: program development, student support, data for grant writing purposes, and other purposes as agreed upon by the parties. All data that is shared by the parties will not be shared with any other agencies or reporters of public radio, newspapers, or the like, without written mutual written consent by the parties.
- 36.3** The District and the Contractor agree to communicate regularly in order to align their respective goals to best serve the youth of the City of Modesto.
- 37. Notices.** 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:
- | | |
|---|------------------------|
| CONTRACTOR: | DISTRICT: |
| Boys & Girls Clubs of Stanislaus County | Sylvan School District |
| PO Box 3349 | 605 Sylvan Avenue |
| Modesto, CA 95353 | Modesto CA 95350 |
| ATTN: President | ATTN: 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.
- 38. 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 Stanislaus County, California.
- 39. 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.

40. **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.
41. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
42. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
43. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
44. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
45. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.
46. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
47. **Incorporation of Recitals and Exhibits.** The recitals and each exhibit attached hereto are hereby incorporated herein by reference.
48. **Subcontract and Assignment.** Neither party shall assign its rights, duties, or privileges under this Agreement, nor shall either party attempt to confer any of its rights, duties, or privileges under this Agreement on any third party, without the written consent of the other party. The Contractor may enter into subcontracts only with the prior written authorization of the District.
49. **Entire Agreement of Parties.** This Agreement sets forth the entire agreement between parties and supersedes all other oral or written representations. This Agreement may be amended or modified only by a written instrument executed by both parties.
50. **Termination.**
 - 50.1 **Without Cause By District.** The District may, at any time, with or without reason, terminate this Agreement and compensate the Contractor only for Services satisfactorily rendered to the date of termination. Written notice by the District shall be sufficient to stop further performance of Services by the Contractor. Notice shall be deemed given when received by the Contractor or

no later than three (3) days after the day of mailing, whichever is sooner.

50.2 Without Cause By Contractor. The Contractor may, upon thirty (30) days' written notice, with or without reason, terminate this Agreement. Upon the Contractor's termination of this Agreement, the District shall only be obligated to compensate the Contractor for Services satisfactorily rendered to the date of termination. Thirty (30) days' prior written notice by the Contractor shall be sufficient to stop further performance of Services to the District. The Contractor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

50.3 With Cause By District. The District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

50.3.1 material violation of this Agreement by the Contractor; or

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

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

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

51. Compliance with State Regulations. The Contractor agrees to comply with all terms and conditions and exhibits of this Agreement and of the Program, which provisions are incorporated by reference into this Agreement.

52. Publicity. The Parties shall jointly establish guidelines governing all news releases, public announcements, advertising or any other publicity (together, "Publicity") to be released jointly or by either party relating to this MOU. No party shall release any Publicity inconsistent with such guidelines unless such Publicity is approved by the other party or required by law.

53. Trademarks, Logos, Trade Names and Service Marks. The parties shall also establish written guidelines governing the use by a party of trademarks, logo, trade names and service marks (together, "Marks") of the other party with respect to all matters other than the co-branding of the District's and the Contractor's services (which shall occur only under a separate trademark licensing agreement between the parties). Notwithstanding the foregoing, all Marks owned by the Contractor shall remain exclusive property of the Contractor. No party shall use the other party's Marks in a manner inconsistent with such guidelines or this Section unless the use is

approved by the other party. Notwithstanding any other provision contained herein or in the guidelines, either party may, in its sole discretion reasonably exercised for good cause instruct the other party to cease immediately the use of its Marks.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**Boys & Girls Clubs of Stanislaus County
(CONTRACTOR)**

**Sylvan School District
(DISTRICT)**

By: _____

By: _____

Title: _____

Title: _____ Superintendent

Information regarding Contractor:

Contractor: _____

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- ____ Individual
- ____ Sole Proprietorship
- ____ Partnership
- ____ Limited Partnership
- ____ Corporation,

State: _____

____ Limited Liability Company

____ Other: _____

Employer Identification and/or Social Security Number

NOTE: Federal Code of Regulations Sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your Federal tax identification number or Social Security number, whichever is applicable.

EXHIBIT "A"

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

[Attach ASES Program Plan]

EXHIBIT "B"

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services of this Agreement.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Services under this Agreement.)

EXHIBIT "C"
FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the boxes below must be checked, with the corresponding certification provided, and this form attached to the Independent Contractor Agreement for Special Services ("Agreement"):

☐ **[To be completed by authorized District employee only.]** The Boys & Girls Clubs of Stanislaus County's ("Contractor") employees, agents and volunteers will (1) have only limited contact, if any, with District students and the District will take appropriate steps to protect the safety of any students that may come in contact with the Contractor's employees so that the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 shall not apply to the Contractor for the Services under this Agreement; or (2) be under the immediate supervision and direction of certificated personnel of the District so that the fingerprinting and criminal background investigation requirements of Education Code Section 49024 shall not apply to the Contractor for the Services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code Section 45125.1 [c]).

Date: _____

District Representative's Name and Title: Debra M. Hendricks, Superintendent

Signature: _____

☒ The fingerprinting and criminal background investigation requirements of Education Code Section 49024 apply to the Contractor's Services under this Agreement and Contractor certifies its compliance with these provisions as follows:

The Contractor certifies that the Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 49024 with respect to all the Contractor's volunteers, employees, subcontractors, agents, and subcontractors' employees or agents ("Contractor Parties") regardless of whether those Contractor Parties are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils in the course of providing Services pursuant to the Agreement, and the California Department of Justice AND the Federal Bureau of Investigation have determined that none of those Contractor Parties has been convicted of a felony, as that term is defined in Education Code Section 45122. A complete and accurate list of all Contractor Parties who may come in contact with District pupils during the course and scope of the Agreement is attached hereto.

