

**MEMORANDUM OF UNDESTANDING  
SCHOOL PSYCHOLOGIST SERVICES**

This agreement (“Agreement”) is by and between the Wheatland Union High School District (“District”) and Wheatland Elementary School District (“Contractor”) (together, they are referred to as “Parties,” and individually, as a “Party”).

**RECITALS**

1. The District is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. The District is in need of such services and advice and Contractor warrants that it employs person or persons who are specially trained, licensed, experienced and/or competent to perform the services required by the District.

**AGREEMENT**

**1. EXHIBITS**

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Compensation
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance

**2. EFFECTIVE DATE AND TERM**

- a. This Agreement is effective on July 1, 2019 (“Effective Date”).
- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) June 30, 2022.

**3. INDEPENDENT CONTRACTOR**

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which the District’s employees are normally entitled,

including, but not limited to, State Unemployment Compensation or Worker's Compensation. 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.

**4. SCOPE OF SERVICES**

Contractor shall furnish to the District the services described in Exhibit A ("Services").

**5. COMPENSATION**

Contractor shall receive payment for Services rendered pursuant to this Agreement as specified in Exhibit B ("Compensation").

**6. GENERAL TERMS AND CONDITIONS**

The General Terms and Conditions are set forth in Exhibit C.

**7. INSURANCE**

Exhibit D, entitled Insurance, is attached and incorporated by reference.

**8. NOTICE**

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To District:  
Wheatland Union High School District  
1010 Wheatland Road  
Wheatland, CA 95692  
Attn: Superintendent

To Contractor:  
Wheatland Elementary School District  
111 Main Street  
Wheatland, CA 95692  
Attn: Superintendent

**9. LIMITATION OF LIABILITY**

Other than as provided in this Agreement, the District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

The Parties have executed this Agreement on the dates indicated below.

**Wheatland Union High School District**

**Wheatland Elementary School District**

Date: \_\_\_\_\_, 2019

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Nicole Newman

Print Name: Craig Guensler

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**to AGREEMENT FOR SERVICES**

**SCOPE OF SERVICES**

Contractor shall furnish the District with one (1) school psychologist, [insert personnel name] (“Key Personnel”), to regularly provide service to the District pupils as directed by the District not to exceed hours (20) hours per week. Contractor shall not substitute the Key Personnel without the prior written approval of the District, which shall not be unreasonably withheld.

**EXHIBIT B  
to AGREEMENT FOR SERVICES**

**COMPENSATION**

**A. Compensation**

Not to exceed the sum of Ninety-Two Thousand Six Hundred Dollars (\$92,600) (“NTE Amount”) per fiscal year, to be computed as follows:

fifty percent (50%) of the salary, wages, and benefits paid by Contractor to retain the Key Personnel or any substitute approved thereafter, provided that such salary must be approved in advance by the District.

The NTE Amount shall be indexed to and adjusted to reflect the amount most recently computed by the Superintendent of Public Instruction pursuant to Subdivision (e) of section 20111 of the Public Contract Code.

**B. Payment**

a. Schedule

Contractor shall submit quarterly invoices for services actually rendered.

b. Process

Payment shall be made (for all undisputed amounts) within thirty (30) calendar days after Contractor submits an invoice to the District for Services actually completed.

