

LOS ANGELES COUNTY OFFICE OF EDUCATION

CONTRACT
FOR
DESIGNATED INSTRUCTION SERVICES (DIS)
SPECIAL EDUCATION

The LOS ANGELES COUNTY OFFICE OF EDUCATION, a public educational agency, located at 9300 Imperial Highway, Downey, California 90242-2890, hereinafter referred to as "LACOE" and

LENNOX SCHOOL DISTRICT, whose mailing address is 10319 Firmona Avenue, Lennox, CA 90304, hereinafter referred to as "District," mutually agree as follows:

1. BASIS OF CONTRACT AND SCOPE OF THE WORK

District has determined that assistance is required from LACOE to provide professional staff (hereinafter referred to as "Personnel") to provide adapted physical education (APE) services to its students. All work shall be coordinated with LACOE's Chief Academic Officer, Dayton Gilleland.

2. TERM OF CONTRACT

This Contract is effective July 1, 2016 and shall remain in effect through June 30, 2017 unless early termination occurs in accordance with the terms of this Contract or extended by a written amendment to this Contract.

3. PAYMENT

District shall reimburse LACOE for the actual salary and employee benefit payments made to, or on behalf of the assigned Personnel plus 11% service fee on the total base salary and benefits during the period of this Contract. All Personnel assignments will be for the entire school/fiscal year. Current salary and benefit ranges for several Personnel positions is hereby attached, incorporated herein, and made part of this Contract as Exhibit A – Estimated Designated Instruction Services, to provide sample information as reference points. District shall also reimburse LACOE for any of the assigned Personnel's mileage costs generated from the reporting location. LACOE shall bill District for the entire cost of the Personnel assignment. It is the responsibility of the District to assign and collect partial costs from other Local Educational Agencies (LEAs) if the services

of the LACOE assigned Personnel are shared among LEAs. Payments shall be made within thirty (30) calendar days of receipt of itemized invoices submitted to the attention of the Accounts Payable Unit.

In the event a change is made in Personnel's total compensation due to collective bargaining agreements, or step/column increases, LACOE shall provide District with written notification of such changes and shall amend this Contract to reflect any such changes.

4. INDEMNIFICATION

- 4.1 LACOE agrees to indemnify, defend, save, and hold harmless the District, its governing board, and the individuals thereof, and all officers, agents, employees, representatives, and volunteers from any liability, loss, cost, expense, injury, proceeding, claim or obligation arising out of, related to, connected with, or as a result of any injury or property damage done to any third party through the Personnel's negligence in the performance of his/her duties or activities set forth in the Contract. Such provision shall not apply to any liability, loss, cost, expense, injury, proceeding, claim or obligation arising out of, connected with, or as a result of any intentional or willful act committed by the District or the Personnel.
- 4.2 The District agrees to indemnify, defend, save, and hold harmless LACOE, its governing board, and the individuals thereof, and all of its officers, agents, employees, representatives, and volunteers from any liability, loss, cost, expense, injury, proceeding, claim or obligation to the Personnel arising out of, related to, connected with, or as a result of any damage to Personnel's person while performing his/her duties under this Contract. The District further agrees that the Personnel is not an employee of District and that any workers' compensation benefits due or payable to the Personnel shall be the liability and the responsibility of LACOE. Under this provision, the Personnel shall be held to the exclusive remedy of workers' compensation benefits owed by LACOE.
- 4.3 District agrees to indemnify, defend, save, and hold harmless LACOE, its governing board, and the individuals thereof, and all of its officers, agents, employees, representatives, and volunteers from any liability, loss, cost, expense, injury, proceeding, or obligation arising out of, related to, connected with, or as a result of any property damage committed upon Personnel's personal property while performing his/her duties under this Contract. Any recovery for any liability, loss, cost, expense, injury, proceeding, claim, or obligation shall be subject to the policy and practices of LACOE.

4.4 LACOE shall remain liable to the Personnel for LACOE's performance or failure to perform any of the duties specified by the Contract, which may include but not be limited to the management, processing and/or payment of the Personnel's salary, worker's compensation benefits, or any other employee benefits. Provided that District performs all of its obligations specified in the contract, including the timely provision of attendance reports, LACOE shall indemnify, defend, save, and hold harmless District from any liability, loss, cost, expense, injury, proceeding, or obligation arising out of, related to, connected with, or as a result of the LACOE's failure to perform its duties specified in the Contract.

