

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into between the Ocean View School District Of Orange County (“District”) and Karen J. Bains, dba Art Explorers

Name of Independent Contractor

16752 Barefoot Circle Huntington Beach CA 92649 714)552-0782
Mailing Address City State Zip Telephone Number

(“Contractor”).

WHEREAS, 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;

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

WHEREAS, 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 to be provided by Contractor. Contractor shall provide art instruction classes and slide presentations for students in grades TK through five at Star View School. Sessions will focus on different artists, art mediums, and techniques. Services and payment to Contractor will continue as long as in-person, on-site learning is occurring. (“Services”).

Services shall be provided by Karen Bains
(Name of specific individual)

2. Term. Contractor shall commence providing Services under this Agreement on September 15, 2021, and will diligently perform as required and complete performance by June 23, 2022.

3. Compensation. District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Ten Thousand Five Hundred and Sixty Dollars. (\$10,560.00). District shall pay Contractor according to the following terms and conditions: as invoiced.

4. Expenses. Contractor shall be responsible for any costs or expenses paid or incurred by Contractor in performing Services for District, except as follows: None.

5. Trade Term Discounts. The District seeks entering into contracts with vendors and consultants that offer parity trade term discounts equal to or better than any other customer (public or private entity) of Contractor in the United States. Please indicate below whether Contractor offers parity trade term discounts or not. If Contractor indicates it does offer parity trade terms discounts, the Contractor shall provide documents reasonably requested by the District to show the pricing for services to be provided by Contractor pursuant to this Agreement is equal to or better than any other customer of the Contractor in the United States. If Contractor indicates it does not offer parity trade term discounts, and the District subsequently obtains evidence that indicates otherwise, it shall be grounds for immediate termination of this Agreement for cause and the District may pursue any legal action or remedies available.

_____ Yes, the undersigned offers parity trade term discounts as noted above and such discounts are being provided to the District in this Agreement.

_____ No, the undersigned does not offer parity trade term discounts as noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Karen Bains
Name

Signed

6. Independent Contractor. Contractor, in the performance of the Services pursuant to this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor's employees shall not be considered officers, employees or agents 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 Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of Contractor's employees or agents as they relate to the Services to be provided under this Agreement. 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 Contractor's 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: _____

Contractor's Services will be performed in accordance with generally and currently accepted principles and practices of Contractor's profession.

8. Originality of Services/Intellectual Property. Contractor agrees that all ideas, technologies, formulae, procedures, processes and methods prepared for and submitted by Contractor to the District in connection with the Services set forth in 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. Contractor further agrees that all materials and writings in whatever form prepared for, written for, or otherwise submitted by Contractor as part of the Services to the District and/or used in connection with the Services set forth in this Agreement ("Content"), reflect the intellectual property of, and copyright interests held by District and shall not be copied or used in whole or in part by Contractor without District's express written permission. Contractor understands and agrees that all Content produced under this Agreement is the property of District and cannot be used without District's express written permission. Contractor acknowledges and agrees that District shall have all right, title and interest in said Content, including the right to secure and maintain the copyright, trademark and/or patent of said Content in the name of the District.

9. Termination. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner.

District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) 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 thirty (30) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) days cease and terminate. In the event of such termination, the District may secure the required Services from another contractor. If the cost to the District to secure the required Services from another contractor exceeds the cost of providing the Services pursuant to this Agreement, the excess cost shall be charges to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the Contractor, or no later than three (3) days after the day of mailing, whichever is sooner.

10. Hold Harmless. Contractor agrees to and does hereby indemnify, hold harmless and defend the District and its Governing Board, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

- (a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the Contractor or any person, firm or corporation employed by the Contractor, either directly or by independent contract, upon or in connection with the Services called for in this Agreement, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District or its officers, employees or agents.
- (b) Any injury to or death of any person(s), including the District's officers, employees and agents, or damage to or loss of any property caused by any act, neglect, default, or omission of the Contractor, or any person, firm or corporation employed by the Contractor, either directly or by independent contract, arising out of, or in any way connected with, the Services covered by this Agreement, whether said injury or damage occurs either on or off District's property, except for liability for damages which result from the sole negligence or willful misconduct of the District or its officers, employees or agents.
- (c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopied matter or patented or unpatented invention under this Agreement.

11. Insurance. Contractor shall insure Contractor's activities in connection with the Services under this Agreement and agrees to carry insurance to ensure Contractor's ability to adhere to the indemnification requirements under this Agreement.

