

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the “Agreement”) is entered into as of July 1st, 2017 (the “Effective Date”) by and between Formation Technology, LLC, a limited liability District (the “Consultant”), and the Perris Union High School District (the “District”, and together with the Consultant, the “Parties”).

RECITALS

WHEREAS, the District wishes to engage the Consultant as an independent contractor for the District for the purpose of providing the professional services set forth in Exhibit A attached hereto and made a part hereof (the “Services”) on the terms and conditions set forth below; and

WHEREAS, the Consultant wishes to provide the Services in accordance with the terms of this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

1. RESPONSIBILITIES.

- (a) Of the Contractor. The Consultant agrees to do each of the following:
 - A. Perform the Services set forth in Exhibit A attached hereto; provided, however, that if a conflict exists between this Agreement and any term in Exhibit A, the terms in this Agreement shall control.
 - B. Devote as much productive time, energy, and ability to the performance of its duties hereunder as may be necessary to provide the required Services in a timely and productive manner.
 - C. Perform the Services in a safe, good, and workmanlike manner by fully-trained, skilled, competent, and experienced personnel using at all times adequate equipment in good working order.
 - D. Communicate with the District regarding progress the Consultant has made in performing the Services.
 - E. Provide services (including the Services) that are satisfactory and acceptable to the District.
- (b) Of the District. The District agrees to do each of the following:
 - A. Engage the Consultant as an independent contractor to perform the Services set forth in Exhibit A to this Agreement.
 - B. Provide relevant information to assist the Consultant with the performance of the Services.
 - C. Satisfy all of the Consultant’s reasonable requests for assistance in its performance of the Services.

2. NATURE OF RELATIONSHIP.

- (a) Independent Contractor Status. The Consultant agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise,

agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Consultant is and will remain an independent contractor in its relationship to the District. The District shall not be responsible for withholding taxes with respect to the Consultant's compensation hereunder. The Consultant shall have no claim against the District hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Nothing in this Agreement shall create any obligation between either Party and a third party.

- (b) Indemnification of District by Consultant. The District has entered into this Agreement in reliance on information provided by the Consultant, including the Consultant's express representation that it is an independent contractor and in compliance with all applicable laws related to work as an independent contractor. If any regulatory body or court of competent jurisdiction finds that the Consultant is not an independent contractor and/or is not in compliance with applicable laws related to work as an independent contractor, based on the Consultant's own actions, the Consultant shall assume full responsibility and liability for all taxes, assessments, and penalties imposed against the Consultant and/or the District resulting from such contrary interpretation, including but not limited to taxes, assessments, and penalties that would have been deducted from the Consultant's earnings had the Consultant been on the Consultant's payroll and employed as an employee of the District.

3. CONFIDENTIAL INFORMATION.

The Consultant agrees, during the Term and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the District, or to disclose to any person, firm, or corporation without the prior written authorization of the District, any Confidential Information of the District. "Confidential Information" means any of the District's proprietary information, technical data, trade secrets, or know-how, including, but not limited to, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed to the Consultant by the District, either directly or indirectly. The Consultant may use the Confidential Information to the extent necessary for negotiations, discussions, and consultations with District personnel or authorized representatives or for any other purpose the District may hereafter authorize in writing.

4. REPRESENTATIONS AND WARRANTIES.

- (a) The Parties each represent and warrant as follows:
- A. Each Party has full power, authority, and right to perform its obligations under the Agreement.
 - B. This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally and equitable remedies).
 - C. Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.

- (b) The Consultant hereby represents and warrants as follows:
 - A. The Consultant has the sole right to control and direct the means, details, manner, and method by which the Services required by this Agreement will be performed.
 - B. The Consultant has the right to perform the Services required by this Agreement at any place or location, and at such times as the Consultant shall determine.
 - C. The Services shall be performed in accordance with standards prevailing in the District's industry, and shall further be performed in accordance with and shall not violate any applicable laws, rules, or regulations, and the Consultant shall obtain all permits or permissions required to comply with such standards, laws, rules, or regulations.
 - D. The Services required by this Agreement shall be performed by the Consultant or the Consultant's staff, and the District shall not be required to hire, supervise, or pay any assistants to help the Consultant perform such Services.
 - E. The Consultant is responsible for paying all ordinary and necessary expenses of its staff.
 - F. The Consultant is responsible for providing insurance coverage for itself and its staff.
- (c) The District hereby represents and warrants as follows:
 - A. The District will make timely payments of amounts earned by the Consultant under this Agreement.
 - B. The District shall notify the Consultant of any changes to its procedures affecting the Consultant's obligations under this Agreement at least 30 days prior to implementing such changes.
 - C. The District shall provide such other assistance to the Consultant as it deems reasonable and appropriate.

