

PROFESSIONAL SERVICES AGREEMENT
between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
and
SAN RAFAEL CITY SCHOOLS

This Professional Services Agreement (the “**Agreement**”), effective as of the date of the parties’ final signature below (the “**Effective Date**”), is by and between The Regents of the University of California, a California public corporation (the “**University**”), on behalf of its UCB HISTORY-SOCIAL SCIENCE PROJECT at its Berkeley campus, and SAN RAFAEL CITY SCHOOLS (the “**Organization**”), having a principal place at 310 NOVA ALBION WAY, SAN RAFAEL, CA 94903. “**Party**” hereinafter refers to each Party individually, or collectively as “Parties.”

RECITALS

WHEREAS, the University has the experience and capabilities necessary to perform the services contemplated by this Agreement and the performance of such services is consistent with its educational, research, and public service activities; and

WHEREAS, the Organization would like the University to provide the services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions in this Agreement, the Parties agree to the following:

AGREEMENT

1. Scope of Work.

The University will perform the services and, if applicable, provide the deliverables set forth in the attached Exhibit A, incorporated by reference and made a part of this Agreement.

2. Term and Termination.

- A. This Agreement commences on the Effective Date and terminates one (1) year from the Effective Date or on JUNE 30, 2019, whichever is later (the “**Term**”), unless earlier terminated in accordance with the terms of this Agreement.
- B. This Agreement may be terminated by a Party in the event of a material breach by the other party, provided that the breach remains uncured for a period of fourteen (14) days after the party-in-breach is notified in writing of the breach. If the Organization is more than thirty (30) days delinquent in any payment due under this Agreement, such delinquency shall constitute a “material breach” of this Agreement for the purposes of this provision.

C. Either Party may terminate this Agreement with or without cause upon thirty (30) days' written notice to the other Party; provided, however, that the Organization shall pay the University for all services rendered and expenses incurred as of the date of receipt or delivery, as the case may be, of the notice of termination. In addition, if the Organization terminates this Agreement, the Organization shall pay the University for all non-cancellable obligations as of the date of delivery of the notice of termination.

D. All provisions which, by their nature, extend beyond the Term will survive termination of this Agreement, including but not limited to, Sections 4 (**Disclaimer of Warranty**), 5 (**Limitation of Liability**), 6 (**Indemnification**), 7 (**Insurance**), 8 (**University Name, Trademarks and Logos**), and 9 (**Copyright**).

3. Fees.

The fees or rates for the services to be rendered by the University and the terms of payment are set forth in Exhibit A. Unless specified in Exhibit A, the Organization shall pay the University within thirty (30) days from the date of University's invoices. If the Organization is more than thirty (30) days delinquent in any payment due under this Agreement, such delinquency shall constitute a "material breach" of this Agreement for the purposes of Section 2.B, and will accrue a one-percent (1%) service charge per month of delinquency. The University shall submit all invoices to the Organization's representative listed in Section 12. All payments from the Organization to the University shall be made payable to "The Regents of the University of California" in a form specified in Exhibit A.

4. Disclaimer of Warranty.

THE UNIVERSITY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SERVICES, THE DELIVERABLES, OR THE RESULTS PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE ORGANIZATION ACKNOWLEDGES THAT THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. THE ORGANIZATION FURTHER ACKNOWLEDGES THAT IT USES SUCH SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. THE UNIVERSITY SHALL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES, DELIVERABLES, OR RESULTS.

5. Limitation of Liability.

THE UNIVERSITY SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN WARRANTY, TORT, CONTRACT, OR OTHERWISE,

INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF GOOD WILL, WHETHER OR NOT THE UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. THE UNIVERSITY'S AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES RECEIVED BY THE UNIVERSITY FROM THE ORGANIZATION PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE ORGANIZATION'S CLAIM. THE ORGANIZATION EXPRESSLY ACKNOWLEDGES THAT THE UNIVERSITY SHALL HAVE NO LIABILITY WITH RESPECT TO ANY LOSS OF PROPERTY, MATERIALS, DATA, OR INFORMATION THAT THE ORGANIZATION PROVIDES TO THE UNIVERSITY UNDER THIS AGREEMENT.

6. Indemnification.

The Organization shall defend, indemnify, and hold the University, its officers, employees, and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Organization, its officers, agents, or employees. The University agrees to provide the Organization with prompt notice of any such claim or action and to permit the Organization to defend any claim or action, and to cooperate fully in such defense. The Organization shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the University, and such consent shall not be unreasonably withheld, conditioned, or delayed.

