

CONTRACT NAME: AGREEMENT BETWEEN CHALLENGE DAY AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This agreement provides two assembly programs, one for seventh grade students and one for eighth grade students, at Holmes Junior High School on April 2, 2019. The Challenge Day assemblies are powerful programs designed show students how to see each other as human beings and build understanding and empathy for each other. The message is that we have the capability to forgive and heal after hurtful events in life.

FISCAL IMPACT: The \$6,950 cost of for the assemblies is funded by Davis Schools Foundation grant funds and a donation from Holmes PTA.

AGREEMENT for Challenge Day Program

THIS AGREEMENT is effective 1/10/2019 by and between **Holmes Junior High School** (the "Client") and **CHALLENGE DAY** (the "Vendor"), a California 501(c)3 nonprofit corporation located at 2520 Stanwell Drive, Suite 160, Concord CA, 94520. For the purposes of this agreement Client shall mean all employees of Client, and Vendor shall mean all employees and subcontractors of Vendor.

Witnessed, that the Client and the Vendor for the consideration hereinafter named agree as follows:

Article 1: Statement of Services

- A. Commencing on 4/2/2019 Vendor shall supply services, people and materials for the following:
See Attached List of Days, Addendum A
- B. This agreement applies to all services performed by Vendor or on behalf of Vendor under this agreement, whether performed in anticipation of or following the execution of this agreement.

Article 2: Compensation for Services

As full compensation for direct and indirect labor costs, overhead and profits, the Vendor shall be paid at the following rates for delivering the program, services and material ("Services") as contemplated by this agreement. Such rates shall only cover services that are performed by bona fide employees of the Vendor, or its subcontractors unless otherwise approved by Client's Representative.

- A. Rates for Services will be as follows:

Client to Pay **\$6950** not including reimbursable expenses (outlined below) which will be invoiced separately.

See attached Invoice #15360 for details.

ASSEMBLY: A minimum of one hundred ten (110) and a maximum of one thousand five hundred (1500) student participants. Any breach of contract pertaining to student numbers will result in an additional charge or possible cancelation at the Clients expense. The max # is 1500 student participants only. Student participants must be recruited from the contracted school (Client) only. Vendor reserves the right to cancel Program(s) without prior notice, according to terms of Cancellation and Termination article, if there are less or more than the agreed upon student participants.

- B. Expenses: Client will pay in advance (or reimburse Vendor) for necessary, reasonable and documented travel expenses actually incurred as follows:
 - 1) Ground Transportation: Ground transportation to Client's site.
 - i. Mileage over thirty (30) miles from Vendor's office to Client's event venue will be billed to the Client at \$0.56 cents per mile, round trip.

Article 3: Limit of Expenditure

The maximum expenditure authorized hereunder for any service, **Excluding** reimbursable expenses as indicated shall be **\$6950**.

Article 4: Invoicing & Payment

Below please find your payment schedule. Adhering to this payment schedule will confirm your requested Challenge Day(s).

- A. Client's requested days will not be confirmed until the 1st installment payment and an authorized Purchase Order for the full invoice amount has been received and credited to your school or organization's account by our administrative offices. All installments are welcomed as early as contracts are completed.
- B. If client's scheduled days are cancelled due to non-payment, client will be required to resubmit their request to host a future Challenge Day. Rescheduling days due to cancellation does not in any way guarantee the cancelled client

precedence over other clients waiting for existing or future booking opportunities.

- C. Booking requests made within 90 days of the event date will be confirmed only if scheduling permits and if the contract is accompanied by no less than the 1st installment (and an approved Purchase Order for full invoice amount made payable no later than 30 days after the event.) Payment, Purchase Order and Contract are expected within 5 business days when booking within the 90 day period.
- D. Accounts that have not paid within 30 days of the program date and that have not submitted and received approval for a payment plan are subject to a .05% monthly finance charge. (6% annual finance charge).

Your requested program date is 4/2/2019.

Balance for program(s): **\$6950**

Schedule of Installments

| Installment | Payment Due Date | Payment Amount | Balance Remaining |
|-----------------|------------------|----------------|-------------------|
| ===== | ===== | ===== | ===== |
| 1st installment | 2/1/2019 | \$3475 | \$3475 |
| 2nd installment | 3/3/2019 | \$3475 | \$0 |

To expedite clarity on any questions, concerns, or issues that may arise regarding payments; please list the information requested below for any/all parties that may be involved in the payment process.