11.1 Contractor shall, at Contractor's sole cost and expense, maintain in full force and effect the following insurance coverages from a California licensed insurer with an A-VIII, or better, rating from A.M. Best or an approved self insurance program, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorney fees) arising out of or in connection with Contractor's fulfillment of the obligations under this Agreement:

- (a) Comprehensive or Commercial Form General Liability Insurance, including bodily injury, property damage and contractual liability with minimum limits as follows:

(1)	Each Occurrence	\$1,000,000.00
(2)	Products Completed Operations	\$2,000,000.00
(3)	Personal and Advertising Injury	\$1,000,000.00
(4)	General Aggregate (Not Applicable to the Comprehensive Form)	\$2,000,000.00

The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. This policy shall include or be endorsed to include abuse and molestation coverage of at least \$3,000,000.00 for each occurrence, and \$6,000,000.00 aggregate.

(b) Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than \$1,000,000.00 per occurrence. (Required only if the Contractor drives on behalf of the District in the course of performing Services.)

(c) Professional Liability Insurance with a limit of \$1,000,000.00 per occurrence, if applicable.

(d) Workers' Compensation and Employers Liability Insurance in a form and amount covering Contractor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws. The policy shall be endorsed with the insurer's waiver of rights of subrogation against the District.

Part A - Statutory Limits for Contractor
Part B - \$1,000,000.00 Employers' Liability

(e) Employment Practices Liability (EPL) and Directors and Officers (D&O) coverage with the following limits:

\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate

It should be expressly understood, however, that the coverages and limits referred to under (a), (b) and (c) above shall not in any way limit the liability of the Contractor.

11.2 No later than thirty (30) days from execution of this Agreement by the District and Contractor, and prior to commencing the Services under this Agreement, Contractor shall provide District with certificates of insurance evidencing all coverages and endorsements required hereunder.

11.3 Contractor shall provide prior written notice to the District thirty (30) days in advance of any non-renewal, cancellation, or modification of the required insurance. The certificates of insurance providing the coverages referred to in clauses (a) and (b) above shall name District, its Governing Board, officers, and employees, as additional insureds with appropriate endorsements. In addition, the certificates of insurance shall include a provision stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." Failure to maintain the above-mentioned insurance coverages shall be cause for termination of this Agreement.

11.4 Contractor hereby grants to the District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District, its Governing Board, officers, employees, volunteers, and agents by virtue of the payment of any loss under such insurance. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District, its Governing Board, officers, employees, volunteers, and agents have received a waiver of subrogation endorsement from the insurer.

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

13. Compliance with Applicable Laws. The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, the Services, equipment and personnel engaged in Services covered by this Agreement or accruing out of the performance of such Services.

13.1. Fingerprinting. Education Code section 45125.1 requires that employees of a Contractor providing certain services to school districts must be fingerprinted by the California Department of Justice for a criminal records check, unless the District determines that the Contractor and/or Contractor's employees will have limited or no contact with District's students. In making this determination, the District will consider the totality of the circumstances. If the District has determined that fingerprinting is required, whether or not the Services are one of those listed in Section 45125.1, the Contractor expressly agrees that Contractor and all of Contractor's current and subsequent employees will submit or have submitted fingerprints in a manner required by the California Department of Justice, as set forth in Education Code section 45125.1. Contractor and/or Contractor's current and subsequent employees shall not come in contact with students until the Department of Justice has ascertained that the Contractor and/or Contractor's employees have not been convicted of a serious or violent felony. Contractor shall certify in writing to the Governing Board of the District that none of its employees who may come in contact with students have been convicted of a serious or violent felony; and shall provide to the Governing Board of the District a list of names of its employees who may come in contact with students. Contractor shall fulfill these requirements at its own expense. The District may require the Contractor and its current and subsequent employees to submit to additional criminal records checks at the District's sole and absolute discretion.

If the District has determined that fingerprinting is not required, the Contractor and/or Contractor's current and subsequent employees shall check in with the District or school site office each day immediately upon arriving at the District or school site, and shall inform District or school site office staff of their proposed activities and location at the District or school site. Once at the District or school site, Contractor and/or Contractor's employees shall not change locations without contacting the District or school site office staff. Contractor and/or Contractor's employees shall not use student restroom facilities; and, if Contractor and/or Contractor's employees encounter any students, Contractor and/or Contractor's employees shall immediately leave the area and contact the District or school site office and receive further direction from District or school site office staff.

