

**BOARD TRANSMITTAL FORM  
DENAIR UNIFIED SCHOOL DISTRICT**

**BOARD MEETING DATE:** December 11, 2014

**EXHIBIT NO.**

**49**

**TO:** Board of Education  
**PREPARED BY:** Fawn Oliver  
**PRESENTED BY:** Fawn Oliver

**AGENDA TITLE:** APPROVAL OF INDEPENDENT CONTRACTOR SERVICES AGREEMENT - INTERN MONITORING

**AGENDA SECTION:**

- |  |  |
|--|--|
| <input type="checkbox"/> Closed Session              | <input type="checkbox"/> Discussion                        |
| <input type="checkbox"/> Study Session               | <input type="checkbox"/> Discussion/Public Comment/Action* |
| <input type="checkbox"/> Public Comment              | <input type="checkbox"/> Bids/Public Comment /Action*      |
| <input type="checkbox"/> Scheduled Communication     | <input checked="" type="checkbox"/> Consent Action*        |
| <input type="checkbox"/> Superintendent/Board Report | <input type="checkbox"/> Administrative Panel              |
| <input type="checkbox"/> Staff Report                | Recommendations*   |
| <input type="checkbox"/> Public Hearing              | <input type="checkbox"/> Roll Call                         |

*\*Scheduled for Action*

**PROGRAM DESCRIPTION / DETAILS:**

Contractor agrees to provide Intern Mentoring and support services for the 2014-15 school year to schools as directed. The Contractor will serve as a mentor/peer coach to the district Special Education interns. The Contractor assists in planning and implementing parent education and involvement activities

**RECOMMENDED ACTION:**

The Director of Student Support Services recommends approval of 2014-15 for Independent Contract.

**FINANCIAL IMPACT:**

\$1,000 per intern. Payment will be in two installments of \$1,000 to be paid by December 31, 2014 and final payment of \$1,000 to be paid by May 1, 2015. The combined total is to not exceed \$2,000.

**DENAIR UNIFIED SCHOOL DISTRICT  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

This independent Contractor Services Agreement (“Agreement”) is hereby entered into between the DENAIR UNIFIED SCHOOL DISTRICT, hereinafter referred to as “DISTRICT,” and “CONTRACTOR,” as more specifically identified below (collectively “PARTIES”):

CONTRACTING AGENCY: Leo Fontana

TAXPAYER ID NUMBER: \_\_\_\_\_

MAILING ADDRESS: 11204 Collier Ave

CITY, STATE, ZIP: Modesto, CA 95350  
209-765-7674

PHONE NUMBER: \_\_\_\_\_

PARTIES agree as follows:

- 1) **Services.** In accordance with this Agreement, CONTRACTOR agrees to provide Intern mentoring and Support services for the 2014-15 school year to schools as directed. The CONTRACTOR will serve as a mentor/peer coach to the district Special Education interns. The CONTRACTOR assists in planning and implementing parent education and involvement activities.
- 2) **Term.** This Agreement shall be effective from August 11, 2014 to May 28, 2015.
- 3) **Compensation.** DISTRICT agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this at a rate of \$1,000.00 per intern for the 2014/2015 school years. DISTRICT shall pay CONTRACTOR according to the following terms and conditions:

Payment will be in two installments of \$1,000 to be paid by December 31, 2014 and a final payment of \$1,000 to be paid by May 1, 2015. The combined total is to not exceed \$2,000.
- 4) **Expenses.** District shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR beyond the Compensation in performing Services for District, except as follows (specify, if any):
- 5) **Independent Contractor.** CONTRACTOR, in the performance of this Agreement, shall be, and act as, an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of DISTRICT, and are not entitled to benefits of any kind or nature normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation.

CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the Services.