5. COMPENSATION.

- (a) Terms and Conditions. The District shall pay the Consultant in accordance with the terms and conditions set forth in Exhibit A.
- (b) Timing of Payment. Payments shall be made to the Consultant within fifteen (15) days of the District's receipt of the Consultant's invoice (supported by reasonable documentation) for all Services performed to the District's satisfaction in accordance with Exhibit A.
- (c) No Payments in Certain Circumstances. Notwithstanding the foregoing, no payment shall be payable to the Consultant under any of the following circumstances:
 - A. if prohibited under applicable government law, regulation, or policy;
 - B. if the Consultant did not directly perform or complete the Services described in Exhibit A;
 - C. if the Consultant did not perform the Services to the reasonable satisfaction of the District; or
 - D. if the Services performed occurred after the expiration or termination of the Term of this Agreement, unless otherwise agreed in writing.
- (d) No Other Compensation. The compensation set out above shall be the Consultant's sole compensation under this Agreement.
- (e) Expenses. Any expenses incurred by the Consultant in the performance of this Agreement shall be the Consultant's sole responsibility.

- (f) Taxes. The Consultant is solely responsible for the payment of all income, social security, employment-related, or other taxes incurred as a result of the performance of the Services by the Consultant under this Agreement and for all obligations, reports, and timely notifications relating to such taxes. The District shall have no obligation to pay or withhold any sums for such taxes.

6. WORK FOR HIRE.

The Consultant expressly acknowledges and agrees that any work prepared by the Consultant under this Agreement shall be considered “work for hire” and the exclusive property of the District unless otherwise specified. To the extent such work may not be deemed a “work for hire” under applicable law, the Consultant hereby assigns to the District all of its right, title, and interest in and to such work. The Consultant shall execute and deliver to the District any instruments of transfer and take such other action that the District may reasonably request, including, without limitation, executing and filing, at the District’s expense, copyright applications, assignments, and other documents required for the protection of the District’s rights to such materials.

7. NO CONFLICT OF INTEREST; OTHER ACTIVITIES.

The Consultant hereby warrants to the District that, to the best of its knowledge, it is not currently obliged under an existing contract or other duty that conflicts with or is inconsistent with this Agreement. During the Term (as defined below), the Consultant is free to engage in other independent contracting activities; however, the Consultant shall not accept work, enter into contracts, or accept obligations inconsistent or incompatible with the Consultant’s obligations or the scope of Services to be rendered for the District pursuant to this Agreement.

8. TERM.

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of Section 9 of this Agreement, will continue until the Services have been satisfactorily completed and the Consultant has been paid in full for such Services (the “Term”); provided, that in no event shall this Agreement remain effective after June 30th, 2018.

9. TERMINATION.

This Agreement may be terminated:

- (a) By either Party on provision of thirty (30) days written notice to the other Party, with or without cause.
- (b) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party’s material breach is not cured within fifteen (15) days of receipt of written notice thereof.
- (c) By the District at any time and without prior notice, if the Consultant is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directives of the District, or is guilty of serious misconduct in connection with performance under this Agreement.

Following the termination of this Agreement for any reason, the District shall promptly pay the Consultant according to the terms of Exhibit A for Services rendered before the effective date of the

termination. The Consultant acknowledges and agrees that no other compensation, of any nature or type, shall be payable hereunder following the termination of this Agreement.

10. RETURN OF PROPERTY

Within thirty days of the termination of this Agreement, whether by expiration or otherwise, the Consultant agrees to return to the District all District products, samples, models, or other property and all documents, retaining no copies or notes, relating to the District's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material obtained by the Consultant during and in connection with its representation of the District. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the District's business, whether prepared by the Consultant or otherwise coming into its possession, shall remain the District's exclusive property.

11. INDEMNIFICATION.

- (a) Of District by Consultant. The Consultant shall indemnify and hold harmless the District and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of the Consultant arising from or connected with Consultant's carrying out of its duties under this Agreement, or (ii) the Consultant's breach of any of its obligations, agreements, or duties under this Agreement.
- (b) Of Consultant by District. The District shall indemnify and hold harmless the Consultant from and against all Claims that it may suffer from or incur and that arise or result primarily from (i) the District's operation of its business, (ii) the District's breach or alleged breach of, or its failure or alleged failure to perform under, any agreement to which it is a party, or (iii) the District's breach of any of its obligations, agreements, or duties under this Agreement; provided, however, none of the foregoing result from or arise out of the actions or inactions of the Consultant.

12. USE OF TRADEMARKS.

The Consultant recognizes the District's right, title, and interest in and to all service marks, trademarks, and trade names used by the District and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair the District's right, title, and interest therein, nor shall the Consultant cause diminishment of value of said trademarks or trade names through any act or representation. The Consultant shall not apply for, acquire, or claim any right, title, or interest in or to any such service marks, trademarks, or trade names, or others that may be confusingly similar to any of them, through advertising or otherwise. Effective as of the termination of this Agreement, whether by expiration or otherwise, the Consultant shall cease to use all of the District's trademarks, marks, and trade names.

