

THIS AGREEMENT, made and entered into this 26th day of February by and between the SAN MARINO UNIFIED SCHOOL DISTRICT (“District”), and Dr. Robert May, aka Mainstream Unlimited (“Independent Contractor”) (collectively referred to as the “Parties”).

RECITALS

WHEREAS, pursuant to California Education Code section 35160.1, the Governing Board of Education (“Board”) of the District is empowered to contract for educational and support services to address the District’s diverse needs unique to their individual communities and programs (“Services”) and

WHEREAS, the Board wishes to retain Independent Contractor to assist the District with the execution of its duties to provide Services to the public it serves; and

WHEREAS the Board wishes to retain the Independent Contractor for the purpose of as more fully described in Exhibit “A” hereto (“Services”); and

WHEREAS the Independent Contractor by his/her signature herein certifies that he/she is specially trained, qualified and possesses the necessary skills, experience, education and competency, and where required, duly licensed and/or credentialed, to perform the Services for which he/she has been retained by the District;

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

MATTERS OF AGREEMENT

1. Term of Agreement. The term of this Agreement shall commence on February 22, 2018 and shall end on June 30, 2018. The term of this Agreement may be extended or renewed only by the authorization of the District’s Board.

2. Services to be Provided to District. The Services to be performed by the Independent Contractor are described and, where appropriate, depicted, in Exhibit “A” hereto. Independent Contractor is not authorized to perform any other services for the District, other than those set forth in Exhibit “A”, unless expressly authorized by the District’s Board and memorialized in a written amendment hereto.

3. Independent Contractor Status. For all purposes arising under this Agreement and at all times during this Agreement the relationship between the Parties shall be that of District and Independent Contractor. At no time, and under no condition, shall any officer, employee of the other party, or otherwise authorized to represent any interest of the other party. Neither Independent Contractor nor District, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers’ compensation benefits, injury leave, or other leave benefits.

4. Payment for Services. Payment to Independent Contractor for the Services to be provided by this Agreement shall be in the amount and under any payment provisions as set forth in Exhibit "A" hereto. Independent Contractor must submit an invoice for the Services to the District's Accounting Department, Attention Accounts Payable at 1665 West Drive, San Marino, California 91108. Payment shall be made in accordance with the District's policy for payment. However, under no circumstances shall payment be made unless and until the District verifies that all services for which payment is requested have been fully and satisfactorily performed. Independent Contractor shall submit to the District any documentation necessary to substantiate the full and satisfactory performances of the services for which payment is requested with any and all detailed documentation related to reimbursement for expenses.

5. Amendment. This Agreement may be amended by the District in consultation with the Independent Contractor. All amendments must be in writing and must be approved by the District's Board.

6. Termination. This Agreement may be terminated by either Party, without mutual consent, upon ten (10) days written notice to the other Party. Such termination shall not be deemed to be a breach of this Agreement.

7. Assignment. Neither Independent Contractor nor District may assign or transfer any interest in this Agreement without prior written consent of the other party.

8. Ownership. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials produced by Independent Contractor under this Agreement shall be the sole and exclusive property of the District. No such materials produced, either in whole or in part, under this Agreement shall be subject to private use, copyright or patent right by Independent Contractor in the United States or in any other country without the express written consent of the District. The District shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent any such materials produced by Independent Contractor under this Agreement.

9. Indemnification and Hold Harmless. Independent Contractor agrees to defend, indemnify, and save free and harmless District, its Board, officers, agents and employees against any and all losses, injuries, damages, actions, causes of action, judgments or liens (including, without limitation, reasonable attorneys' fees and associated costs) arising from or related to the performance of Services by Independent Contractor pursuant to this Agreement, or alleged to have arisen from, the intentional or negligent acts or omissions of Independent Contractor, its officers, agents or employees. Such defense and indemnity shall apply regardless of whether the injury or damage occurs either on or off District's property, except for liability or damages which result from intentional acts or willful misconduct of the District or its officers, employees, or agents.

- a. This indemnification and hold harmless^d shall survive the termination of this Agreement and shall be binding until such time as an action, which may be brought against the District, is absolutely barred by the applicable statute of limitations.
- b. However, notwithstanding the above, in its sole discretion, the District may participate in the defense of any claim, action or proceeding, brought against it utilizing legal counsel of its choice; however, such participation shall not relieve the Independent Contractor of any obligation imposed pursuant to this Agreement.

The Independent Contractor shall cooperate fully with the District in the defense of any and all claims.

10. Insurance Required. Independent Contractor, at his, her, or its sole cost and expense, shall purchase and maintain in full force and effect, during the term of this Agreement, the following insurance coverage from a California licensed and/or admitted insurer with an A or better rating according to the current A.M. Best's Insurance reports and acceptable to District, sufficient to cover any claims, damages, liabilities, costs and expenses (including attorneys' fees) which may arise out of or result from Independent Contractor's actions or inactions relating to his, her, or its obligations under this Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation. In the event that Independent Contractor subcontracts any portion of Independent Contractor's duties, Independent Contractor shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination. The aforementioned insurance shall include coverage for:

a. Workers' Compensation and Employers Liability Insurance in a form and amount covering Independent Contractor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws. If Independent Contractor chooses to not acquire workers' compensation insurance, it is understood that it will cover all necessary medical, legal and other associated costs, and that the District will not be responsible in any manner or way.

b. Comprehensive General Liability Insurance, including both bodily injury and property damage, with minimum coverage limits of \$1million per occurrence and \$2million annual aggregate. Each policy of insurance required above shall name the District and its officers, agents and employees as additional insured with no qualification; shall state that, with respect to the operations of the Independent Contractor hereunder, such policy is primary and any insurance carried by the District is excess and non-contributory with such primary insurance; shall state that no less than thirty (30) days' written notice shall be given to the District prior to cancellation; and, shall waive all rights of subrogation. Independent Contractor shall notify the District in the event of material change in, or failure to renew, each policy. Prior to commencing work for the District under this Agreement, Independent Contractor shall deliver to the District certificates of insurance as evidence of compliance with the requirements herein. In the event Independent Contractor fails to secure or maintain any policy of insurance in the name of and for the account of Independent Contractor, and in such event Independent Contractor shall reimburse the District upon demand for the cost thereof.

