

**GILROY UNIFIED SCHOOL DISTRICT
AGREEMENT FOR EDUCATIONAL SERVICES**

The following is an Agreement by and between GILROY UNIFIED SCHOOL DISTRICT (the "District") and **YMCA of Silicon Valley** ("Consultant").

RECITALS

- A. The District requires certain [staff development and training; educational] services described below; and
- B. The Consultant represents that it is qualified and available to provide such services.

AGREEMENT

NOW THEREFORE, pursuant to the following terms and conditions the District and Consultant hereby agree as follows:

A. TERM. The term of this Agreement (the "Term") shall commence on **June 11, 2021** and end on **August 31, 2022** unless the work is completed or the Agreement is terminated sooner.

B. SERVICES. Consultant has submitted a Proposal dated **May 26, 2021** (the "Proposal"), which is accepted by the District and incorporated herein by this reference to the extent not inconsistent with the terms and conditions of this Agreement. As needed and requested by the District, Consultant shall perform in a competent and professional manner satisfactory to the District, the services described in **Exhibit A**, attached hereto and incorporated herein by reference (collectively, the "Services").

C. COMPENSATION. In exchange for the satisfactory performance of the Services, the District will pay Consultant not to exceed **\$916,750**. Payment will be made for services completed to the satisfaction of the District, at the rates specified on **Exhibit A**, upon receipt of an itemized billing by Consultant. No final payments shall be authorized until all reports have been rendered to and approved by the district. All invoices for services must be submitted to the District within 30 calendar days after services are performed. Subject to and upon approval of the District, payment of invoices shall be made within 60 days after Consultant submits invoices and any other requested documentation. For purposes of this Agreement, "payment" shall mean the act of depositing checks in the United States Postal Service mail for delivery to the Consultant.

D. DISTRICT OWNERSHIP. All data and information provided for and/or used by Consultant shall be the property of and returned to the District at the completion of this contract. All reports or other documents generated will constitute "works made for hire" by or for the District and the District will be the "author" of all such reports under applicable copyright laws.

E. INDEPENDENT CONTRACTOR STATUS. It is understood that Consultant is an independent contractor, is responsible for accomplishing the results required herein, and District shall not be liable to Consultant for any payments, benefits, loss, costs, expenses, or injury or damages to Consultant's person or property, except the District's liability to Consultant for his compensation for services performed herein. Consultant shall not be entitled to receive any benefits normally provided to District's employees, including health insurance benefits, paid vacation, or any other employee benefits. The District shall not be responsible for withholding income or other taxes from payments made to Consultant. Consultant shall be solely responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Consultant pursuant to this Agreement. A 1099 tax form will be provided to Consultant for services rendered at the end of each calendar year.

Consultant states and affirms that it is acting as a free agent and independent Consultant, maintains a place of business at the address indicated in the signature page, and that this Agreement is not exclusive. Consultant may enter any other contracts as Consultant sees fit providing that such contract does not

interfere with any services that Consultant is currently providing the District or that might be deemed to be a conflict of interest with the best interests of the District.

F. COMPLIANCE WITH LAWS. Consultant shall comply with all federal, state and local laws and ordinances governing the operation of this Agreement. Without limiting the generality of the foregoing, Consultant shall comply with any applicable fingerprinting and TB clearance requirements of the California Education Code and shall provide certifications satisfactory to the District, in substantially the form attached hereto as **Exhibit B**.

G. CONFIDENTIALITY. The confidentiality provisions of this Agreement will survive and remain in full force and effect beyond the termination or expiration of this Agreement. Consultant agrees to hold confidential information obtained from the District, including any student or personnel information, whether obtained through observations, documentation or otherwise, in strict confidence and shall not without prior permission of the District disclose to anyone any such confidential information. Consultant shall not at any time or in any manner, either directly or indirectly, use any confidential District information for Consultant's own benefit. Consultant will protect such information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

If Consultant discloses (or threatens to disclose) information in violation of this Agreement, the District shall be entitled to an injunction to restrain Consultant from disclosing, in whole or in part, such information, of from providing any services to any party to whom such information has been disclosed or may be disclosed. The District shall not be prohibited by this provision from pursuing other remedies, including a claim for loss and damages.

H. INDEMNIFICATION; INSURANCE.

Each party ("Indemnifying Party") agrees to indemnify and hold the other ("Indemnified Party") and its board members or directors, as applicable, and its officers, employees and agents, harmless with respect to any and all claims, losses, damages, liabilities, judgments, expenses and costs, including reasonable attorney's fees, arising out of this Agreement or the Services and incurred by the Indemnified Party to the extent proximately caused by any action or omission of the Indemnifying Party. The parties agree to promptly notify each other upon receipt of any claim or legal action arising out of activities conducted pursuant to this Agreement. The rights and responsibilities established in this paragraph shall survive indefinitely the expiration or termination of this Agreement.