- 6) **Clearance Requirement.** CONTRACTOR shall comply with the requirements of California Education Code sections 44237, 35021.1 and 35021.2 including, but not limited to: obtaining clearance from both the California Department of Justice (hereinafter referred to as "CDOJ") and clearance from Federal Bureau of Investigation (hereinafter referred to as "FBI") for Contractor's employees, subcontractors and volunteers shall not come in contact with DISTRICT students in performance of Services pursuant to this Agreement until CDOJ and FBI clearances are confirmed. CONTRACTOR shall certify in writing to DISTRICT that none of its employees, subcontractors and volunteers have been convicted of a violent or serious felony as those terms are defined in California Education Code section 44237(h) unless, despite the volunteer's, subcontractor's or employee's conviction of a violent or serious felony, he/she has met the criteria to be eligible for employment pursuant to California Education Code section 44237(i) or (j).
- 7) **Taxes.** CONTRACTOR acknowledges and agrees that it is the sole responsibility of CONTRACTOR to report as income the Compensation received from DISTRICT and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of the Compensation shall be subject to withholding by DISTRICT for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
- 8) **Materials.** CONTRACTOR shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services, except as follows (specify, if any):
- 9) **Competence.** CONTRACTOR's Services will be performed, findings obtained, and reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

#### 10) **Confidentiality and Use of Information**

- a) PARTIES shall consider CONTRACTOR a "school official" as contemplated by Code of Federal Regulations, Title 34, section 99.31 (A)(1)(i)(B) for the following purposes:
  - i) Performance of Services;
  - b) CONTRACTOR shall not disclose to any person, other than Director of Student Services and Stanislaus County Induction Personnel, any Confidential Information. CONTRACTOR is required to maintain the confidentiality of Confidential Information. "Confidential Information" includes employee Intern status records, personally identifiable information, and information that is related to DISTRICT's research, development, trade secrets and business affairs. Confidential Information does not include information that is generally known or easily ascertainable by nonparties through available public documentation.

- c) CONTRACTOR shall advise DISTRICT of all materials used, or recommended for use by CONTRACTOR, to perform Services that are subject to any copyright restrictions or requirements. In the event CONTRACTOR shall fail to so advise DISTRICT and as a result of the use of any programs or materials developed by CONTRACTOR under this Agreement DISTRICT should be found in violation of any copyright restrictions or requirements, CONTRACTOR agrees to indemnify, defend and hold harmless, DISTRICT against any action or claim brought by the copyright holder.
- 11) **Audit and Inspection of Records.** CONTRACTOR shall maintain all records, documents, data, and information received from DISTRICT in connection with the performance of Services, or prepared in the performance of Services, for at least five years from the date of full execution of this Agreement. At any time during normal business hours and as often as DISTRICT may deem necessary during the term of this Agreement, and thereafter, CONTRACTOR shall make available to DISTRICT for examination at DISTRICT's place of business, or shall provide copies of, all data, records, test protocols, reports, notes, and all other materials regarding, and preferred by CONTRACTOR in performance of Services. CONTRACTOR shall make the requested information available within three business days of DISTRICT's request. CONTRACTOR understands and affirms that the Family Education Rights and Privacy Act, the Health Insurance Portability and Accountability Act of 1996, and similar California statutes and regulations that protect confidentiality of information do not prevent CONTRACTOR from releasing the aforementioned information to DISTRICT in compliance with this paragraph. CONTRACTOR further understands that its compliance with this paragraph is a material provision of this Agreement. Accordingly, CONTRACTOR will permit DISTRICT to audit and review all aforementioned records, test protocols, reports, and notes, and all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.
- 12) **Works for Hire/Copyright/Trademark/Patent.** CONTRACTOR understands and agrees that all matters, including writings, prepared and/or produced under this Agreement shall be works for hire and shall become the sole property of DISTRICT and cannot be used without DISTRICT's express written permission. 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 DISTRICT. CONTRACTOR consents to use of CONTRACTOR name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- 13) **Termination.** District may, at any time, with or without reason, terminate this Agreement and compensate CONTRACTOR only for Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or not later than five (5) days after the day of mailing, whichever is sooner. DISTRICT may also terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- a) material violation of this Agreement by the CONTRACTOR; or

- b) any act by CONTRACTOR exposing DISTRICT to liability to others for personal injury or property damage; or
- c) if CONTRACTOR is adjudged a 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 DISTRICT of termination for cause shall contain the reasons for such intention to terminate and unless within 10 (ten days) after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the 10 (ten) days cease and terminate. In the event of such termination, DISTRICT may secure the required Services from another contractor. If the cost to DISTRICT of obtaining the Services from another contractor exceeds the costs of providing the Service pursuant to this Agreement, the excess cost shall be charged to and collected from the CONTRACTOR.
- d) **CONTRACTOR may terminate this agreement by giving the DISTRICT thirty (30) days written notice of termination.**

The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT. Written notice by DISTRICT shall be deemed given when received by CONTRACTOR, or later than five (5) days after the day of mailing, whichever is sooner.

