

SUBCONTRACT

This Subcontract is entered into by and between WestEd and Perris Union High School District

SECTION A: CONTACTS

Perris Union High School District

Julie Zierold
 Director of Curriculum and Instruction
 1151 North A Street
 Perris, CA 92570
 P: (951) 943-6369
julie.zierold@puhsd.org

WestEd Technical:

Anne Keicher
 Program Associate
 P: 510.302.4207
akeiche@wested.org

WestEd Contracts:

Contracts Management Department
 730 Harrison Street
 San Francisco, CA 94107
 P: 415.615.3136
contracts@wested.org

WestEd Billing:

Donald Hom
 A/P Supervisor
 4665 Lampson Avenue
 Los Alamitos, CA 90720
 P: 562.799.5121
accountspayable@wested.org

SECTION B: WORK OR SERVICES

1. Prime Contract Information

Prime Funder: Fresno County Superintendent of Schools
 Project Name: i3 ERWC Validation (2016)
 Prime Contract Number & CFDA (if applicable): 25754, 84.411B

2. Subcontract Term

Start Date: 07/01/2018

End Date: 06/30/2021

3. Work or Services to be completed by Subcontractor (brief description):

See attached Scope of Work, Exhibit 1

4. Maximum Fees and expenses: \$65,000.00

5. Attachments

The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of this Subcontract.

See Attached:

- WestEd Terms and Conditions
- Scope of Work, Exhibit 1
- Budget Detail, Exhibit 2
- Small Business Representations, Exhibit 3
- Additional Attachments: Additional Contractual Requirements, Exhibit 4; Data Sharing Agreement, Exhibit 5

SECTION C: PAYMENT

- This is a fixed price Subcontract. Subcontractor shall invoice based on the payment structure outlined in Exhibit 2, Budget Detail. All invoices MUST BE received by WestEd no later than fifteen (15) days after the end of the month in which the invoices are due, or the end of the contract period, whichever is earlier. Invoices received after such date MAY NOT BE PAID.
- Subcontractor shall submit invoices in duplicate. An original invoice shall be sent to the **WestEd Billing Contact** with a duplicate sent to the **WestEd Technical Contact** (contact information is provided in Section A above).
- All invoices must include the following: (1) Subcontractor's name, Federal Tax ID, invoice date; (2) Subcontract Number and invoice number; (3) Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent; (4) Name, title, phone number of person preparing the invoice; (5) Authorized signature of certifying official.
- Subcontractor invoices must detail all services performed and/or expenses incurred in accordance with the attached budget. WestEd agrees to pay Subcontractor within 30 days of WestEd's receipt and approval of invoices. In no event shall WestEd be liable for late charges, interest, or penalties for failure to make payment within the time specified herein.

SECTION D: AUTHORIZED SIGNATORIES

IN WITNESS WHEREOF, this Subcontract has been executed by the parties hereto.

WestEd

Agreed and accepted:

Authorized Signature

Date Signed:

Name (Print): Virgilio F. Tinio, Jr.

Title: Contracts Manager

Perris Union High School District ("Subcontractor")

Agreed and accepted:

Authorized Signature

Date Signed:

Name (Print):

Title:

EIN:

The remainder of this page is intentionally left blank.

WESTED TERMS AND CONDITIONS

1.0 Allowable Costs: Allowable costs are determined in accordance with the cost principles applicable to the organization incurring the costs, e.g., FAR Subpart 31.2 (commercial organizations), 2 CFR 230 (non-profit organizations), 2 CFR 220 (educational institutions). Specific unallowable costs include, but are not limited to, capitalized equipment with an acquisition cost of \$5,000 or more, foreign travel, entertainment cost, and use of funds to influence legislation or appropriations.

2.0 Certification of Cost & Price: Subcontractor hereby certifies that the fees and expenses charged for the work being conducted for WestEd is the Subcontractor's usual and customary fee. Subcontractor also certifies that Subcontractor is not charging other organizations a lower amount for the same work.

