CONTRACT NAME: AGREEMENT BETWEEN GRAY STEP SOFTWARE/ASBWORKS AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This is a licensing agreement for ASBWorks, a web-based accounting software program currently used at DJUSD secondary sites. This agreement will provide access to ASBWorks at the elementary and pre-school sites for online web store donations and payments.

FISCAL IMPACT: The cost of this agreement is covered in the allocated 2019-20 budget.

GRAY STEP SOFTWARE   ASBWorks .com

This Software License Agreement ("Agreement") is entered into between Gray Step Software, Inc. ("Licensor") and Davis Joint Unified School District (Customer") on **July 1, 2019** ("Contract Date").

1. Definitions
   a. *Software.* The term "Software" shall mean the computer program in object code on the Licensor's website.
   b. *Customer.* The term "Customer" shall mean the named entities signing this agreement.
2. License
   a. *Grant of License.* Licensor grants Customer, pursuant to the terms and conditions of this Agreement, a nonexclusive nontransferable license to use the Software on Licensor's Website.
   b. *Restrictions on Use.* Customer agrees to use the Software only for Customer's own business. Customer shall not (i) permit any parent, subsidiaries, affiliated entities or third parties to use the Software, (ii) process or permit to be processed the data of any other party, (iii) use the Software in the operation of a service bureau, or (iv) use the Software in any manner that is unlawful, or that does not conform to local, state or federal guidelines or compliance.
   c. *Modifications, Reverse Engineering.* Customer agrees that only Licensor shall have the right to alter, maintain, enhance or otherwise modify the Software. Customer shall not disassemble, decompile or reverse engineer the Software's computer programs.
   d. *Delivery.* Licensor shall grant access to the Software on Licensor's website within five (5) days of the effective date of this Agreement.
   e. *In General.* In consideration for the license granted by Licensor under this Agreement, Customer shall pay Licensor a fee in the amount of $3,291 annually beginning July 1, 2019 (the "License Fee"). License Fee is based on usage for the following number of sites.

ASBWorks Accounting Software

QTY	TYPE	FEE	TOTAL
8	Elementary School	$ 399	$ 3,192
1	Other - School Site	$ 99	$ 99
N/A	N/A	$	$ 0
N/A	N/A	$	$ 0
N/A	N/A	$	$
	Total		$ 5,989

Event Tracker Software

QTY	TYPE	FEE	TOTAL
N/A	N/A	$	$ 0
N/A	N/A	$	$ 0
N/A	N/A	$	$ 0
	Total		$

Notes:

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   f. *Payment Terms.* Payment in full shall be tendered within 45 days of the execution of this Agreement.
   g. *Taxes.* Customer shall, in addition to the other amounts payable under this Agreement, pay all sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.
   h. *Optional Equipment.* Optional equipment such as point of sale hardware may be purchased at standard price sheet rates.

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3. Ownership
    a. *Title.* Customer and Licensor agree that Licensor owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software, whether made by Licensor or any third party.
    b. *Pupil Records.* All Pupil Records obtained by the Licensor from the Customer continue to be the property of and under control of the Customer. At the Customer's request, all records will be made available by the Licensor to the Customer for the use of distribution to pupils, parents, and legal guardians at the Customer's discretion. The Licensor shall not use any information in a Pupil Record for any purposes other than those required or specifically permitted by the Software License Agreement.
    c. *Transfers.* Under no circumstances shall Customer allow access to any person or entity not named in this Agreement to Licensor's website and Software without Licensor's prior written consent.
4. Confidential Information
    a. *Confidentiality.* Customer agrees that the Software contains proprietary information, including trade secrets, know-how and confidential information that is the exclusive property of Licensor. During the period this Agreement is in effect and at all times after its termination, Customer and its employees shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this Agreement. Customer shall not disclose any such proprietary information concerning the Software, including any flow charts, logic diagrams, user manuals and screens, to persons not an employee of Customer without the prior written consent of Licensor. Neither party shall use or disclose any Confidential Information, including information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), provided by the other party except as necessary to carry out the terms of this contract. A party receiving Confidential Information from the other shall use the highest commercial reasonable degree of care to protect that Confidential Information, including ensuring that its employees with access to such Confidential Information have agreed in writing not to disclose the Confidential Information.
5. Use and Training
    a. *Use and Training.* Customer shall limit the use of the Software to its employees who have been appropriately trained. On-site training by Licensor may be provided for $975 per full day of training (the amount below for training is not included as part of the License Fee in Section 2 above).