7. Insurance.

A. The Parties shall keep in full force and effect during the Term, at each Party's own expense, insurance or in the case of the University, self-insurance with coverages as follows ("**Insurance**"):

i. Commercial Form General Liability Insurance with minimum limits as follows:

a. Each Occurrence	\$1,000,000
b. Products/Completed Operations Aggregate	\$2,000,000
c. Personal and Advertising Injury	\$1,000,000
d. General Aggregate	\$2,000,000

ii. Workers Compensation as required by applicable law.

iii. Business Automobile Insurance with insurance coverage amount of \$1,000,000 per occurrence.

B. If the Insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement.

- C. The Insurance shall provide for a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement.
- D. Each Party shall be named as an additional insured on the General Liability and Business Automobile insurance of the other Party, in proportion to and to the extent of the negligent acts or omissions of the former Party's officers, employees and agents.
- E. Within thirty (30) days of the execution of this Agreement, each Party shall furnish the other Party with a Certificate of Insurance (the "**Certificate of Insurance**") evidencing compliance with the insurance provisions of this Agreement. The Organization's Certificate of Insurance shall be delivered to University's representative specified in Section 12. Each Party is required to give thirty (30) days' advance written notice to such other Party of any modification, change, or cancellation with respect to the Insurance.
- F. The insurance requirements set forth in this Section shall not limit a Party's liability.

8. University Name, Trademarks and Logos

The Organization shall not use the name of the University of California, any abbreviation thereof, any name of which "University of California" is a part, or any trademarks or logos of the University ("**University Marks**"), in any commercial context (including, without limitation, on products, in media (including websites), and in advertisements), or in cases when such use may imply an endorsement or sponsorship of the Organization, its products or services. All such uses of the University's name and trademarks must receive prior written consent from The Regents of the University of California through the Office of Business Contracts and Brand Protection, who can be reached at bcbp@berkeley.edu. At all times, the Organization agrees to comply with California Education Code Section 92000.

University Marks are and shall remain exclusively the property of the University. The Organization shall not, either directly or indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and the Organization hereby expressly waives any right which it may have in University Marks. The Organization recognizes the University's exclusive ownership of University Marks.

9. Copyright.

All rights to a Party's pre-existing copyrighted or copyrightable materials (or derivative works thereof) shall be retained by such Party. All copyright rights to any works created in the performance of this Agreement ("**Works**") shall vest with the University as a "work made for hire" under U.S. copyright law. In the event that it is determined that the University is not the owner of such Works under the "work made for hire" doctrine, the Organization

hereby irrevocably assigns to the University all right, title, and interest (including copyright rights) to and in such Works. The University grants to the Organization a non-transferable, royalty-free, non-exclusive license to use and reproduce the Works solely to the extent necessary to perform the obligations and activities of this Agreement. The Organization will not use the Works for any other purpose without the prior written consent of the University.

10. Export Control and Biohazardous Materials.

If any of the materials and/or information provided to the University by the Organization (“**Export Materials**”) are: export-controlled under the International Traffic in Arms Regulations (22 CFR 120-130), the United States Munitions List (22 CFR 121.1), or Export Administration Regulations (15 CFR 730-774); controlled on a military strategic goods list; Select Agent(s) under 42 CFR Part 73, et seq.; or subject to regulations governing access to such Export Materials, the Organization shall provide the University contact in Section 12 with written notification that identifies such Export Materials, including their export classification, prior to disclosure.

11. Materials Provided by the Organization.

In the event the University is producing deliverables or providing services that require the Organization to furnish or supply the University with parts, goods, data, specifications, components, programs, practices, methods, Export Materials, or other property under this Agreement (collectively, “**Organization Materials**”), the Organization warrants that Organization Materials will: 1) conform to the requirements of this Agreement, including all descriptions, specifications, and attachments made a part hereof, and 2) will not infringe any third party rights. The University’s acceptance of Organization Materials shall not relieve the Organization from its obligations under this warranty.

The Organization shall indemnify, defend, and hold harmless the University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys’ fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Organization Materials or the University’s use of Organization Materials constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The University retains the right to participate in the defense against any such suit or action, and the Organization shall not settle any such suit or action without the University’s consent.

12. Notice.

Any notice or communication required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by overnight mail, or prepaid registered mail addressed to the other party at the address set forth below. Additionally, notices by Email will be considered legal notice if such communications include the

following text in the Subject field: “FORMAL LEGAL NOTICE – [insert, as the case may be, the Organization name or University of California].”

University’s representative for all purposes shall be:

Andrea Eubanks

UCBHSSP

3229 Dwinelle Hall MC#2550

Berkeley, CA 94720-2550

510-643-0897

ucbhssp@berkeley.edu

Organization’s representative for all purposes shall be:

Kevin Kerr

San Rafael City Schools

310 Nova Albion Way

San Rafael, CA 94903

415-492-3200

13. Data Security and Privacy.

The Organization shall not exchange, reveal, or otherwise share Protected Health Information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with the University. In the event that exchange or disclosure of personally identified information or data identifiable to an individual (“**Protected Information**”) is contemplated in the performance of this Agreement, both Parties agree to comply with all applicable local, state federal, and international laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of such Protected Information, and the Parties further agree that additional appendices or exhibits may be required to govern such use.