5. INSURANCE

- 5.1 Without limiting the indemnity provisions in this contract, District and LACOE shall maintain liability insurance to protect District and LACOE as their interests may appear.
- 5.2 District recognizes and accepts that LACOE maintains a program of self- insurance supported by its general fund and layers of excess insurance coverage.
- 5.3 LACOE recognizes and accepts that District maintains a program of self- insurance supported by its general fund and layers of excess insurance coverage.
- 5.4 LACOE agrees to consider District as an "alternate employer" for the purposes of this contract. Such reference to District as an "alternate employer" is made exclusively for the purpose of LACOE providing Workers' Compensation benefits to the Personnel.

6. NOTICES

Any notices to be given pursuant to this Contract shall be in writing and such notices, as well as any other document to be delivered, shall be delivered by personal service or by deposit in the U.S. Mail, certified or registered, return receipt requested, postage prepaid, and addressed to the party for whom intended as follows:

LACOE:

Administrative Services Manager
Contracts Section
LOS ANGELES COUNTY OFFICE OF EDUCATION
9300 Imperial Highway, ECW-153
Downey, CA 90242-2890

District:

Mailing address is District address

7. ATTENDANCE REPORTING

While Personnel is providing service to the District, District shall determine the Personnel's starting work date and ending work date. A Personnel's work day is an eight (8) hour day. The total number of work days performed by the Personnel shall total the same amount of work days Personnel is expected to perform under the LACOE employment contract. The Personnel shall strictly adhere to this arrangement. Only in special circumstances determined by LACOE will exceptions be made.

Two days prior to LACOE's payroll certification dates, District shall provide LACOE with a written attendance report which indicates the number of days worked during the month, the number of days absent from work, and the reasons for any such absences.

8. STATUS OF EMPLOYMENT AND EMPLOYEE RIGHTS

8.1 While performing services hereunder, Personnel is an employee of LACOE. LACOE agrees to provide Personnel with all employee benefits at the same rate as provided to other employees of LACOE who are employed in the same job classification, including seniority rights.

8.2 Personnel's performance evaluations shall be processed and retained on record by LACOE. The District is responsible for the scheduling and managing the daily activities of Personnel.

8.3 Should the Personnel file a grievance for any actions taken against them while they perform work for District, such a procedure shall be subject to LACOE guidelines and handled by LACOE, with the assistance of the District where appropriate.

8.4 Should the Personnel be subject to disciplinary action while performing services for District, District shall notify LACOE and consult with LACOE on appropriate disciplinary action to be taken. If there is a conflict in relevant policy and procedures between LACOE and the District, such disciplinary action shall follow the most stringent policy and/or procedure between LACOE and the District. Such disciplinary action against the Personnel may also result in possible termination of this Contract by LACOE, subject to the requirement of mutual written agreement as set forth in Section 4, above.

9. VACATION AND OTHER LEAVES

District shall not reimburse LACOE for any uncompensated leaves taken by Personnel, consistent with LACOE's policies on leaves. Prior written approval from the project director shall be required before Personnel may take vacation time while performing services with District.

Short-term absences will be covered through compensatory services to students, based upon IEP stipulations, not through substitute employees.

Should Personnel be placed in a position where Personnel is performing services for District beyond the workdays on LACOE's employment contract, LACOE may arrange an alternative means of effecting continued service by the Personnel.

10. POLICIES

While Personnel is performing service for District, Personnel shall be subject to all LACOE policies, unless otherwise specified in this Contract.

11. COVENANT AGAINST CONTINGENT FEES

District warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies retained by District for the purpose of securing business. For breach or violation of this warranty, LACOE shall have the right to immediate termination of this Contract and, at its sole discretion, deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or commission fee.

12. EMPLOYEE FINGERPRINTING

During the entire term of the Contract, both parties, including all subcontractors, shall fully comply with the provisions of the Education Code Section 45125.1 when LACOE determines that District's employees and/or employees of subcontractors will have more than limited contact with LACOE pupils in the performance of the work of the Contract.