Holmes Jr. High
Department
Teresa Nunes
Name
Site Admin Asst.
Title
530-757-5445 ext. 101
Phone/Ext.
tnunes@djUSD.net
Email

Article 5: Personnel to Be Provided

Client's Representative, hereinafter referred to as the Coordinator, shall be present at each of the program days. The Coordinator shall be **Ellen Shields** or such person or persons as may be designated by the Client.

Vendor must have phone contact regarding final logistics with Coordinator no later than 28 days prior to first scheduled program day. Vendor reserves the right to cancel if Coordinator or alternate Client Representative cannot be reached, subject to the termination section below.

If Coordinator is not a school counselor, Client must also provide a counselor who will attend the entire program day(s) and coordinate any necessary follow-up support for youth participants.

The Coordinator will:

- A. Use the Challenge Day Coordinator's Handbook and other program materials, provided by Vendor to Client, as guides for coordinating participation and logistics for the program day(s).
- B. Act as primary contact with the Challenge Day office regarding all logistics for program day(s).
- C. Attend a phone meeting with Challenge Day Client Manager named below five (5) to six (6) weeks prior to first program day. The purpose of this meeting is to review the Challenge Day Coordinator's Handbook and all arrangements and logistics.
- D. Maintain weekly e-mail and/or phone contact with the Challenge Day Client Manager from six (6) weeks prior to first program day to one (1) week after the last program day.
- E. Take responsibility for ensuring that all personnel, facilities, tools and equipment are provided as written in this agreement and the Challenge Day Coordinator's Handbook.
- F. Be available to speak with Challenge Day staff the day prior to the first program day to review last-minute logistics.
- G. Attend each program day in its entirety and/or assign an alternate coordinator to attend each program day in its entirety. If an alternate coordinator is assigned, the alternate coordinator must agree to assume all coordinator responsibilities regarding event participants, logistics and personnel for that day.

Article 6: Facilities to Be Provided

ASSEMBLY: Client to secure a private room free of columns or other structural obstructions and large enough for all participants (maximum 1500). Ideally an auditorium or the largest Gym with two sides of bleachers and floor seating in chairs. The ceilings must be at least 20' high. Vendor must have the ability to adjust lighting in the room as the lights will be turned off during a portion of the program; we require access to the light switches. There must be numerous, working electrical outlets and simple access to power supplies. The room should be scheduled for two (2) hours before and two (2) hours after the program start and ending times. of interruptions for the duration of the program, where loud sounds such as cheering will not disturb occupants in adjoining rooms, and any windows at or below eye level have been covered. Site must be confirmed three (3) weeks prior to the event(s).

Article 7: Changes

Client may, during the term of this agreement, request additions to the services furnished by the Vendor. Client reserves the right to cancel any scheduled services consistent with the terms of Cancellation and Termination article. Vendor shall not be obligated to make changes without its written acknowledgment of acceptance of such changes.

Article 8: Cancellation And Termination

- A. If Client schedules program days with Vendor and cancels ninety one (91) days or more prior to the scheduled date of program, no fee is due.
- B. If Client schedules program days with the Vendor and cancels sixty one (61) to ninety (90) days prior to the scheduled date of the program then Client will pay Vendor 1st installments for the days cancelled, plus any travel costs or fees incurred by the Vendor on behalf of the Client.
- C. If Client schedules program days with the Vendor and cancels sixty (60) days prior to the scheduled date of the program then Client will pay Vendor all installments for the days cancelled, plus any travel costs or fees incurred by the Vendor on behalf of the Client.
- D. Vendor must have phone contact regarding final logistics with Client's representative no later than 28 days prior to the first scheduled program day. Vendor reserves the right to cancel if Client cannot be reached, subject to Cancellation and Termination clauses B and C.
- E. If program days are canceled due to weather outside of listed items in Force Majeure Article, Client will pay Vendor any travel costs or fees incurred by the Vendor on behalf of the Client for the dates listed in **Addendum A**. If openings exist, program days may be rescheduled to a date or dates within one (1) calendar year from the original date(s). If the

event is to be rescheduled Client will pay Vendor additional travel costs incurred for rescheduled event.