Prior to performance of any Services, Consultant shall provide evidence that it has obtained, and will maintain during the Term of the Agreement, the types and amounts of insurance required by the District, as specified in **Exhibit A**.

I. TERMINATION AND SUSPENSION.

- a. **For Cause.** If Consultant fails to perform its obligations under this Agreement, the District will provide written notice specifying each breach for which notice is being given. If Consultant fails to cure such breach(es) within 14 days of such notice (or to make arrangements for cure that are satisfactory to the District, if the breach is such that more than 14 days are required to cure), then the District may elect to terminate this Agreement for cause. Any such termination for cause will become effective upon the date set forth in the District's written notice to Consultant of its election to terminate.
- b. **For Convenience.** The District may terminate, abandon or suspend performance of this Agreement for convenience and without cause at any time upon 30 days prior written notice to Consultant, in which case the District will pay Consultant as provided in Paragraph C, above, for all Services actually performed, and all authorized expenses actually incurred and paid, under and in accordance with this Agreement, up to and including the date of termination. Such payment shall be Consultant's sole and exclusive

compensation and the District shall have no liability to Consultant for any other compensation or damages, including, without limitation, anticipated profits, prospective losses, legal fees or costs associated with legal representation or consequential damages, of any kind.

J. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all prior agreements, discussions, or understandings, whether written, oral or implied, with respect to the subject matter of this Agreement. This Agreement may not be modified or amended without the prior written consent of each party.

K. ASSIGNMENT OR SUBLETTING. This Agreement shall not be assigned or sublet to any other person or persons except with the District's written consent.

L. ATTORNEYS FEES. In the event of any claim, dispute, or legal proceeding arising out of or relating to this Agreement, the party prevailing in such dispute shall be entitled to recover, and the other party shall pay, all reasonable fees and expenses incurred in connection therewith.

M. NOTICE. Unless otherwise specified in this Agreement or agreed to in writing by the Parties, notices and any other information required or contemplated under this Agreement may be given by first-class U.S. mail, express delivery service, or facsimile transmission at the addresses indicated on the signature page.

N. GOVERNING LAW; VENUE. This Agreement shall be construed and interpreted pursuant to the laws of the State of California, without regard to any conflict of laws principles. Jurisdiction and venue shall be in the superior courts of Santa Clara County, wherein this Agreement shall be deemed to have been executed and Services, Work and products furnished. Any attempt to remove venue to another jurisdiction, unless mutually agreed in writing, shall constitute a material breach of this Agreement.

O. WAIVER. Waiver of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by either party of any breach or default shall not constitute a waiver of any other provision or of any subsequent breach or violation of any provision of this Agreement. Acceptance by the District of any Services shall not constitute a waiver of any of the provisions of this Agreement or of any indemnification or insurance obligation of Consultant.

O. AUTHORITY TO EXECUTE. The person executing this Agreement on behalf of Consultant represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Consultant to the performance of its obligations hereunder. Furthermore, Consultant represents that it is legally authorized to provide the Services within the State of California.

IN WITNESS WHEREOF, the parties hereto have subscribed their names to this Agreement on the dates set forth below.

GILROY UNIFIED SCHOOL DISTRICT

YMCA of Silicon Valley

By: _____

By: _____

Name: Dr. Deborah A. Flores

Name: **Sandra Berlin Walker**

Title: Superintendent

Title: **President & CEO**

Date: _____

Date: _____

Address for Notice:

7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores
Phone: (669)205-4091
Email: debbie.flores@gilroyunified.org

80 Saratoga Avenue
Santa Clara, California 95051
Attn: Mary Hoshiko- Haughey
Phone: (408)351-6400
Email: mhoshiko@ymcasv.org

Information Concerning Consultant:

State of incorporation or formation: _____

License #: _____

Type of Business Entity:

TIN: _____

- ☐ Corporation
- ☐ Individual
- ☐ Partnership
- ☐ Limited Liability Company
- ☐ Sole Proprietorship
- ☐ Limited Partnership
- ☐ Other: _____

Employer Identification Number and/or Social Security Number
NOTE: The Code of Federal Regulations, Sections 6041 and 6209, require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number ("EID" or "TIN"). The regulations also provide that a penalty may be imposed for failure to furnish the EID or TIN. To comply with these regulations, the District requires your EID, TIN or SSN, whichever is applicable.