3.0 Records Maintenance, Retention, and Access: Subcontractor shall maintain proper accounting records and supporting documents that reflect all expenditures related to Subcontractor's performance of services under this Subcontract. WestEd may inspect, audit, or engage at its own expense an outside audit firm to review the Subcontractor's books to verify the claimed cost. Subcontractor shall retain all of such records and documents for at least seven (7) years after the final payment under this Subcontract.

4.0 Audit: During the term of this Subcontract and for a reasonable period of time thereafter, WestEd or its agent shall have the right, at periodic intervals and during regular business hours, on Subcontractor's premises, to examine and make copies of all books and records of Subcontractor insofar as they relate to this Subcontract.

5.0 Independent Contractor Status and Responsibilities: In performing its services, Subcontractor shall be an independent contractor with authority and responsibility to control and direct the performance of the services required under this Subcontract, subject to WestEd's general right to inspect work in progress to determine whether the services are being performed in accordance with this Subcontract. All persons hired and/or contracted by Subcontractor shall be Subcontractor's employees and/or subcontractors. Subcontractor shall be responsible for the accuracy, completeness, and adequacy of all services performed by Subcontractor's employees and/or subcontractors and shall ensure that all applicable licensing and operating requirements of the State and County governments and all applicable accreditation and other standards of quality generally accepted in the field of Subcontractor's activities are complied with and satisfactorily met.

Subcontractor voluntarily and knowingly assumes the entire liability (if any such liability is determined to exist) to its employees and/or subcontractors or to other persons for all loss, damage, or injury caused by Subcontractor's employees and/or subcontractors in the course of their employment and/or subcontract. Subcontractor shall be responsible for payment of applicable income, social security, and other State or County taxes and fees, and all statutory benefits including, without limitation, Workers' Compensation, Unemployment Insurance and Temporary Disability Insurance.

6.0 No Alteration of Contract: No alteration, addendum, modification, or waiver of the terms of this Subcontract shall be valid unless made in writing and signed by both parties, and no oral understanding or agreement not incorporated herein shall be binding on either of the parties. No inline delineation or alteration shall be accepted or bind WestEd.

7.0 Termination: **7.1** It is mutually agreed that either party may cancel this Subcontract before performance is completed by giving written notice to the other party at least thirty (30) days before the termination date.

7.2 WestEd may terminate this Subcontract immediately upon termination by the prime funder under which this Subcontract is being performed by giving written notice to the Subcontractor.

7.3 In the event of a termination under Section 7.1 or 7.2, WestEd shall reimburse Subcontractor for work performed under the Subcontract up to and including the date of termination, which are invoiced and submitted to WestEd in accordance with the attached Scope of Work and Budget.

8.0 Subcontracts and Assignments: Except as specifically stated herein above, Subcontractor shall not subcontract or assign any part of the services to be performed under this Subcontract without the prior written consent and approval of WestEd.

9.0 Indemnification: Subcontractor agrees to indemnify and hold harmless WestEd, its officers, employees and agents from all claims, liabilities and losses by whomever asserted arising out of acts or omissions of Subcontractor, its officers, employees and agents in the performance of this Subcontract, except those arising by reason of the sole negligence of WestEd, its officers, employees and agents. This provision will survive termination of this Subcontract.

10.0 Intellectual Property Ownership: Subcontractor agrees to convey ownership to any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code that was first conceived or first actually reduced to practice in the performance of the work under this Subcontract. Subcontractor hereby conveys to WestEd any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code that was first conceived or first actually reduced to practice in the performance of the work under this Subcontract. Subcontractor agrees that any information, design, expression, computer program or other work that is or may be copyrighted under U.S. copyright law first created or developed in the performance of the work under this Subcontract shall be a work made for hire, as defined by Title 17, Section 101, of the United States Code, for the benefit of WestEd. Subcontractor further agrees that any other information or data first created or developed in the performance of work under this Subcontract, including that which may be subject to protection as a trade secret, shall be proprietary to WestEd. This provision will survive termination of this Subcontract.