14. Conflict of Interest

The Organization affirms that it is not aware of any University employee who has participated in the University's decision-making concerning this Agreement having an "economic interest" in this Agreement or in the Organization. A University employee's "economic interest" means:

- A. An investment worth Two Thousand Dollars (\$2,000) or more in the Organization or its affiliate;
- B. A position as director, officer, partner, trustee, employee or manager of the Organization or its affiliate;
- C. Payment during the past twelve (12) months of Five Hundred Dollars (\$500) in income or Four Hundred Seventy Dollars (\$470) in gifts by the Organization or its affiliate; or
- D. A personal financial benefit from this Agreement in the amount of Two Hundred Fifty Dollars (\$250) or more.

In the event of a change in Organization's awareness of any of the factors mentioned above in A-D, the Organization shall provide written notice to the University within thirty (30) days after such change, noting such changes. The Organization shall not be in a reporting relationship to a University employee who is a near relative, nor shall a near relative be in a decision-making position with respect to the Organization.

15. Governing Law

This Agreement shall be governed by and interpreted according to the laws of the State of California, without regard to its conflict of laws provisions.

16. Modification

This Agreement may only be amended in a writing, signed by the authorized representatives of the Parties.

17. Relationship of the Parties

In the performance of this Agreement, the Parties, and their officers, agents and employees, shall act as independent contractors. Nothing in this Agreement shall create, or be construed to be, a joint venture, association, partnership, franchise or other form of business relationship. At no time will the employees, agents or assigns of one Party be considered the employees of the other Party for any purpose, including but not limited to workers' compensation purposes.

18. Force Majeure

If any Party fails to timely perform its obligations under this Agreement as a result of acts of God, labor disputes, strikes, actions of governmental authority, acts of terrorism, wars, judicial orders or other causes beyond the reasonable control of the Party obligated to perform, then that Party's performance shall be excused for the duration of such force majeure event.

19. Waiver

Any failure of the Parties to enforce any of the terms or conditions of this Agreement shall not constitute a waiver and shall not affect or impair such terms or conditions in any way, nor shall it impair the right of the Parties to avail themselves of such remedies as may be available for any breach of this Agreement.

20. Assignment

Neither Party may assign this Agreement without the written consent of the other Party. In case such consent is given, the assignee shall agree, in writing, to be subject to all of the terms of this Agreement that are applicable to the assignor.

21. Severability

In the event any portion of this Agreement is declared illegal, unenforceable, invalid or void by a court of competent jurisdiction, such portion shall be severed from this Agreement, and the remaining provisions shall remain in full force and effect.

22. Integration

This Agreement, including any exhibits, constitutes the entire understanding and agreement between the Parties as to all matters contained herein, and supersedes any and all prior agreements, representations and understandings of the Parties. The parties may utilize their standard forms of purchase, invoicing, quotations and other such forms in administering this Agreement, but any of the terms and conditions printed or otherwise appearing on such forms will not be applicable and will be void. Additional or different terms and conditions may only be added to this Agreement by a written agreement signed by both Parties that expressly states in the title of such document an intent to amend this Agreement. If any of the terms within this Agreement and its attachments conflict, the Agreement will control the interpretation thereof.

23. Counterparts

This Agreement may be executed in two or more counterparts, which may be transmitted via facsimile or electronically, each of which shall be deemed an original and all of which together shall constitute one instrument.

24. Representation on Authority of Parties/Signatories

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

[signature page follows]

IN WITNESS WHEREOF, the duly authorized Parties have executed this Agreement as of the Effective Date.

ORGANIZATION

By: _____

Name: _____

Title: _____

Date: _____

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By: _____

Name:

Title:

Business Contracts and Brand Protection

Date: _____

EXHIBIT A

San Rafael City Schools

Kevin Kerr 9-12 Director of Teacher and Learning
310 Nova Albion Way
San Rafael, California 94903
415.492.3200 - Phone

Proposed Scope of Work for San Rafael High School 2018-19

San Rafael High School- Wide Instructional Coaching: UCBHSSP proposes a scope of work, which comprises:

- Coaching the Graduate Student Profile Design team to develop and implement Performance Assessment Design.
- Coaching the ELD and SDAIE teachers in unit and lesson design to incorporate language development, integrated ELD supports and project-based learning outcomes.
- Assist Organization's designated personnel in the planning of site based Professional Development.
- Facilitate 9th grade teachers to agree upon common practices and assessments to support student success in high school.

Instructional Coaching	
Full days coaching for: Design Team members, 9 th grade teachers, ELD and SDAIE teachers 10 days @\$2250/day:	\$22,500
Administration costs 10%	\$2,250
Total	\$24,750