**EXHIBIT C**  
**to AGREEMENT FOR SERVICES**

**GENERAL TERMS AND CONDITIONS**

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by the District as a basis for such services.
3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of the District and cannot be used without the District's express written permission. The District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
4. **TERMINATION.**
  - a. **Without Cause by District.** The District may, upon no less than one hundred eighty (180) days prior written notice, with or without reason, terminate this Agreement effective upon the conclusion of the then current fiscal year (July 1 – June 30) and compensate Contractor only for services satisfactorily rendered through the end of the current fiscal year. Notice shall be deemed given when received by Contractor or no later than three (3) days after the day of mailing, whichever is sooner.
  - b. **Without Cause by Contractor.** Contractor may, upon no less than one hundred eighty (180) days prior written notice, with or without reason, terminate this Agreement effective upon the conclusion of the then current fiscal year (July 1 – June 30), and in such event the District shall compensate Contractor only for services satisfactorily rendered through the end of the current fiscal year. Notice shall be deemed given when received by the District or no later than three (3) days after the day of mailing, whichever is sooner.
  - c. **With Cause by District.** The District may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
    - (1) material violation of this Agreement by Contractor; or
    - (2) any act by Contractor exposing the District to liability to others for personal injury or property damage; or
    - (3) Contractor is adjudged 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 the District shall contain the reasons for such intent 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 contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District.
  - d. **With Cause by Contractor.** Contractor may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
    - (1) material violation of this Agreement by the District; or
    - (2) any act by the District exposing Contractor to liability to others for personal injury or property damage; or
    - (3) The District is adjudged bankrupt, the District makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.Written notice by Contractor shall contain the reasons for such intention to terminate and

unless within thirty (30) 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 thirty (30) calendar days cease and terminate. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Contractor.

- e. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**5. INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**

- a. **Generally.** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:

- (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; *or*
- (2) arises out of, pertains to, or relates to the performance of this Agreement

- b. **Indemnified Parties, Defined.** The "Indemnified Parties" are the District, its officers, consultants, employees, and trustees, provided however that the Indemnified Parties do not include the officers, consultants, employees, and agents of the Contractor.

- c. **Claim, Defined.** A "Claim" consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death, except that:

- (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a "Claim" shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor; and
- (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a "Claim" shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified

Parties or defects in design furnished by those persons.

- d. The District may accept or reject legal counsel Contractor proposes to defend the District with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend the District at Contractor's expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.

- 6. INSURANCE.** Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.

- 7. CONFIDENTIALITY.** Contractor and Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services ("Confidential Information"), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of the District, except as required by law or as necessary for Contractor's agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor's agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to the District notice(s) of the legal process," but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that the District may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.

- 8. CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify the

District of this information.

9. **APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon the District until the District's Governing Board has approved all the terms and conditions contained herein.
10. **DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
11. **COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.
12. **PERMITS/LICENSES.** Contractor and all Contractor's employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
13. **SAFETY AND SECURITY.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
14. **ANTI-DISCRIMINATION.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore

Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, Contractor agrees to require like compliance by all its subcontractor(s).

15. **FINGERPRINTING OF EMPLOYEES.** Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees if required by law to do so. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of Contractor. Verification of compliance with this Section shall be provided in writing to the District prior to each individual's contact with any student.
16. **AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor 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 Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
17. **EVALUATION OF CONTRACTOR AND SUBORDINATES.** The District may evaluate Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
  - a. Requesting that District employee(s) evaluate Contractor and Contractor's employees and subcontractors and each of their performance.
  - b. Announced and unannounced observance of

Contractor, Contractor's employee(s), and/or subcontractor(s)

**18. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by the District.

**19. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.

**20. ASSIGNMENT AND SUCCESSORS.** Neither the District nor Contractor shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

**21. SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.

**22. FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire,

flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.

**23. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which the District's principal administrative office is located.

**24. ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.

**25. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.

**26. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both the District and Contractor.

**27. MODIFICATION.** This Agreement may be amended at any time by the written agreement of the District and Contractor.

**28. WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

**29. AUTHORITY.** The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.

**30. HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.

**31. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as

an original.

**EXHIBIT D  
to AGREEMENT FOR SERVICES**

**INSURANCE**

1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
  - 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
  - 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with the District the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
  - 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	<b>\$1,000,000</b> <b>\$3,000,000</b>
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	<b>\$1,000,000</b> <b>\$1,000,000</b>
<b>Professional Liability</b> Each Occurrence General Aggregate	<b>\$1,000,000</b> <b>\$3,000,000</b>
<b>Workers Compensation</b>	<b>Statutory Limits</b>
<b>Employer's Liability</b>	<b>\$1,000,000</b>

2. Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
  - 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
  - 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

- 2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by the District.
- 2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.