All pre-existing WestEd data and materials provided to Subcontractor by WestEd to assist in the performance of this Subcontract shall remain WestEd's property. WestEd hereby authorizes Subcontractor to have access to and make use of the data and/or materials as is appropriate for the performance by Subcontractor of its obligations under the Subcontract. Upon expiration or termination of the Subcontract for any reason, Subcontractor shall request instructions from WestEd regarding whether Subcontractor should: (1) erase or destroy the data files and/or materials maintained by the Subcontractor or (2) return the data and/or materials to WestEd. Subcontractor may not utilize the data and/or materials for any purpose other than in performing services for WestEd pursuant to this Subcontract.

11.0 Warranties: Subcontractor warrants that all services performed under this Subcontract shall be performed consistent with prevailing industry standards. If WestEd determines that Subcontractor has failed in the performance of this Subcontract, Subcontractor will be given fifteen (15) days to complete any required corrective action. If Subcontractor is unable to correct the performance issue, WestEd shall be entitled to terminate the contract immediately at the conclusion of the fifteen (15) day period and to recover all fees paid to Subcontractor for the deficient services.

12.0 Authority to Sign: Both parties executing this Subcontract acknowledge and warrant that they possess the authority to enter into this Subcontract on behalf of their respective companies.

13.0 Governance / Compliance: This Subcontract shall be governed by the laws of the State of California, without giving effect to conflict of law principles. Subcontractor shall also comply with all applicable

WESTED TERMS AND CONDITIONS

Federal and state laws, regulations, standards, orders, and requirements.

14.0 Disputes: The parties will attempt to settle any dispute, claim or controversy arising out of or relating to this Subcontract or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope (hereinafter a "Dispute"), through good faith negotiations. Such negotiations shall take place face to face, between representatives authorized to settle the Dispute, within 30 days from the date one party provides the other party with written notice of a Dispute and the legal and factual basis for such Dispute (hereinafter the "Negotiations"). Only in the event that a Dispute cannot be resolved through such good faith Negotiations, either party may submit the Dispute to arbitration in San Francisco, California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. No party shall file an arbitration demand or complaint until the parties have engaged in good faith Negotiations and such Negotiations have ended in an impasse. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Notwithstanding the foregoing, no Dispute concerning a party's or a third party's rights in or to intellectual property protected in accordance with Federal law (an IP Dispute") shall be subject to arbitration and any such IP Dispute may be filed only in a federal court of competent jurisdiction, subject to the obligation to participate in Negotiations, as set forth herein.

15.0 Insurance: Without in anyway limiting the Subcontractor's liability pursuant to Section 9.0, Indemnification, of this Subcontract, Subcontractor shall procure and maintain during the full term of this Subcontract the following insurance amounts and coverage:

(a) Comprehensive General Liability with limits not less than \$1,000,000 each occurrence combined Single Limit for Bodily Injury and Property Damage;

(b) Comprehensive or Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for Owned, Non-owned and Hired Vehicles, as applicable;

(c) Worker's Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 each accident;

(d) Professional Liability (E & O) Insurance with limits not less than \$1,000,000 each occurrence;

(e) Subcontractor shall name WestEd as additional insured. Subcontractor shall provide WestEd with appropriate certificate(s) of insurance, including an updated certificate in the event the certificate originally provided expires during the performance period of the Subcontract. Subcontractor also understands and agrees that WestEd may withhold payment for services for any violations of the insurance provisions of this Subcontract.

16.0 Subcontractor Conflict of Interest: **16.1** The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined as, activities or relationships with other persons, organizations or any other third party which would cause the Subcontractor to be unable or potentially unable to render impartial assistance or advice to WestEd, or the Subcontractor's objectivity in performing the work might be otherwise impaired, or resulting in an unfair competitive advantage, or that the Subcontractor has disclosed all such relevant information to WestEd.

