

**CONTRACT NAME: AGREEMENT BETWEEN PROFESSIONAL TUTORS OF AMERICA, INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This agreement provides before or after school tutoring for one student.

**FISCAL IMPACT:** The term of this agreement is from September 1, 2018 to June 30, 2019 and the cost is included in the approved Special Education budget.

## MEMORANDUM OF UNDERSTANDING

This agreement made and entered into this 1<sup>st</sup> day of September, 2018 by and between the Davis Joint Unified School District of Yolo County, hereinafter referred to as "District", and **Professional Tutors of America, Inc.** hereinafter referred to as "Contractor" for the purposes of providing before-or-after school tutoring for one student.

NOW, THEREFORE, in consideration of the mutual promises contained herein, IT IS MUTUALLY AGREED by and between parties hereto as follows:

### 1. TERM

The term of this agreement shall be from September 1, 2018 until June 30, 2019.

### 2. TERMINATION

Either party may terminate this agreement for cause by serving a thirty (30) day written notice of termination upon the other party. Cause includes, but is not limited to, a material breach of any term of condition of this agreement. Upon termination with default of CONTRACTOR, the DISTRICT shall pay, without duplication, for all services performed and expenses incurred up to and including date of termination. In consideration of this payment, CONTRACTOR waives all right to any further payment or to any damages, including but not limited to any and all claims of damages related to the enforcement of this agreement, including any attorneys fees associated with such enforcement. Upon termination

CONTRACTOR shall forthwith turn over to the DISTRICT all records required to be maintained hereunder, possessed by CONTRACTOR or under its control at the time of termination.

### 3. MODIFICATIONS AND AMENDMENTS

This agreement may be modified or amended by a written document executed by CONTRACTOR and DISTRICT. At any time during the term of the agreement, the parent, CONTRACTOR, or DISTRICT may request a review of the pupil's individualized program, subject to all procedural safeguards as specified in California Administrative Code Title V. 3080, et seq., and Education Code 56500-56507.

### 4. NON-ASSIGNABILITY TO SUBCONTRACTOR

This agreement and the rights and duties thereunder shall not be assigned or subcontracted in whole or in part without the express written consent of DISTRICT.

### 5. INDEPENDENT CONTRACTOR

It is understood and agreed that CONTRACTOR is engaged to perform services under this agreement as an independent contractor and the agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, or joint venture of association.

CONTRACTOR shall determine the means, manner, method and details of performance under this agreement and in doing so shall be responsible for providing the materials and tools necessary for performance under this agreement.

## 6. NOTICES

All notices given pursuant to the terms of this agreement shall be in writing and may be personally delivered or mailed by certified mail. Said notice shall be effective when personally delivered or when deposited in the United States Mail, postage prepaid and addressed as follows:

CONTRACTOR: Professional Tutors of America, Inc.  
3350 East Birch St., Ste. 108  
Brea, CA 92821

DISTRICT: Davis Joint Unified School District  
526 B Street  
Davis, CA 95616

## 7. INDEMNIFICATION

CONTRACTOR shall defend, save harmless, and indemnify the DISTRICT and its officers, agents and employees from any and all liabilities and claims for damages including but not limited to claims for injuries and/or damages for death, sickness or injury to persons or property. This agreement includes, without limitations, any and all consequential damages, from any cause whatsoever

arising from or connected with its service hereunder which may result from the negligence or willful misconduct of CONTRACTOR, its agents or employees or from any breach by CONTRACTOR of this agreement.

#### 8. PAYMENT

CONTRACTOR shall submit request for payment within thirty (30) calendar days after the end of the attendance accounting period in which the services were rendered. Within ten (10) calendar days after the receipt of a payment request, DISTRICT shall audit the request and give the CONTRACTOR written notice if the payment is denied in whole or in part. If the payment request is approved, payment shall be made within thirty (30) calendar days after the payment request is received.

**Payment shall be an hourly rate of \$75.00, for a maximum of 120 hours.**

**Maximum \$9,000.**

#### 9. RIGHT TO WITHHOLD

The DISTRICT has the right to withhold payment to contractor when, in the opinion of the DISTRICT, expressed in writing to the CONTRACTOR:

- i. CONTRACTOR'S performance, in whole or in part, either has not been carried out or is insufficiently documented.
- ii. CONTRACTOR has neglected, failed or refused to furnish information or to cooperate with the inspection, review or audit of its program, work, or records.

#### 10. COMPLIANCE WITH LAWS

During the term of this agreement, CONTRACTOR shall comply with all federal, State, State Board of Education and local statutes, laws, ordinances, rules and regulations relating to the required special education services and facilities for individuals with exceptional needs.

CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect all permits or certificates required by any governmental agency for the use and/or operation of the facility.

CONTRACTOR'S failure to maintain certification by the State Board of Education in accordance with the provisions of the Education Code 56366(d) and/or failure to comply with any other provisions of this paragraph shall constitute cause for terminating this agreement.

#### 11. CALIFORNIA LAW

This agreement shall be governed by and construed in accordance with California law.

#### 12. COUNTERPARTS

This agreement may be executed in counterparts and each original shall fully bind the party for whom it is executed.

### 13. SEVERABILITY

If any term of this agreement is deemed to be unenforceable, void or invalid under the laws of the State of California, those terms shall be construed as being eliminated from the agreement and the remainder of the agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month, and year first written above.

CONTRACTOR:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DISTRICT:

BY: J. N. N. N.

DATE: 11/7/2018