- F. Client may terminate this agreement at any time subject to the provisions of cancellation indicated above in clauses A through E.

Article 9: Choice of Law

The laws of the State of California shall govern this agreement and all transactions under it. Vendor agrees to submit to the jurisdiction of any court wherein an action is commenced against Client based on a claim for which Vendor has agreed to indemnify Client under this Agreement.

Article 10: Entire Agreement

The provisions of this agreement supersede all contemporaneous oral agreements and all prior oral and written communications (including the School Coordinator Program Packet) and understanding of the parties with respect to the subject matter of this Agreement. This agreement is the entire agreement between the parties.

Article 11: Force Majeure

Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, or other similar causes beyond the control and without the fault or negligence of the delayed or non performing party or its subcontractors.

Article 12: Insurance

Vendor shall maintain in full force and effect, at its cost and expense, liability insurance in the aggregate amount of \$1,000,000.

Article 13: Disputes

Any controversy, dispute or claim arising out of or relating to the interpretation of this Agreement shall be subject to a thirty (30) day negotiation period between the parties in which key business people for the parties will, in good faith, attempt to resolve the matter.

Article 14: Mediation and Arbitration

If a dispute arises out of or relates to this Agreement, or its breach, and the parties have not been successful in resolving such dispute through negotiation, the parties agree to attempt to resolve the dispute through mediation by submitting the dispute to a sole mediator selected by the parties or, at any time at the option of either party, to mediation by the American Arbitration Association ("AAA"). If not thus resolved, it shall be referred to a sole arbitrator selected by the parties within thirty (30) days of the mediation or, in absence of such election, to final and binding arbitration by a sole arbitrator under the AAA Arbitration Rules ("Rules") in effect on the date of this Agreement. The mediation and arbitration, including arguments and briefs, shall be in the English language in the State of California, United States of America. The arbitrator may not limit, expand or otherwise modify the terms of this Agreement or award exemplary or punitive damages or attorney's fees. The arbitrator shall apply the substantive law of the State of California. The award shall be in United States dollars. Judgment upon the award rendered in the arbitration may be entered in any court having jurisdiction thereof. Each party shall bear its own expenses (including attorney's fees) and an equal share of the expense of the mediator and arbitrator and the fees of the AAA. The parties and their representatives, other participants and the mediator and arbitrator shall hold the existence, content and result of the mediation and arbitration in confidence. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation or arbitration. A request by a party to a court for such injunctive relief shall not be deemed a waiver of the obligation to mediate or

arbitrate.

Article 15: Tools and Equipment

Unless otherwise specifically provided for in this agreement, Vendor shall provide all tools and equipment ("equipment") for performance of this Agreement. Should the Vendor actually use any equipment owned or rented by Client, Vendor accepts the equipment "as is" and the Vendor shall have the risk of damage to such equipment as long as damage is sustained as a result of Vendor's actions. Vendor agrees not to remove the equipment from Client's premises, and to use equipment only for the services covered under this agreement. In addition to one chair per participant (chairs must be lightweight and without arms), Client must provide the equipment and supplies specified in the Challenge Day Coordinator's Handbook.

Article 16: Timely Performance

If Vendor has knowledge that anything prevents or threatens to prevent the timely performance of the Services under this Agreement, Vendor shall immediately notify Client thereof and include all relevant information concerning the delay or potential delay.

Article 17: Title to Media / License to Use

Receipt of materials supplied under this agreement represents acceptance of a license to use such materials for "in house" activities sponsored by Client solely for the benefit of Client's employees and students. Such rights are restricted to use by those employees who participate in the program to which the materials are related. License to use any documents and other tangible media of expression ("Training Media") furnished hereunder by Vendor to Client shall pass to Client on full payment of invoice for the services associated with such media. Client expressly agrees that it does not have the right to reproduce or sub-license such media.

Article 18: Ownership of Programs

Vendor's programs or related materials in any form including but not limited to written, video, audio or electronic reproductions, and shall obligate its employees, subcontractors and others working for it, to adhere to the same limitations, without written consent of Vendor. Client agrees to limit its use of programs and materials supplied by Vendor to "in house" activities sponsored by Client solely for the benefit of its employees and students.