16.2 The Subcontractor agrees that if an actual or potential organizational conflict of interest is discovered after this Subcontract is executed, the Subcontractor will make a full disclosure in writing to WestEd. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take, after consultation

with WestEd, to avoid, mitigate, or neutralize the actual or potential conflict.

16.3 WestEd may terminate for convenience this Subcontract, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Subcontractor was aware of a potential organizational conflict of interest prior to the execution of this Subcontract or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to WestEd, WestEd may terminate the Subcontract for default, or pursue such other remedies as may be permitted by law or this Subcontract.

17.0 Confidentiality: All materials, products, documents, and other information of WestEd are proprietary and confidential, and may not be used, disclosed, or otherwise published by Subcontractor without WestEd's expressed written consent.

18.0 Non-Discrimination in Employment: The Equal Employment Opportunity clauses of Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act are hereby incorporated by reference if applicable based on the size of this Subcontract and the work to be performed and/or the goods or services involved. **This Subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

19.0 Severability: If any provision of this Subcontract is found by a court to be void, invalid or unenforceable, this Subcontract will either be reformed to comply with applicable law or the provision in question will be stricken so as not to affect the validity or enforceability of the remainder of this Subcontract.

20.0 Counterparts: This Subcontract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

21.0 Notices: Any notice or other communication shall be in writing, and will be considered to have been given if delivered by hand or sent by certified United States mail, return receipt requested, or by commercial courier service to the other party at the address stated above or to such other address as may be specified by either party in a notice to the other. Notice is effective upon receipt.

22.0 Entire Agreement: This Subcontract, together with Exhibits hereto, is the entire agreement of the parties and supersedes any prior agreements between them, whether written or oral, with respect to the subject matter hereof.

23.0 Order of Precedence: In the event of a discrepancy between these terms and conditions and any additional exhibits or attachments, the language of these terms and conditions will prevail.

Expository Reading and Writing Curriculum (ERWC) Evaluation

The evaluation of the Expository Reading and Writing Curriculum (ERWC), which is funded by a U.S. Department of Education's Investing in Innovation (i3) Validation Grant, will assess the effectiveness of the ERWC in improving 11th and 12th graders' reading and writing skills. WestEd is serving as the independent evaluator of the curriculum.

The ERWC emphasizes the in-depth study of expository, analytical, and argumentative reading and writing. The evaluation will assess whether students' enrollment in the ERWC in 11th grade has a positive impact on student achievement as measured through the Smarter Balanced ELA/Literacy Summative Assessment. The evaluation will also assess whether students' enrollment in the ERWC in both 11th grade and 12th grade has a positive effect on students' ELA/literacy academic achievement.

The study will occur over three school years: 2018-19, 2019-20, and 2020-21. The 2018-19 school year will be a required pilot year for the 11th grade curriculum and optional pilot year for the 12th grade curriculum; the 2019-20 school year will be an evaluation year for the 11th grade curriculum and a pilot year for the 12th grade curriculum; the 2020-21 school year will be an evaluation year for the 12th grade curriculum. In addition, if students matriculate to the University of California (UC), California State University (CSU), California Community College (CCC), or public college or university in the state of Washington in the 2021/22 school year, then WestEd will work with these post-secondary segments to evaluate the impact of students having taken the ERWC on their college coursework.

Subcontract Scopes of Work

District

The district shall undertake the following activities for the duration of the subcontract, which lasts through the 2020-21 school year:

1. Facilitate communication between WestEd and the schools within the district that are participating in the study.
2. Identify a district liaison who will respond to any questions or requests by WestEd concerning the research study.
3. Help to ensure that the aims of the research study are being met.
4. Provide student-level data containing student names, demographic information, assessment results, and course enrollment information for students participating in the study. Data extractions will occur 1-2 times per year. Additional details about the data extractions can be found in the attached Data Sharing Agreement.

5. Provide any necessary data documentation concerning the student-level datasets that will assist in the analysis of the data.
6. Distribute the school stipends paid by WestEd to the schools that are participating in the study.