11. Fingerprinting Requirements. Education Code § 45125.1 states that if employees of any Independent Contractor providing school site Administrative or similar services may have any contact with any underage pupils (younger than 18 years of age); those employees shall be fingerprinted by the Department of Justice (DOJ) before entering to determine that they have not been convicted of a serious or violent

felony. If the District determines that more than limited contact with students will occur during the performance of these Services by Independent Contractor, Independent Contractor will not perform Services until all employees providing Services have been fingerprinted by the DOJ and DOJ fingerprinting clearance certification has been provided to the District.

- a. The District has determined that Independent Contractor's Services will result in contact with pupils. If contact will be made Independent Contractor will obtain fingerprinting clearance for all employees before Services can begin and Independent Contractor will provide a list to the District of all employees cleared by DOJ who will provide Services under this Agreement. Failure to provide such written certification within ten (10) days of execution of this Agreement will result in immediate termination of this Agreement.

12. Notices. All notices required to be delivered under this Agreement to the other Party must be in writing and shall be effective (i) when personally delivered by the other Party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective Parties as set forth below or to such other address and to such other persons as the Parties may hereafter designate by written notice to the other Parties hereto:

TO DISTRICT:

San Marino Unified School District
1665 West Drive
San Marino, California 91108
Phone: (626) 299-7000
Fax: (626) 299-7010
Email: hrtorre@smusd.us
Attention: Linda de la Torre

TO INDEPENDENT CONTRACTOR:

Robert May
3715 Galena Cir
Burney, CA 96103
Phone: (760) 221-8205
Email: biem47@outlook.com
Attention:

13. Diversity Programs. Independent Contractor agrees to comply with any applicable District employment or contracting diversity programs, policies or procedures.

14. Entire Agreement. This Agreement and the terms herein stated shall constitute the entire agreement between the Independent Contractor and the District

and supersedes all prior negotiations, representations or agreements, either written or oral.

15. Severability. If any provision of this Agreement is rendered unenforceable for any reason, the remaining provisions of this Agreement shall remain unaffected thereby.

16. Representation by Independent Counsel. Independent Contractor acknowledges that he/she/it has had the opportunity to be represented by independent legal counsel of their own choosing regarding this Agreement. Consequently, the Parties agree that this Agreement shall be construed as mutually drafted by the Parties, with no presumption that this Agreement was drafted by any one party or the other.

17. Jurisdiction; Venue. The Parties agree and consent that the jurisdiction for any dispute arising from this Agreement shall be in the State of California, County of Los Angeles. Such courts shall have exclusive jurisdiction to hear and decide any issue, dispute or controversy arising from this Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of whom shall be deemed to be an original and all such counterparts together shall constitute one and the same instrument.

19. Miscellaneous Provisions.

a. Responsibilities of the District, not set forth herein, if any, are identified in Exhibit A.

b. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Independent Contractor.

c. The District and Independent Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other Party to this Agreement with respect to the terms of this Agreement. Independent Contractor shall not assign this Agreement.

d. This Agreement shall be governed by the laws of the State of California.

e. All attachments referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance and in text hereof.

IN WITNESS THEREOF, the Independent Contractor and the District have duly executed this Agreement as of the date set forth above.

DATED: 2/22/18

SAN MARINO UNIFIED SCHOOL DISTRICT

By: 

Linda de la Torre,
Assistant Superintendent,
Human Resources

DATED: 2/21/2018

INDEPENDENT CONTRACTOR

By:

Robert May



Robert May
Consultant

FOR USE BY THE ACCOUNTING OFFICE

Account#: _____ Name of Account: _____

EXHIBIT A

In consideration of the mutual covenants expressed herein, the PARTIES agree as follows:

SERVICES TO BE RENDERED BY INDEPENDENT CONTRACTOR:

- Attend and participate in San Marino High School's Parent Active Shooter Drill Information Night on February 22, 2018;
- Provide expert feedback, advice, and guidance to the District on best practices on the aforementioned topic as requested;
- Collaborate with the San Marino Unified School District Superintendent and his Cabinet in making recommendations for revisions to the existing plans, follow-up trainings, and in-services, as requested;
- Provide training and support to leadership, parents, students, and staff, as requested.

TERMS OF PAYMENT FOR INDEPENDENT CONTRACTOR SERVICES:

TOTAL AMOUNT DUE INDEPENDENT CONTRACTOR: It is agreed and understood that the Contractor shall be paid as follows: The Contractor shall be paid \$250 per hour for professional services rendered, not to exceed 15 hours.

Contract fees and reimbursements will be paid based on receipt of an original invoice with supporting documentation within (30) fifteen days upon successful completion of all activities and services.