I am an authorized representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the Contractor.

Date: _____

Name of Contractor or Company: _____

Boys & Girls Clubs of Stanislaus County

Signature: _____

Print Name and Title: _____

EXHIBIT "D"

TUBERCULOSIS CLEARANCE

The undersigned does hereby certify to the Governing Board of the District as follows:

I am a representative of the Boys & Girls Clubs of Stanislaus County ("Contractor") currently entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the Contractor.

The Contractor's responsibility for tuberculosis clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District students regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

The Contractor certifies that at least one of the following items applies to the Services that are the subject of the Agreement:

- ☐ The Contractor has complied with the tuberculosis requirements of Education Code Section 49406.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District students in the course of providing Services pursuant to the Agreement, and the California Department of Justice has determined that none of those employees has active tuberculosis, as that term is defined in Education Code Section 45122.1. A complete and accurate list of the Contractor's employees and of all of its subcontractors' employees who may come in contact with District students during the course and scope of the Agreement is attached hereto; and/or
- ☐ The Contractor's Services under the Agreement are to be provided at an unoccupied school site only and/or will not be done on any District property and no employee and/or subcontractor or supplier of any tier of Agreement shall come in contact with District students.

Date: _____

Name of Contractor: Boys & Girls Clubs of Stanislaus County

Signature: _____

Print Name and Title: _____

EXHIBIT "E"**FIELD TRIP CONSENT AND RELEASE FORM****Boys & Girls Clubs of Stanislaus County****PARENT PERMISSION FORM FOR STUDENT TO PARTICIPATE IN FIELD TRIP,
WAIVER OF LIABILITY AND CONSENT FOR MEDICAL TREATMENT****Return this to <Your Child's Teacher>**

I, _____ (Parent/Guardian of Student), by signing below agree to the following with respect to my daughter/son's, _____, ("Student") participation in the voluntary activity described in this Consent and Release Form.

Student has my consent to participate in the field trip described below and may participate in all activities associated with the field trip or school-related trip (hereinafter, "Field Trip").

1. Description of Field Trip: _____
2. Location: _____
3. Date/Time/Duration: _____

- A. Student and Parent/Guardian understand that Student's participation in the Field Trip is an honor and a privilege and that Student shall act responsibly and with self control throughout the Field Trip's duration. Student and Parent/Guardian acknowledge that Student is a person of sufficient maturity to make reasonable decisions about his/her conduct, and Student shall accept full responsibility for such conduct while participating in this Field Trip.
- B. Student agrees to abide by the discipline code of the Boys and Girls Club while participating in the Field Trip, commencing at the time of departure from school premises until Student returns to his/her home:
 - i. A copy of the discipline code is attached to this Consent and Release Form.
 - ii. Student will stay within the designated geographic parameters throughout the Field Trip.
- C. Student and Parent/Guardian understand and agree that if Student violates any of the rules set forth in the District's discipline code, it will be within the sole discretion of the Field Trip supervisor or other designated supervisor ("Supervisors") to take whatever disciplinary action is necessary, including immediate notification of Parent/Guardian, dismissal from the Field Trip, or any other discretionary action that may be deemed appropriate.
- D. Student and Parent/Guardian acknowledge that there are certain risks inherent in participating in field trips. Such risks may include, but are not limited to, accident, delay, injury, illness or damage to personal property. Student and Parent/Guardian further agree that the Supervisors cannot ensure the safety of Student. Student and Parent/Guardian expressly assume these risks and agree that they will not hold the Supervisors or the Sylvan Union School District responsible if such events occur.
- E. Student and Parent/Guardian, as a condition of Student's participation in the Field Trip, hereby agree to indemnify and hold harmless and waive all claims or suits for damages or injury arising from Student's participation in the Field Trip and liability against the

Sylvan Union School District, its officers, agents, employees, and volunteers, for injury, accident, illness, or death occurring during or by reason of this Field Trip. Student and Parent/Guardian hereby waive any and all rights to hold Supervisors and the Sylvan Union School District personally, individually, jointly or severally liable for any and all claims.

- F. In the event of an accident, injury and/or medical emergency, Supervisors are hereby authorized to consent to and obtain whatever emergency medical treatment, surgery or dental care is considered necessary from and in the best judgment of the attending physician, medical care facility, hospital, paramedic unit or other health care provider deemed appropriate by Supervisors in the circumstances. In the event it is impossible to receive instructions for Student's care, full authorization is given to any licensed physician and/or surgeon for the provisions of medical treatment, including the administration of drugs or medication, and the performance of surgical treatment for the relief of pain and/or the preservation of life and/or health and well being. Student and Parent/Guardian understand that this authorization is given in advance of any specific diagnosis or treatment being required and that such authorization is given to provide Supervisors and the Sylvan Union School District with the power to secure reasonable medical care under emergency circumstances. Medical costs incurred shall be the responsibility of the Student and Parent/Guardian.
- G. Student and Parent/Guardian agree to pay for such medical care whether or not the costs are insured by Student or Parent/Guardian's health insurance. Student and Parent/Guardian understand that an attempt will be made to contact Parent/Guardian by telephone if possible, before such care is administered.

Phone Number(s) where parent(s)/guardian(s) can be reached:

Name of Medical Insurance: _____ Emergency medical contact number(s): _____

Medical history that may be of importance:

Medication student is taking (if any): _____ Medication student should not take: _____

- H. The Sylvan Union School District does not provide insurance for accidental injuries to students.

I have read, understand, and voluntarily agree to all provisions stated above. I give my permission for my child to participate in the Field Trip described herein.

Parent/Guardian Name: _____

Parent/Guardian Signature: _____

Address: _____

Date: _____ Phone: _____