Schools

The school shall undertake the following activities for the duration of the subcontract:

1. Identify a school-site contact person who will ensure that the aims of the research study are met.
2. Communicate the study requirements and expectations to participating teachers.
3. In 2018-19, provide a list of the student identification numbers of 10th grade students to WestEd. WestEd will then randomize these students to either the ERWC or the traditional curriculum for the 11th grade year for 2019-20 (students taking Advanced Placement English, International Baccalaureate English, Honors English, and English Language Development courses will not be randomized). The school will place students into the English 3/11 curriculum based on the random assignment designated by WestEd.
4. Ensure that at least 90% of the students enroll in the 11th grade English curriculum that they were assigned to based on the above described randomization process (#3) in the 2019-20 school year.
5. Oversee the administration of the following assessments:
 - a. A one-period English assessment for 11th grade students participating in the study at the beginning of the 2019-20 school year.
 - b. The Smarter Balanced ELA/Literacy Summative Assessment for the 11th grade students participating in the study at the end of the 2019-20 school year.
 - c. A two-period ELA assessment for the 12th grade students participating in the study at the end of the 2020-21 school year.
6. Ensure high rates of student participation in the three above-mentioned assessments.
7. Provide adequate facilities and amounts of time in the school schedule for students to take the assessments.
8. Ensure that the ERWC teachers attend the professional learning components of the ERWC while they are participating in the study. The professional learning components include:
 - a. A three-day workshop every summer (uncertified ERWC teachers will participate in an additional two days during the first summer of participation)
 - b. Five coaching sessions throughout each school year
 - c. Five school-based community of practice meetings throughout each school year
9. Ensure teachers participate in research activities while participating in the study. Research activities include:
 - a. Approximately ten surveys for ERWC teachers during the evaluation and pilot years

- b. Approximately three surveys for non-ERWC teachers during the evaluation years
- c. Up to two interviews for randomly sampled teachers during the pilot and evaluation years
- d. Up to two classroom observations for randomly sampled teachers during the pilot and evaluation years

WestEd

1. Compensate the district in the amount of \$5,000 each participating school in the amount of \$20,000 over the three study years.
2. Set up separate stipend forms directly with individual participating teachers. The stipend amounts will be as follows:
 - a. 11th and 12th grade ERWC teachers during the evaluation years: \$2,000 per year
 - b. 11th and 12th grade ERWC teachers during the pilot/non-evaluation years in the year immediately prior to the evaluation year: \$1,000 per year
 - c. 12th grade ERWC teachers during the pilot/non-evaluation year that is two years prior to the evaluation year: \$500 per year
 - d. Non-ERWC “English 11” and “English 12” teachers during the evaluation years: \$1,000 per year
3. Work with the districts, schools, and teachers to ensure that the evaluation progresses smoothly throughout the course of the study.
4. Keep the identity of districts, schools, and teachers confidential in any publications or other communications outside of the research team.

Budget:

WestEd will compensate the district in the amount of \$5,000 and compensate each participating school in the amount of \$20,000 each.

Perris Union High School District: \$5,000

Perris High School: \$20,000

Heritage High School: \$20,000

Paloma Valley High School: \$20,000

Total: \$5,000 + \$60,000= \$65,000

Payment Structure:

District (\$5,000 total) - Paid out as follows:

- \$2,500 in June 2019 (end of year 1 of study)
- \$2,500 in June 2021 (end of the study)

Schools (\$20,000 total for each) – Paid out as follows:

- \$5,000 in December 2018 (middle of year 1 of study)
- \$5,000 in June 2019 (end of year 1 of study)
- \$5,000 in June 2020 (end of year 2 of study)
- \$5,000 in June 2021 (end of study)

BUDGET DETAIL
Sample Invoice

Invoice #000000

Billing Date: mm/dd/yyyy

WestEd
Attention: <Name of Project Director>
Address
City, State, ZIP Code

From: <enter Subcontractor name>
Address
City, State, ZIP Code

Project Name: enter project name
Subcontract Number: s00-00000

Total Subcontract \$ -

Subcontract Number: <enter subcontract no. 00-0000>
Period of Performance: <enter start date - end date>

Billing Period: <enter start month-date-year - end month-date-year>

Description	Budget	Current Amount Billed	Cumulative Amount Billed	Balance
<enter Task description based on approved budget>	\$ -	\$ -	\$ -	\$ -
Total Costs	\$ -	\$ -	\$ -	\$ -
Total Amount Due		\$ -		

I certify that the services were performed by
<name of subcontractor> according to the subcontract.