“Unsupervised contact” with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct District supervision. Contractor shall ensure that Contractor, and their officers, employees and agents, will have no direct, unsupervised contact with students while on District property. Contractor will work with District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, employees or agents will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Contractor

shall notify District in writing before beginning any work that could result in such contact. In addition to any criminal records check as set forth above, Contractor authorizes District, at its discretion, to obtain information about Contractor and its history and to independently conduct its own criminal records check, including fingerprinting, of any Contractor officers, employees or agents who may have unsupervised contact with students. Contractor shall cause its employees, if any, to authorize District to conduct these criminal records checks. Unless otherwise required by law, Contractor shall pay all fees for processing the criminal records check. District may deduct the cost of such fees from a progress or final payment to Contractor under this Agreement, unless Contractor elects to pay such fees directly.

13.2 Mandated Child Abuse Reporter. Contractor acknowledges and understands that, pursuant to California Penal Code section 11165.7, each person whose duties under the Services include direct contact and supervision of children is a mandated reporter of known or suspected instances of child abuse or neglect. Contractor is responsible for ensuring that every mandated reporter takes the Child Abuse Mandated Reporter Educators Training Module within six (6) weeks of hire and annually thereafter within the first six (6) weeks of each school year. Contractor will provide verification of compliance with this section upon District's request.

13.3. Tuberculosis Testing. Contractor and/or Contractor's current and subsequent employees providing Services to the District agree to undergo tuberculosis screening and to submit written verification of negative results for tuberculosis, if required by the District, prior to commencing Services pursuant to this Agreement.

14. 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.

15. 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.

16. Force Majeure. Neither party will be liable for damages for any delay in performance or nonperformance caused by acts of God such as, but not limited to, earthquakes, severe weather conditions such as tornados, floods, hurricanes, or other natural disasters, war, riots, terrorism, civil commotions, acts of public enemy, acts of civil or military authority, fire, explosion, epidemics or pandemics, or any law, proclamation, regulation, ordinance or other act or order of any court, government or governmental agency, or any other similar causes beyond the reasonable control of the party obligated to perform under this Agreement. Performance by that party for a period equal to the period of that delay in performance or nonperformance is excused, provided the party seeking the excuse gives written notice detailing the force majeure event and its good faith efforts to perform the Agreement. In addition, either party may terminate this Agreement if the delay in performance or non-performance exceeds thirty (30) calendar days.

17. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire Agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the Services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement. This Agreement incorporates by this reference, any exhibits, which are attached hereto and incorporated herein.

18. Nondiscrimination. Contractor agrees that Contractor will not engage in unlawful discrimination in employment of persons because of race, ethnicity, religion, nationality, disability, gender, sex, marital status, age, or other characteristics protected by federal or state laws.

19. Non Waiver. The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

20. Notice. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received, if personally served, or if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as follows:

District:

Contractor:

Ocean View School District of Orange Country
17200 Pinehurst Lane
Huntington Beach, CA 92647

Karen J. Bains dba Art Explorers
16752 Barefoot Circle
Huntington Beach, CA 92649

21. 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.

22. 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 attorneys' fees.

23. Headings. The headings contained in this Agreement are provided exclusively for reference and the convenience of the parties. No legal significance of any type shall be attached to the headings.

24. Counterparts. This Agreement may be signed and delivered in two counterparts, each of which, when so signed and delivered, shall be an original, but such counterparts together shall constitute the one instrument that is the Agreement, and the Agreement shall not be binding on any party until the parties have signed it.

25. Authorized Signatures. The individual signing this Agreement warrants that he/she is authorized to do so. The District and Contractor understand and agree that a breach of this warranty shall constitute a breach of the Agreement and shall entitle the non-breaching party to all appropriate legal and equitable remedies against the breaching party.

26. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Orange County, California. This Agreement is made in and shall be performed in Orange County, California.

This Agreement is entered into this 15th day of September, 2021 .

OCEAN VIEW SCHOOL DISTRICT
OF ORANGE COUNTY

Name of District

Karen Bains dba Art Explorers

Contractor Name

By: _____

By: _____

Keith Farrow

Typed Name

Karen Bains

Typed Name

Assistant Superintendent, Administrative Services

Title

Independent Contractor

Title

On File

Taxpayer Identification Number

Contract Number:

Funding Source/Account Number:

Board Approved / Agenda Item #: September 14, 2021/

Department Lead: Paul Kraft

Name

Signature

Date

Assistant Superintendent: Julianne Hoefler

Name

Signature

Date

OVSD ICA (ASCIP)

8

July 2021

