



# MORGAN HILL UNIFIED SCHOOL DISTRICT SERVICES AGREEMENT

2015-16

THIS AGREEMENT ("Agreement") is made between Morgan Hill Unified School District, 15600 Concord Circle, Morgan Hill, CA 95037, hereinafter referred to as the DISTRICT, and the following named service provider hereinafter referred to as VENDOR:

**VENDOR NAME:** YMCA of Silicon Valley  
**DBA:** YMCA of Silicon Valley, Mt. Madonna Branch  
**ADDRESS:** 171 W. Edmundson, Morgan Hill, CA 95037  
**MAILING ADDRESS:** (if different than above) 80 Saratoga Ave  
**CITY:** Santa Clara      **STATE:** CA      **ZIP:** 95051  
**PHONE:** (408) 351-6422      **FAX:** (408) 298-0143  
**EMAIL ADDRESS:** mhaughey@ymcasv.org  
**FEDERAL TAX I.D. OR SOCIAL SECURITY NUMBER:** 94-1156318

*Vendor is responsible for updating contact information in a timely manner.*

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

Check appropriate box for federal tax classification:

Individual/sole proprietor       C Corporation       S Corporation  
 Partnership       Trust/estate       Other \_\_\_\_\_  
 Limited Liability Company      Type:  (C)     (S)     (P)

Submittal of Documents: The VENDOR shall not commence the work under this Agreement until the VENDOR has submitted and the DISTRICT has approved the certificate(s) and affidavit(s), and the endorsement(s) of the insurance required as indicated below:

<input checked="" type="checkbox"/>	Signed Agreement
<input type="checkbox"/>	Insurance Certificates and Endorsements
<input checked="" type="checkbox"/>	W-9 Form
<input checked="" type="checkbox"/>	Workers' Compensation Certificate (if applicable)
<input checked="" type="checkbox"/>	Tuberculosis Clearance (if applicable)
<input checked="" type="checkbox"/>	Fingerprinting/Criminal Background Investigation (if applicable)
<input type="checkbox"/>	DIR # _____ (if applicable)

on-file @ district

**1. TERM**

This Agreement is effective on Sept 2, 2015 and terminates on May 27, 2016 or upon completion of services, whichever occurs first.

VENDOR shall not undertake any work under this Agreement until this Agreement is reviewed and approved by the DISTRICT's Board of Education, and VENDOR is in receipt of a signed Agreement.

**2. TERMINATION**

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

**2.2 Without cause by VENDOR.** VENDOR may, upon thirty (30) day notice, with or without reason, terminate this Agreement. Upon this termination, DISTRICT shall only be obligated to compensate VENDOR for services satisfactorily rendered to the date of termination. Written notice by VENDOR shall be sufficient to stop further performance of services to DISTRICT. VENDOR acknowledges that this thirty (30) day notice period is acceptable so that the DISTRICT can attempt to procure the services from another source.

**2.3 With cause by DISTRICT.** DISTRICT may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

2.3.1. Material violation of this Agreement by the VENDOR; or

2.3.2. Any act by VENDOR exposing the DISTRICT to liability to others for personal injury or property damage; or

2.3.3. VENDOR is adjudged bankrupt, VENDOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of VENDOR'S insolvency.

Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the DISTRICT may secure the required services from another VENDOR. If the expense, fees, and/or costs to the DISTRICT exceed the cost of providing the services pursuant to this Agreement, the VENDOR shall immediately pay the excess expense, fees, and/or costs to the DISTRICT upon the receipt of the DISTRICT'S notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available.

**3. SUBCONTRACT OR ASSIGNMENT**

Neither party shall assign, delegate or subcontract any part of this Agreement without the written consent of the other party.

**4. INTERPRETATION**

In the event of any conflict or inconsistency between VENDOR'S agreement or documents and this **MORGAN HILL UNIFIED SCHOOL DISTRICT SERVICES AGREEMENT**, the **MORGAN HILL UNIFIED SCHOOL DISTRICT SERVICES AGREEMENT** shall prevail and supersede all other agreements or contract language.