QTY (DAYS)	TYPE	FEE	TOTAL
N/A	N/A	$	$ 0
N/A	N/A	$	$ 0
	Total		$ 0

Notes:
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6. Warranty
    a. *Warranties.* Licensor makes no warranties with respect to the software, express or implied, including but not limited to the implied warranties of merchantability and fitness. Customer accepts the products "As Is".
7. Webstore/ Split Transactions
    a. *Technology Fee on Webstore Transactions.* If Customer utilizes webstore feature for processing credit cards, Licensor will charge a technology convenience fee to be assess upon checkout.
8. Limitations Period
    a. *Limitations Period.* No arbitration or other action under this Agreement, unless involving death or personal injury, may be brought by either party against the other more than one (1) year after the cause of action arises.
9. No Consequential Damages
    a. *No Consequential Damages.* Licensor shall not be liable to Customer for indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from Customer's use or inability to use the Software, arising from any cause of action whatsoever, including contract, warranty, strict liability, or negligence, even if Licensor has been notified of the possibility of such damages, and that these limitations will apply notwithstanding any failure of essential purpose of this Agreement.

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10. Limitation on Recovery
    a. *Limitation on Recovery.* Under no circumstances shall the liability of Licensor to Customer exceed the amounts paid by Customer to Licensor under this Agreement, the refund of the License Fee paid by Customer being Customer's sole remedy. Licensor may in its sole discretion provide modifications to keep the Software in substantial conformance with this Agreement, replace the Software, or refund the license fees paid to Licensor.

11. Term and Termination
    a. *Effective Date.* This Agreement and the license granted hereunder shall take effect on July 1, 2019 .
    b. *Annual Renewal.* This Agreement shall automatically renew July 1, 2020 for an annual fee of $3,291 per year and each subsequent year, unless terminated as provided below. Upon renewal, the same terms and conditions contained in this Agreement shall apply except that Licensor shall provide Customer with a revised License Fee thirty (30) days before the anniversary date of this Agreement.
    c. *Termination.* Each party shall have the right to terminate this Agreement and the license granted herein upon the occurrence of one of the following events (an "Event of Default"): (i) In the event the other party violates any provision of this Agreement; or (ii) Upon a party giving thirty (30) day notice of its intent to terminate this Agreement prior to the anniversary date of this Agreement. Additionally, upon the Customer's request, the Licensor agrees that a Pupil's Records shall not be retained or available to the Licensor upon completion of the terms of the Agreement, or upon its termination.

12. Assignment
    a. *Assignment.* Customer shall not assign or otherwise transfer the Software or this Agreement to anyone, including any parent, subsidiaries, affiliated entities or third parties, or as part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization, without Licensor's prior written consent.

13. Force Majeure
    a. *Force Majeure.* Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors including the failure of Licensor's equipment or the business dissolution of Licensor. The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could be the cause of a delay in the performance of this Agreement.

14. Notices
    a. *Notices.* All notices under this Agreement are to be delivered by (i) depositing the notice in the mail, using registered mail, return receipt requested, addressed to the address below or to any other address as the party may designate by providing notice, (ii) overnight delivery service addressed to the address below or to any other address as the party may designate by providing notice, or (iii) hand delivery to the individual designated below or to any other individual as the party may designate by providing notice. The notice shall be deemed delivered (i) if by registered mail, four (4) days after the notice's deposit in the mail, (ii) if by overnight delivery service, on the day of delivery, and (iii) if by hand delivery, on the date of hand delivery.

Licensor	Customer
Gray Step Software, Inc.	Davis Joint Unified School District
PO Box 4408	526 B Street
El Dorado Hills, CA 95762	Davis, CA 95616

15. General Provisions
    a. *Complete Agreement.* The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to this Agreement.
    b. *Amendment.* This Agreement may not be modified, altered or amended except by written instrument duly executed by both parties.

c. *Waiver.* The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

d. *Severability.* If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

e. *Governing Law.* This Agreement and performance hereunder shall be governed by the laws of the State of California. Customer hereby agrees to submit to the jurisdiction of State and Federal Courts in the State of California.

f. *Compliance.* The Customer agrees to work with the Licensor to ensure compliance with FERPA and other applicable student data privacy laws.

g. *Data Security.* The Licensor maintains procedures to ensure the security and confidentiality of all pupil records, including but not limited to designing and training appropriate individuals on ensuring the security and confidentiality of pupil records. Such procedures include password protection, HTTPS protocol for data encryption, and secured redundant backups and mirrored drives. Licensor servers are located in a secure location that requires card key access and two-factor biometric authentication. Our server facility is guarded 24 hours per day, 7 days a week both on the interior and exterior of the facility, including cameras and personnel. In the event of an unauthorized disclosure of a Pupil's Records, the Licensor shall report said unauthorized disclosure to the Customer.

h. *Independent Contractor.* Each party agrees and acknowledges that in its performance of its obligations under this Agreement, it is an independent contractor of the other party, and is solely responsible for its own activities. Neither party shall have any authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate the other party in any manner whatsoever. No joint venture, franchise or partnership is intended to be formed by this Agreement.

i. *Counterparts.* This Agreement may be executed in two counterparts, both of which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

j. *Read and Understood.* Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms.

IN WITNESS WHEREOF, IT IS AGREED: Licensor and Customer, intending to be legally bound by the terms of this Agreement, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Licensor: Customer:

_____   _____
Signature   Signature

Brian Cichella
_____   _____
Name   Name
President
_____   _____
Title   Title

_____   _____
Date   Date