13. MODIFICATION.

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

14. ASSIGNMENT.

The District may assign this Agreement freely, in whole or in part. The Consultant may not, without the written consent of the District, assign, subcontract, or delegate its obligations under this Agreement, except that the Consultant may transfer the right to receive any amounts that may be payable to it for its Services under this Agreement, which transfer will be effective only after receipt by the District of written notice of such assignment or transfer.

15. SUCCESSORS AND ASSIGNS.

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

16. FORCE MAJEURE.

A Party shall not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "Force Majeure Event"); however, if a Force Majeure Event occurs, the affected Party shall, as soon as practicable:

- (a) notify the other Party of the Force Majeure Event and its impact on performance under this Agreement; and
- (b) use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations hereunder.

17. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

18. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the District:

Joseph Williams
Perris Union High School District
155 East 4th Street
Perris, CA 92570
(951) 943-6369
joseph.williams@puhsd.org

If to the Consultant:
Jimmy Apodaca
Formation Technology, LLC
info@formationtech.com
Mailing:
P.O. Box 890071
Temecula, CA 92589
Physical:
33329 Via Chapparo
Temecula, CA 92592

19. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of California. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

20. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

21. FINGERPRINTING

This contract is subject to the provisions of Education Code Section 45125.1. Consultants' employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any site. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony or has been convicted of a violent or serious felony as they are defined in Penal Code Sections 667.5c and 1192.7c respectively. Consultant shall not permit an employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code Section 45122.1. Consultant shall certify in writing to the District that none of its employees who may come in contact with students have been convicted of a felony as defined in Education Code Section 45122.2. District may request the removal of an employee from a site at any time. Failure to comply with this provision may result in termination of the Contract.

22. NONDISCRIMINATION.

It is the policy of the District that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. Each Contractor agrees to comply with applicable Federal and California laws including, but not limited to, The California Fair Employment Practice Act, beginning with Government Code Section 12900, Labor Code Section 1735, and Title 5, Division 1, Chapter 1, Subchapter 4 of the California Code of Regulations. In addition, each Contractor agrees to require like compliance by any subcontractors employed on the work by him.

23. WORKERS' COMPENSATION.

In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees.

24. SEVERABILITY.

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

25. ENTIRE AGREEMENT.

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

26. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

24. EXECUTION OF CONTRACT.

Consultant shall not commence providing Services and/or the Products under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under Exhibit "B".

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

DISTRICT

Perris Union High School District

By: _____
Name:
Title:

CONSULTANT

Formation Technology, LLC

By: _____
Name: Jimmy Apodaca
Title: Owner

EXHIBIT A

DUTIES, SPECIFICATIONS, AND COMPENSATION

A. DUTIES. The Consultant will provide the following services:

(a) Consulting

Advise PUHSD on general technology operations, including (but not limited to): purchasing, planning, drafting policies, implementing new technology and providing support.

Provide application development services for PUHSD's various data programs and web applications.

Provide assistance and training on the administration of the following technologies:

Wide Area Network(s) and Local Area Network(s)

Network Security and Network Applications

Servers, Workstations, Internet and Mobile Devices

Server Applications and Client Applications

Provide SQL support and development services for PUHSD's Student Information System.

(b) Documentation

Document all work and adequately transfer knowledge upon completion of each project.

The Consultant shall devote as much productive time, energy, and ability as may be necessary to provide the required Consulting Services in a timely and productive manner.

C. COMPENSATION.

As full compensation for the Services rendered pursuant to this Agreement, the District shall pay the Consultant the rate of \$100 per hour for Consulting and \$60 per hour for Documentation, with total payment not to exceed \$80,000. The Consultant shall provide invoices requesting compensation on a monthly basis.

[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: _____

DISTRICT

Perris Union High School District

By: _____

Name:

Title:

CONSULTANT

Formation Technology, LLC

By: _____

Name: Jimmy Apodaca

Title: Owner

EXHIBIT "B" - Insurance Requirements

A. Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

B. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (A) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (B) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (C) *Workers' Compensation and Employers' Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance. Consultant shall maintain limits no less than: (A) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (B) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (C) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

D. Professional Liability [INCLUDE IF APPLICABLE] Consultant shall procure and maintain, and require its sub-consultants to procure and maintain errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

E. Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(1) General Liability. The general liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services and/or the Products or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it.

(2) Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it.

(3) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

F. Other Requirements. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers. Any deductibles or self-insured retentions must be declared to and approved by the District. Consultant shall guarantee that, at the option of the District, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents and volunteers; or (B) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the District. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.