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**5. INDEPENDENT CONTRACTOR STATUS**

In the performance of the services to be provided, VENDOR is an independent contractor with the authority to control and direct the performance of the details of the work, and this Agreement shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. VENDOR understands and agrees that it and all of its employees are not employees of the DISTRICT and are not entitled to benefits to which DISTRICT employees are normally entitled, including, but not limited to, State Unemployment Compensation, Workers' Compensation, vacation or sick pay.

**6. TAX REPORTING / PAYMENT**

VENDOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including, but not limited to, Unemployment Insurance, Social Security and Income Taxes with respect to VENDOR'S employees. Pursuant to IRS regulations, the DISTRICT shall provide VENDOR in IRS identified tax classification with an annual statement of compensation on the appropriate federal forms (currently IRS Form 1099 Misc.).

**7. REGULATIONS**

VENDOR shall comply with all federal, state, and local laws, ordinances, regulations, permit requirements, and Board of Education's policies and regulations in performance of this Agreement, including as set forth herein at Paragraph 8.

**8. FINGERPRINTING AND CRIMINAL RECORDS CHECK**

The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to the VENDOR performing any of the services as listed in Item 12 of this Agreement. DISTRICT retains authority to remove any VENDOR employee from DISTRICT site upon the determination that he/she has not complied with this fingerprinting and background check requirement, or has been convicted of a violent or serious felony, as defined in Education Code §45122.1. VENDOR must notify the DISTRICT and remove any employee immediately should the VENDOR learn that an employee working on a DISTRICT site has been convicted of a serious or violent felony, or sex offense. Failure to provide notice as required above may result in cancellation of this Agreement by DISTRICT and further legal action by the DISTRICT where applicable.

**9. GOVERNING LAW**

This Agreement shall be governed under the laws of the State of California. VENDOR hereby consents to the jurisdiction of the state or federal courts of Santa Clara County, California.

**10. MISCELLANEOUS**

This Agreement contains the entire agreement between DISTRICT and VENDOR and supersedes any and all prior discussions, understandings, and negotiations, whether oral or in writing. This Agreement may not be modified or amended unless in writing and signed by both parties.

**11. INSURANCE AND INDEMNIFICATION**

VENDOR agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Education, officers, employees and agents, individually and collectively, from and against all costs, losses, claims, demands, suits, actions, payments, liabilities and judgments, including attorneys fees, arising from personal or bodily injuries, property damage or otherwise, regardless of and however caused that may arise for any reason from VENDOR'S performance of this Agreement.

VENDOR must keep in full force and effect a policy or policies of Workers' Compensation Insurance in the amount or amounts required by applicable law.

During the term of this Agreement, **VENDOR** shall procure and maintain general liability, automobile liability, and professional liability (errors and omissions) from a California licensed insurer acceptable to **DISTRICT** with per-occurrence limits of \$1 Million unless otherwise specified by the **DISTRICT**. **VENDOR** shall provide **DISTRICT** with a Certificate(s) of Insurance evidencing such coverage. High risk activities may require additional coverage as determined by the **DISTRICT**. Certificate Holder is Morgan Hill Unified School District. **VENDOR** shall also provide an Additional Insured Endorsement, naming Morgan Hill Unified School District as Additional Insured. Such insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the **DISTRICT** shall be non-contributory. These certificates shall contain a provision that coverage afforded under the policy will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been delivered to the **DISTRICT**.

**12. DESCRIPTION OF SERVICES (SCOPE OF WORK)**

**VENDOR** shall supply all required payment and performance bonds and shall pay employees applicable prevailing wages in accordance with state and federal law where required. **VENDOR** shall furnish, at its own expense, all labor, materials, equipment and other items necessary to carry out the terms of this Agreement. **VENDOR** shall provide the following services to **DISTRICT**:

- Activities to be provided during noon recess:
1. Education to students on proper rules and game components
  2. Provide age appropriate activities to develop proper motor skills
  3. Provide activities that promote skill development, self-esteem and fair play
  4. Incorporate recognition program based on the YMCA's for core values of honesty, caring, respect, and responsibility
  5. Incorporate suggestion from YMCA staff, school administration and faculty
  6. Curriculum will be assets-based to align with school goals

(Additional pages may be added and shall be marked Exhibit "A" and are incorporated herein by this reference).