13. INDEPENDENT CONTRACTOR

While performing its obligations under this Contract, LACOE is an Independent Contractor and not an officer, employee or agent of District. LACOE shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of District. LACOE warrants its compliance with the criteria established by the U.S. Internal Revenue Service (I.R.S.) and the California Employment Development

Department (EDD) for qualification as an Independent Contractor including, but not limited to, being hired on a temporary basis, having some discretion in scheduling time to complete contract work, working for more than one employer at a time, and acquiring and maintaining its own office space and equipment.

14. ASSIGNMENT

District shall not in any manner, directly or indirectly, by operation of law or otherwise, assign, transfer or encumber this Contract or any portion hereof of any interest herein, in whole or in part, without the prior written consent of LACOE. If prior written consent is not given by LACOE to assign, transfer, or encumber this Contract, such action shall be deemed automatically void.

15. INTEGRATION

This Contract, including all exhibits and other documents incorporated herein or made applicable by reference, contains the complete and final understanding of the parties' rights, duties and obligations with respect to the transaction discussed in the Contract and supersedes all prior Contracts, understandings and commitments, whether oral or written. This Contract shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

16. MODIFICATION

The Contract shall not be modified or amended without mutual written consent of the parties. If any actual or physical deletions or changes appear on the face of the Contract, such deletions or changes shall only be effective if the initials of both contracting parties appear beside such deletion or change.

17. ORDER OF PRECEDENCE

Except as specifically provided elsewhere in this Contract, conflicting, vague and/or ambiguous provisions of this Contract shall prevail in the following order of precedence: (1) the provisions in the body of this Contract, (2) the exhibits of the Contract, if any; (3) all other documents cited in this Contract or incorporated by reference.

18. SEVERABILITY / WAIVER

18.1 If any provision of this Contract is determined to be illegal, unenforceable, or invalid, such act shall in no way affect the validity of any other provision in this Contract.

18.2 No waiver of any provision of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

19. AMENDMENTS

The Contract may be amended by mutual written consent of the parties.

20. TERMINATION

20.1 Termination by either party can only be made by mutual agreement of both parties. If the Personnel is unable to perform the duties as assigned due to physical or mental incapacity, District may terminate this Contract upon ten (10) calendar days written notification to LACOE.

20.2 If termination of this Contract should occur at the end of the contract term, the notice requirements as provided above shall not be used to extend the Contract term. Furthermore, if the Contract should terminate upon the end of Contract term, it is understood by LACOE that the Personnel was provided to District only temporarily pursuant to this Contract, therefore, Personnel shall return to LACOE upon termination of the Contract.

Any actions, claims or proceedings brought by the Personnel and arise from the Personnel being relocated back to LACOE, shall be handled by the District, and be subject to the District's guidelines.

20.3 This contract may be terminated prior to the date specified in Section 20.1, above, only upon mutual written agreement of LACOE and the District. If the District and LACOE mutually agree to terminate this contract prior to the date specified in the TERM section, above, the new date of termination will be at LACOE's discretion, and District shall reimburse LACOE for all costs for the salary and benefits for the period the Personnel was on loan to District through the new termination date specified by the District, plus the full processing fee (if applicable).

21. FAILURE TO COMPLY

In the event District fails to perform in accordance with the indemnification or insurance requirement clauses of this Contract, makes inaccurate certifications as a part of this contract or contracting process, or otherwise breaches any other clause of this Contract, LACOE, the Los Angeles County Board of Education and the individuals thereof, and all officers, agents, employees, representatives, and volunteers shall be

entitled to recover all legal fees, costs, and other expenses incident to securing performance or incurred as a consequence of nonperformance.

22. ATTORNEY'S FEES

Should either party be required to file any legal action or claim to enforce any provision of this Contract or resolve any dispute arising under or connected to this Contract, except as set forth in the "Failure to Comply" in this contract, each party shall bear its own attorney's fees and costs in bringing such an action and any judgment or decree rendered in such a proceeding shall not include an award thereof.

23. COMPLIANCE WITH LAW

District shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, policies, and procedures in performing under this Contract. District warrants that it has all licenses, permits, certificates and credentials required by law to perform the work specified under this Contract and shall, upon request by LACOE, provide evidence of same.