Authorized Certifying Official
Remittance should be made payable to:
<name of subcontractor> at the address above
For billing questions, please call <enter contact name and phone number>

Subcontractor represents that, under the Small Business Administration Regulation and other related laws and regulations, it is a (check all that are applicable):

- Small Business
- Large Business
- Non-Profit
- Other (please explain): _____

And operated as (please check as many as applicable; if not applicable, indicate "N/A" in other):

- Minority-Owned
- Woman-Owned
- Veteran-Owned
- Service-Disabled Veteran-Owned Business
- HUBZone Business
- Other (please explain): _____



ADDITIONAL TERMS AND CONDITIONS

The following provisions are flowed down from the Prime Agreement between Fresno County Superintendent of Schools ("FCSS") and WestEd. When necessary to make the context of these clauses applicable to the Subcontract, the term "Agreement" shall mean "Subcontract" and "Contractor" shall mean "Subcontractor" as appropriate. Subcontractor agrees to comply with all terms and conditions of the Agreement, as applicable, including but not limited to the following:

1. RIGHTS RELATING TO WORK PRODUCTS. The following applies to any data, document, display, report, material, invention, work, and discovery (whether written, recorded, or electronically stored), including any copyright, rights, and interests therein or thereto (collectively "**Work**"), that FCSS provides to Contractor ("**FCSS Work**") or that are prepared and/or provided to FCSS by or on behalf of Contractor ("**Contractor Work**") under this Agreement: (A) the FCSS Work is FCSS' property and FCSS has all rights thereto; (B) Contractor does not own and shall not claim any rights or interests to or in the FCSS Work; (C) FCSS grants to Contractor a limited license during the Contract Term to use and reproduce only those portions of the FCSS Work necessary for Contractor to perform the Services; (D) Contractor shall return any or all FCSS Work to FCSS upon FCSS' request; (E) Contractor represents that the Contractor Work is Contractor's original work and do not contain any unlawful matter or infringe upon any third party's copyright, rights, or interest; (F) the Contractor Work is an instrument of service and shall become FCSS' sole property upon, and Contractor shall deliver the Contractor Work to FCSS within 30 days of, completion of the Services or termination of this Agreement, whichever is earlier; and (G) FCSS shall have the right to, and may authorize others to, use, modify, duplicate, distribute, sell, dispose, and/or disclose, in whole or in part, in any manner, and for any purpose, the Contractor Work. The provisions of this Section shall survive the termination of this Agreement.

This section will supersede section 10, Intellectual property, of WestEd's Terms and Conditions.

2. RECORD KEEPING, RETENTION, INSPECTION, AND AUDIT. Contractor shall maintain accurate books and records of all Services provided under, amounts billed pursuant to, and all documents required of Contractor under this Agreement and make them available for review, audit, and/or copying by FCSS. If this Agreement involves the expenditure of \$10, 000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor's examination and audit at FCSS' request or as part of an audit of FCSS. The provisions of this Section shall survive the termination of this Agreement.

3. CONFIDENTIAL RECORDS AND INFORMATION. If any document and/or information (e.g., employee or student records) that are subject to nondisclosure or protection under federal and/or California laws (collectively "**Confidential Materials**") are provided to or created by Contractor, Contractor shall: (A) not release, disseminate, publish, or disclose the Confidential Materials except as required by law or a court order, as this Agreement may permit, or as FCSS may authorize in writing; (B) not use the Confidential Materials for any purpose not related to the performance of this Agreement; and (C) protect and secure the Confidential Materials, including those that are saved or stored in an electronic form, to ensure that they are safe from theft, loss, destruction, erasure, alteration, and unauthorized viewing, duplication, and use. The provisions of this Section shall survive the termination of this Agreement.