**13. COMPENSATION AND EXPENSES**

**DISTRICT** agrees to pay the **VENDOR** for services satisfactorily rendered pursuant to this Agreement at the rate of \$ 5,837.00 per flat rate for a total fee not to exceed \$ 5,837.00. District shall pay **VENDOR** according to the following terms and conditions:

**13.1.** Payment shall be made for all undisputed amounts in installment payments within thirty (30) days after the **VENDOR** submits an invoice to the **DISTRICT**. **VENDOR** will only be paid after the MHUSD Board of Education has approved/ratified this Agreement.

**13.2.** **VENDOR** invoices will be subject to verification that services have been rendered and subject to written approval by Mary Alice Callahan.

**13.3.** **DISTRICT** shall not be liable to **VENDOR** for any costs or expenses paid or incurred by **VENDOR** in performing services for **DISTRICT** including but not limited to travel, professional development related expenses, duplication, etc.

**13.4.** **VENDOR** shall not increase prices during the term of this Agreement.

**13.5.** All invoices must be submitted within 30 days of rendering services. **DISTRICT** reserves the right to reject invoices submitted for payment more than 30 days after services are performed.

**14. OWNERSHIP OF WORK PRODUCT**

**VENDOR** agrees all work prepared or produced during the course of this Agreement and arising from the

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services rendered (see Paragraph 12) shall be owned by and assigned to DISTRICT as its sole and exclusive property.

**15. AUDIT**

VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. VENDOR shall permit the DISTRICT, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the services covered by this Agreement. Audit(s) may be performed at any time, provided that the DISTRICT shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

**16. CERTIFICATES / PERMITS / LICENSES**

VENDOR and all VENDOR'S employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

**17. CONFIDENTIALITY**

VENDOR and all VENDOR'S agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**18. NOTICE**

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

<p><b><u>DISTRICT</u></b>  Morgan Hill Unified School District  15600 Concord Circle  Morgan Hill, CA 95037</p> <p>ATTN: <u>Mary Alice Callahan</u></p>	<p><b><u>VENDOR</u></b>  <u>YMCA of Silicon Valley</u>  <u>80 Saratoga Ave</u>  <u>Santa Clara, CA 95051</u></p> <p>ATTN: <u>Mary Haughey</u></p>
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**19. ATTORNEY FEES / COSTS**

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**20. COMPLETION**

The work completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT'S general right of inspection and supervision, in a manner consistent with VENDOR'S status as an independent contractor, to secure the satisfactory completion thereof. Work must be completed in good workmanship like manner and in accordance with the generally accepted standard of care in the industry.

**21. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or

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impaired thereby, except where enforcement is inconsistent with the parties' intent.

**22. RELEASE, DISCHARGE OR WAIVER**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

**23. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same agreement.

**Any party signing this Agreement on behalf of the VENDOR hereby represents that he/she is duly authorized by the VENDOR to execute this Agreement and that the VENDOR has agreed to be bound by the provisions hereof.**

YMCA of Silicon Valley ("VENDOR")

Signature: *Mary Hoshiko Haughey*

Date: 8/18/15

Name: Mary Hoshiko Haughey

Title: Vice President of Operations

MORGAN HILL UNIFIED SCHOOL DISTRICT ("DISTRICT")

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Kirsten Perez

Title: Assistant Superintendent, Business Services

Date of Board Approval \_\_\_\_\_

Notwithstanding the effective date of this Agreement set forth in Paragraph 1, this Agreement shall not be considered accepted, approved or otherwise effective until 1) Board approval and 2) the required approvals and certifications have been implemented, provided by, or submitted to the DISTRICT, as appropriate.