24. FORCE MAJEURE

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault or negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy, insurrection, acts of the federal government or any unit of state or local government in sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays in transportation, to the extent that such circumstances are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. GOVERNING LAW/FORUM SELECTION

This Contract is made, entered into and executed in Los Angeles County, California, and the parties agree that any legal action, claim or proceeding arising out of or connected with this Contract shall be filed in the applicable court in Los Angeles County, California. The parties further agree this Contract shall be construed, and all disputes hereunder shall be settled, in accordance with the laws of the State of California.

26. INCORPORATION BY REFERENCE

Any exhibits referenced herein shall be incorporated and made a part of this Contract.

27. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were so inserted and included.

28. RECORD RETENTION AND INSPECTION

District agrees that LACOE shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent records pertaining to this Contract. All records shall be kept and maintained by District and made available to LACOE during the entire term of this Contract and for a period not less than five (5) years after final payment hereunder by LACOE.

29. NO THIRD PARTY OBLIGATIONS

The execution and delivery of this Contract shall not be deemed to confer any rights upon, nor obligate any parties thereto, to any person or entity other than the parties hereto.

30. LACOE BUDGET/GRANT FUNDS CONTINGENCY

If any portion(s) of LACOE's financial budget affecting the contractual time period of this agreement does not appropriate sufficient funds for these contracted services and/or related programs, or if grant funds related to these contracted services and/or related programs are not available for any reason whatsoever, this agreement shall be of no further force and effect. In this event, LACOE shall have no liability to pay any funds to District under this agreement, and the District shall not be obligated to perform any provisions of this agreement.

In such instances, particularly when partial funding remains available, LACOE shall have the option to either terminate this agreement with no liability occurring to LACOE, or LACOE may offer an amendment to this agreement to reflect the reduced availability of funds.

31. NON-DISCRIMINATION AND NON-SEGREGATION

During the performance of this Contract, both parties hereby agrees to comply with all Federal, state and local laws respecting non-discrimination in employment and non-segregation of facilities including, but not limited

to requirements set out in 41 CFR 60-1.4, 60-250.4 and 60-741.4, which equal opportunity clauses are hereby incorporated by reference.

32. TOBACCO-FREE WORKPLACE

When at LACOE-owned or LACOE-leased buildings, both parties hereby agree to comply with the Los Angeles County Board of Education's Policy 3513.3 which states: The County Board recognizes the health hazards associated with smoking and the use of tobacco products including the breathing of second-hand smoke, and desires to provide a healthy environment for students and staff. The County Board prohibits the use of tobacco products at any time in LACOE-owned or leased buildings, on LACOE property and in LACOE vehicles.

33. ALCOHOL AND DRUG-FREE WORKPLACE

Both parties hereby certify under penalty or perjury under the laws of the State of California that District will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et. seq.), and the Los Angeles County Board of Education's Alcohol and Drug-Free Workplace Policy 4020.

34. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY (Federal Executive Order 12549)

By executing this contractual instrument, District certifies to the best of its knowledge and belief that it and its principals:

- 34.1 Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency;
- 34.2 Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction (Federal, State or Local) or contract under a public transaction; or violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 34.3 Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in Section 34.2 above, of this certification; and,

34.4 Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transactions (Federal, State or Local) terminated for cause of default.

35. EXECUTION REQUIREMENTS

Proper signatures required for execution of this instrument may be by original signature; photocopy; fax/facsimile copy; valid, encrypted, electronic transmission/signature; and/or other commonly accepted, widely used, commercially acceptable signature methods. This instrument may be executed in counter-parts by each party on a separate copy thereof with the same force and effect as though all parties had executed a single original copy.

LOS ANGELES COUNTY
OFFICE OF EDUCATION

LENNOX SCHOOL DISTRICT

By _____
Deborah C. Harris
Assistant Director
Administrative Services
Controller's Office

By _____
Kent Taylor

Typed or Printed Name

Title Superintendent

Date _____
ab 6-22
Report

Date August 10, 2016

EXHIBIT A
ESTIMATED DESIGNATED INSTRUCTION SERVICES
(*billed at actual cost; effective 7/1/16)

1 FTE Adapted Physical Education Teacher:

Salary and Benefits	\$ 119,016.49
Administrative Fees (11%)	<u>\$ 13,091.81</u>
Total Cost	<u>\$ 132,108.30</u>