Article 19: Right to Use Ideas

The ideas presented in the Vendor's programs may be used by Client and its employees, subcontractors and others working for Client without restriction. However, due to the nature of the exercises, which are protected under Federal copyright law, specific exercises, such as the Power Shuffle, may not be reproduced in any format.

Article 20: No Result or Benefit

The Vendor promises only to deliver the program and does not warrant or promise any result or benefit to Client or those participating.

Article 21: Representations

Vendor represents to Client that the services rendered by the Vendor will be performed in a manner consistent with highest professional standards in its field.

Article 22: Indemnity

- A. The Client shall indemnify and save harmless the Vendor, its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise, directly or indirectly and whether by statute or otherwise, out of any act or omission of the Client, its employee and agencies in the performance by the Client of this Agreement.
- B. The Vendor shall indemnify and save harmless the Client, its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise, directly or indirectly and whether by statute or otherwise, out of any act or omission of the Vendor, its employees and agencies in the performance by the Vendor of this Agreement.
- C. The above indemnifications shall survive the termination of this Agreement.

Article 23: NonWaiver

No agreement or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

Article 24: Severability

If any portions of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provisions or provision, and the rights and obligations of the Vendor and Client shall be construed and enforced accordingly.

Article 25: Program Requirements

Below you will find a list of logistical items you and your planning team must attend to as you prepare for your school's Program(s). These are non-negotiable items and agreements that must be met to ensure the success of your event. Please review this list carefully.

ASSEMBLY:

- A counselor will participate in each Assembly.
- All teachers will participate in the Assembly with their classes.
- Assembly(s) will include only students from the same school.
- Assembly requires at least 1 hour and 30 minutes of uninterrupted program time.
- School staff will be informed about the Challenge Day Assembly & how they will be involved.
- A designated person who will be in charge of tech and must supply their contact info including cellphone if possible. This person will be available the day/evening prior to the Assembly to setup, run sound and AV checks to make sure everything is working ahead of time and to set master levels which won't be changed. This person must connect with our IT Manager at least two weeks prior to the event to go over these details. Specific times for the AV tech to be available will be provided based on the individual program time.
- Gym/Auditorium of the Assembly will be available for set-up the day prior to the Assembly with enough time to complete 3-5 hours before 9pm.
- A projection screen that is at least 10.5 feet tall by 14 feet wide. A projector that will be bright enough to project a bright image for everyone in the auditorium to see easily with lights dimmed. This needs to be a projector with a minimum of 3000 lumens. The image needs to fill the screen completely. The technician needs to know the projector in order to make adjustments as is necessary.
- Chairs will be provided for 1/3 of the population of your school, for the Assembly (the remaining 2/3 will be seated in bleachers).

*** Chairs are required for all participants. No sitting on the floor ***

Article 26: Notices

Any notice or demand which under the terms of this Agreement or under any statute must or may be given or made by Vendor or Client shall be in writing and shall be given or made by confirmed facsimile, or similar communication, or by certified mail, registered mail, or courier service addressed to the respective parties as follows:

For Holmes Junior High School :

Ellen Shields
1222 Drexel Drive
Davis, CA 95616

For Challenge Day:

Liu Su'a-Falevai
Challenge Day
2520 Stanwell Drive, Ste 160
Concord, CA 94520
Fax: 925-969-0256

The effective dates of such notice shall be (1) upon evidence of successful facsimile transmission, or (2) five days following the date mailed for certified or registered letters and two days following the date mailed for overnight letters (courier service), or (3) when delivered, if in person. The above addresses may be changed at any time by giving written notice as provided above.

Article 27: Signatures

By signing below, I agree to the articles of this Agreement and agree to provide support, personnel, facilities, tools and equipment as written above. I attest that I am authorized to make agreements on behalf of Holmes Junior High School :

Authorized Signature Name:

Bruce E. Colby

Signature:

[Signature]

Date:

1/29/19

By signing below, I attest that I have read and agree to perform the responsibilities of Coordinator, as written above:

Coordinator Name: Ellen Shields

Title:

Counselor

Signature:

Ellen Shields

Date:

1/11/19

For Challenge Day:

Booking Manager Name: Liu Su'a-Falevai

Signature: _____

Date: _____

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Agreement between Holmes Junior High School and Challenge Day