FOR DISTRICT OFFICE USE

Funding Code: _____

Funding Program: _____

Form approved by District Legal Counsel 5/26/2020

EXHIBIT A
TO AGREEMENT FOR EDUCATIONAL SERVICES WITH
YMCA of Silicon Valley, dated June 11, 2021

SERVICES

I. Consultant will perform the following Services under the Captioned Agreement:

SEE ATTACHED PROPOSAL DATED **May 26, 2021**; AND
 SEE ATTACHED LIST OF SERVICES

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the District:

SEE ATTACHED LIST OF SERVICES

III. During performance of the Services, Consultant will keep the District apprised of the status of performance by delivering the following status reports under the indicated schedule:

☐ None. ☐ See below. ☒ **See attached list.**

STATUS REPORT FOR ACTIVITY:	DUE DATE
A.	
B.	
C.	

IV. The following rates of pay shall apply in the performance of the Services under this Agreement:

Manager	YMCA
Program Manager	\$45
Site Staff	
Site Coordinator (SC)	\$22
Assistant Site Coordinator (ASC)	\$20
Program Leaders (PL)	\$18

V. Consultant will utilize the following personnel to accomplish the Services:

☐ None. ☒ **See attached list. – “List of Services”**

VI. Consultant will utilize the following subconsultants to accomplish the Services (check one):

☒ **None.** ☐ See attached list.

VII. **INSURANCE REQUIREMENTS.**

A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, Consultant will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial general liability	\$1,000,000
Professional liability	\$1,000,000
Business automobile liability	\$1,000,000

Workers compensation

Statutory requirement

B. Commercial general liability insurance will meet or exceed the requirements of ISO-CGL Form No. CG 12 10 11 97. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name the District, its officials, and employees as “additional insureds” under said insurance coverage and to state that such insurance will be deemed “primary” such that any other insurance that may be carried by the District will be excess thereto. Such insurance will be on an “occurrence” basis, except professional liability will be on a “claims made” basis, and will not be cancelable or subject to reduction except upon a thirty day prior written notice to the District.

C. Automobile coverage will be written on ISO Business Auto Coverage Form CA 00 01 10 01, including symbol 1 (Any Auto).

D. Consultant will furnish to the District duly authenticated Certificates of Insurance and Endorsements evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance as may be reasonably required by the District from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of “A:VII.” Originals of the duly authenticated Certificates of Insurance and Endorsements will be included with this Agreement as **Exhibit C**.

VIII. AMENDMENT TO SERVICES. The Scope of Services, including services, work product, and personnel, are subject to change by mutual Agreement. In the absence of mutual Agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

IX. ADDITIONAL TERMS AND CONDITIONS. The following terms and conditions have been negotiated by the Parties and, to the extent of any conflict between the following provisions and the terms of the Agreement to which this **Exhibit A** is attached, the following provisions control.

☐ None.

☐ See below.

EXHIBIT B
TO AGREEMENT FOR EDUCATIONAL SERVICES WITH
YMCA of Silicon Valley, dated June 11, 2021

CERTIFICATIONS

- ☐ None.
- ☒ See Attached, the following (check all applicable):
- ☒ Fingerprinting/Criminal Background Certification.
 - ☒ Tuberculosis Clearance.
 - ☐ Other; _____.

FINGERPRINTING/CRIMINAL BACKGROUND CERTIFICATION

(NOTE: This Certification is required in connection with all agreement for services and public work contracts that might allow persons other than District staff to come into contact with District students)

The undersigned does hereby certify to the governing board of the District that I am a duly authorized representative of the Consultant under the Agreement for Services ("Agreement") to which this Certification is attached. I further certify as follows:

I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant. Consultant has taken at least one of the following actions with respect to the construction Project that is the subject of the Agreement (check all that apply):

 X **The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subconsultants' employees who may have contact with District pupils in the course of providing Services pursuant to the Agreement, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Consultant's employees and of all of its subconsultants' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto; and/or**

 Pursuant to Education Code section 45125.2, a physical barrier exists, or Consultant has installed or will install prior to commencement of the Services a physical barrier, at the location of the Services, that will limit contact between Consultant's employees and District pupils at all times; and/or

 Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its subconsultants' employees is

Name: _____

Title: _____

 The Services under the Agreement will be performed at an unoccupied school site and no employee and/or subconsultant or supplier of Agreement shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, subconsultants, and employees of subconsultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.