14) **Hold Harmless.** CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend DISTRICT and its officers, agents, and employees from every claim or demand and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

a) Liability for damages for:

i) Death or bodily injury to person;

ii) Injury to, loss or theft of property; or

iii) Any other loss damage or expense arising out of (i) or (ii) above, sustained by CONTRACTOR or any person, firm or corporation employed by CONTRACTOR, either directly or by independent contract, upon, or in connection with, the Services, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of DISTRICT or its officers, employees or agents.

b) Any injury to, or death of, any person, including DISTRICT officers, agents and employees, or damage to or loss of any property caused by an act, neglect, default, or omission of CONTRACTOR, or any person, firm or corporation employed by CONTRACTOR, either directly or by independent contract, arising out of, or in any way

connected with, the Services, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages that result from the sole negligence or willful misconduct of DISTRICT or its officers, employees or agents.

- c) Any liability for damages that may arise from the furnishing or use of any copyrighted or un-copyrighted matter or patented invention under this Agreement.
- 15) **Insurance.** CONTRACTOR agrees to carry a comprehensive general and automobile liability insurance with limits of \$1,000,000.00 (ONE MILLION DOLLARS) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both PARTIES to protect CONTRACTOR and DISTRICT against liability or claims of liability, which may arise out of this Agreement. In addition, CONTRACTOR agrees to provide an endorsement to this policy stating, such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory. No later than September 30, 2014, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverage's and endorsements required hereunder including a 30 (THIRTY) day written notice of cancellation or reduction in coverage. CONTRACTOR agrees to name DISTRICT and its officers, agents and employees as additional insured under said policy.
- 16) **Workers Compensation Insurance.** CONTRACTOR agrees to procure and maintain in full force and effect Workers Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers Compensation Act is filed against District by a bona fide employee of CONTRACTOR participating under this Agreement, CONTRACTOR agrees to defend and hold harmless DISTRICT from such claim.
- 17) **Assignment.** The obligations of CONTRACTOR pursuant to this Agreement shall not be assigned by CONTRACTOR.
- 18) **Compliance With Applicable Laws.** The Services completed herein must meet the approval of DISTRICT and shall be subject to DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances applicable to independent educational evaluations.
- 19) **Permits/Licenses.** CONTRACTOR and all CONTRACTOR's employees, subcontractors or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Services.
- 20) **Employment With Public Agency.** CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed.

- 21) **Entire Agreement/Amendment.** This Agreement and any exhibits attached hereto constitute the entire Agreement among the PARTIES to it and supersedes any prior or contemporaneous understanding or agreement with respect to the Services to be performed by CONTRACTOR.
- 22) **Nondiscrimination in Employment.** CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, medical condition, marital status, or sex of such persons.
- 23) **Non-Waiver.** The failure of DISTRICT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by DISTRICT of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
- 24) **Administrator of Agreement.** This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

**District:** Aaron Rosander  
3460 Lester Road  
Denair, CA 95316  
209-632-7514 ext. 1202

**Contractor:** Leo Fontana

- 25) **Notice.** All notices or demands to be given under this Agreement by either party to the other, shall be in writing and given either by: (a) personal service or (b) U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provision of this section. At the date of this Agreement, the addresses of the PARTIES are as set forth above.
- 26) **Severability.** If any term, condition or provision of this Agreement is held by court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
- 27) **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California.

28) **Warranty of Authority.** Each of the PARTIES signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

**District:**

\_\_\_\_\_   
Date

\_\_\_\_\_   
Aaron Rosander, Superintendent

**Contractor:**

\_\_\_\_\_   
Date

\_\_\_\_\_   
Leo Fontana