Date:

Legal Name of Consultant:

Signature:

By (Name of signatory):

Its (Title):

TUBERCULOSIS CLEARANCE

(NOTE: This Certification is required in connection with all agreement for services and public work contracts that might allow persons other than District staff to come into contact with District students)

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

1. I am a representative of the Consultant currently entering into this Agreement with the District. As such, I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Consultant. Consultant's responsibility for tuberculosis clearance extends to all of its employees, subconsultants, and employees of subconsultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.
2. The following item applies to the Services that are the subject of the Agreement:

X The Consultant ensures that each person providing any portion of the Services has submitted to an examination by a physician or surgeon, within 60 days of Board approval of the contract, or if previous contractor to the District, within the last four years, and each such person is free of active tuberculosis.

- If there is however a positive result, chest x-ray verification is required.
- Upon the District's request, a complete and accurate list of Consultant's employees and of all of its sub-consultant's employees, who may come in contact with District pupils in connection with the Agreement, will be furnished and the date of each person's examination will be included.

- ☐ The 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 subconsultant or supplier of any tier of Agreement shall come in contact with District pupils.

By signing below on behalf of Consultant, I certify that I am an authorized signatory and that the information provided herein is true and accurate. I further certify that during the Term of this Agreement, if I learn of additional information which differs from the responses provided above, or if I engage an additional employee/agent/volunteer/subconsultant or representative to provide Work or Services under the Agreement, I shall forward this additional information to the District immediately.

Date:

Legal Name of Consultant:

Signature:

By (Name of signatory):

Its (Title):

LIST OF SERVICES

1. **YMCA** Program Director will provide program supervision and assist with development and improvement upon **Power School** program design and sustainability of **a variety of possible models due to COVID19 including in person program, possible Distance Learning, or a hybrid format for Power School.**

Services are to **possibly** include:

- Uphold GUSD and **Power School** vision for student success
- Hire, manage, and supervise site coordinator and frontline staff
- Attend regular meetings with site coordinators and site administration
- Attend regularly scheduled district meetings with site coordinators, program administrator, and teacher coach
- Ensure program evaluation and assessments are completed
- Ensure adequate staffing for contracted positions
- Ensure ASES/21st CCLC program components are effectively implemented
- Promoting program and building strong relationships with students, parents, and community
- Provide quality interaction with parents, teachers, school and District staff.
- Integrating Developmental Assets, SEL, healthy living, STEM, VAPA, and PBIS within **Power School**

2. Full-time **YMCA** Site Coordinators will provide program management, academically aligned enrichment activities, recreation, and health and wellness services, meeting grant requirements, in **a variety of possible models due to COVID19 including in person program, possible Distance Learning, or a hybrid format for Power School.**

Services are to **possibly** include:

- Attendance management
- Keeping accurate daily, weekly and monthly attendance records, for students and staff
- Maintaining and managing enrollment of students identified by the district in **Power School** based on demographic data, test scores, teacher/school recommendations, other data as needed, and/or parent requests
- Ensure ASES/21st CCLC program components are effectively implemented
- Development of fun, educational programs and curriculum for new sessions
- Promoting program and building strong relationships with students, parents, and community
- Provide quality interaction with parents, teachers, school and District staff
- Integrating Developmental Assets, SEL, healthy living, STEM, VAPA, and PBIS within **Power School**
- Serve in lead capacity to Cal-SOAP, YMCA and YMCA staff, and any other partner agency staff included in collaboration
- Meet regularly with Program Administrator and other **Power School** staff
- Conducting assessment of student progress in accordance with District expectations
- Disseminating and collecting completed assessments
- Using data to help design program based on academic needs of students
- Collaboratively planning and delivering lessons and activities
- Attending meetings with district administrator and with summer principals
- Other duties as assigned

3. **YMCA** will provide academically aligned enrichment activities, recreation and health and wellness services in **a variety of possible models due to COVID19 including in person program, possible Distance Learning, or a hybrid format for Power School.**

Services are to **possibly** include:

- Providing daily supervision and leadership of students
- Collaboratively planning and delivering lessons and activities
- Assisting the coordinator in operation of **Power School**
- Development of fun, educational programs and curriculum for new sessions
- Recruitment of participants identified by district
- Entering of attendance data as directed by coordinator.
- Promoting program and building strong relationships with students, parents, and community
- Integrating Developmental Assets, SEL, healthy living, STEM, VAPA, and PBIS within **Power School**
- Conduct activities that adhere to ASES/21st CCLC guidelines.

4. **YMCA** employees will participate in academic training modules and collaborative planning sessions as required by the District and the **YMCA**.

5. **YMCA** employees will document hours of services per site, signed by the Site Coordinator and submitted to the **YMCA** Director, in accordance with **YMCA** policies.

6. The **YMCA** will work collaboratively with the District to meet grant criteria at listed staffing levels.

7. The **YMCA** reserves the right to add additional staffing for special events or special needs within overall the contract approved budget.

8. Based on enrollment and participation in **a variety of possible models due to COVID19 including in person program, possible Distance Learning, or a hybrid format for Power School additional or reduced staffing may be required.**

9. **The Scope of this agreement will be dependent on student enrollment and participation and will be reviewed for the duration of the Power School program.**

10. **YMCA** employees will meet district instructional aide requirement of either 48 college credits or passing exam designed for after school instructional aides.



**FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY**

The YMCA of Silicon Valley is proposes the following for the Gilroy Unified School District Power School program partnership:

The YMCA agrees to operate Luigi Elementary School After School Program The proposal is for a 180 day school year. Total cost for services in this proposal shall not exceed \$190,000.

The YMCA of Silicon Valley AGREES: To perform in a competent, collaborative and professional manner the services outlined in the Scope of Services located within the Agreement for Professional Services through the following staffing levels:

1. One YMCA Program Director (64% time) school year. (Included in the Power School Budget)
2. One (1) non-exempt YMCA Site Coordinator school year (Summer wages in Super Power Summer Camp Budget Proposal).
3. One (1) non-exempt YMCA Assistant Director school year (Summer wages in Super Power Summer Camp Budget Proposal)
4. Six (6) YMCA Specialist positions for 25 hours per week for 180 days
5. Thirty (30) hours of training per staff within the school year
6. This proposal also includes the purchase of site supplies for day to day use at each school site.

Additionally, in order for the YMCA to support bus trips through the District Power School Program the District must provide the following insurance requirements: *Gilroy Unified School District agrees to provide evidence that they carry Commercial Automobile liability insurance with a minimum limit of \$15M. This insurance will be endorsed to include YMCA of Silicon Valley as additional insured. YMCA of Silicon Valley will receive 30 days' notice in advance of any cancellation of coverage.*

The YMCA will provide written notice to the District in regards to any personnel changes that would impact the staff member assigned to the Program Director Position. The YMCA will commit to have the District provide input on hiring for any new Program Director in this position.

It is the YMCA's intent to work with the District to develop opportunities for funding enhancements for programs with low levels of grant funding or programs with large waiting lists. Funding opportunities may include fees for student participation.

Sincerely,

Sandy Berlin Walker
President and CEO
YMCA of Silicon Valley
80 Saratoga Ave
Santa Clara CA 95051
P 408-351-6400
www.ymcasv.org



**FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY**

The YMCA of Silicon Valley is proposes the following for the Gilroy Unified School District Power School program partnership:

The YMCA agrees to operate Rucker, El Roble & Las Animas Elementary School After School Programs The proposal is for a 180 day school year. Total cost for services in this proposal shall not exceed \$726,750

The YMCA of Silicon Valley AGREES: To perform in a competent, collaborative and professional manner the services outlined in the Scope of Services located within the Agreement for Professional Services through the following staffing levels:

1. One YMCA Program Director (64% time) school year. (Included in the Power School Budget)
2. Three (3) non-exempt YMCA Site Coordinator school year (Summer wages in Super Power Summer Camp Budget Proposal).
3. Three (3) non-exempt YMCA Assistant Director school year (Summer wages in Super Power Summer Camp Budget Proposal)
4. Twenty-Four (24) YMCA Specialist positions for 25 hours per week for 180 days
5. Thirty (30) hours of training per staff within the school year
6. This proposal also includes the purchase of site supplies for day to day use at each school site.

Additionally, in order for the YMCA to support bus trips through the District Power School Program the District must provide the following insurance requirements: *Gilroy Unified School District agrees to provide evidence that they carry Commercial Automobile liability insurance with a minimum limit of \$15M. This insurance will be endorsed to include YMCA of Silicon Valley as additional insured. YMCA of Silicon Valley will receive 30 days' notice in advance of any cancellation of coverage.*

The YMCA will provide written notice to the District in regards to any personnel changes that would impact the staff member assigned to the Program Director Position. The YMCA will commit to have the District provide input on hiring for any new Program Director in this position.

It is the YMCA's intent to work with the District to develop opportunities for funding enhancements for programs with low levels of grant funding or programs with large waiting lists. Funding opportunities may include fees for student participation.

Sincerely

Sandy Berlin Walker
President and CEO
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