4. COMPLIANCE WITH APPLICABLE LAWS AND GRANT CONDITIONS. Contractor shall comply with all laws applicable to its performance of this Agreement. If this Agreement is funded with any federal funds, Contractor shall comply with federal suspension and debarment regulations, including



Executive Order 12549 (29 C.F.R. Part 98). Each provision of law required to be inserted in or that applies to this Agreement shall be deemed inserted herein, and this Agreement shall be read and enforced as though such provision of law is inserted herein. Contractor shall comply with applicable terms and conditions of the Grant.

Data Sharing Agreement
by and between
WestEd and Perris Union High School District

This Data Sharing Agreement (“DSA”) sets forth the agreement between WestEd and Perris Union High School District (“District”) for the sharing, use, and protection of data related to the Investing in Innovation (i3) Expository Reading and Writing Curriculum (ERWC) Project (“Project”), related to the scope of work under Subcontract S-15436 entered into between WestEd and District (the “Subcontract”). At times herein, WestEd and the District are each individually referred to as a “Party” and collectively referred to as “the Parties.” The Parties wish to adequately protect student data and to comply with all applicable Federal, State, and local laws, ordinances, regulations, and directives relating to confidentiality and therefore, agree as follows:

1. Purpose:

The evaluation of the ERWC, which is funded by a U.S. Department of Education’s i3 Validation Grant, will assess the effectiveness of the ERWC in improving 11th and 12th graders’ reading and writing skills. WestEd is serving as the independent evaluator of the Project.

In order for WestEd to evaluate the impact of the ERWC, the District will share student-level data with WestEd. The data elements include:

- name (first, middle, last)
- date of birth
- statewide student identification number
- local student identification number
- grade level
- gender
- ethnicity
- special education status
- English language learner status (English Only/Initially Fluent English Proficient/English Learner/Reclassified Fluent English Proficient)
- high school attended
- free- or reduced-price lunch status
- Smarter Balanced ELA/literacy scale score from grade 8
- English course CBEDS number currently enrolled in
- English teacher’s name (first and last) currently enrolled in
- English section/period currently enrolled in
- English course name currently enrolled in
- Grade 11 Smarter Balanced ELA/literacy scale score
- Grade 11 English grades in each term

Certain participating districts may be selected for observation, in which case, WestEd, with appropriate consent, will conduct a one-hour observation in a selected classroom.

2. Definitions:

- A. “Data,” as used in this DSA, shall mean and refer to student-level data collected from districts.
- B. “Personally Identifiable Information” or “PII,” as used in this DSA, shall mean any information or Data that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify a student or



- C. student's parent with reasonable certainty.
- D. "De-identified Data," as used in this DSA, shall mean Data from which all Personally Identifiable Information has been removed or obscured so that a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, would not be able to identify any individual student or parent with reasonable certainty.

3. Term and Termination:

- A. This DSA is effective as of June 1, 2018 and will expire on June 30, 2021.
- B. The parties may amend this DSA to extend its term; however, such amendment must be in accordance with Section 7.A of this DSA.
- C. Notwithstanding the foregoing, the provisions of Sections 4 and 7 shall survive the termination or expiration of this DSA.

4. Confidentiality:

- A. WestEd agrees to take all necessary precautions to safeguard the Data and comply with all applicable Federal, State, or local laws, ordinances, regulations, and directives relating to confidentiality. These include, but are not limited to, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR part 99), the California Information Practices Act (California Civil Code § 1798 *et. seq.*), and the Privacy Act of 1974, as amended (5 U.S.C. § 552).
- B. WestEd will take steps to maintain the confidentiality and security of the Data at all stages of the Project.
- C. Education records shared by District, if any, are and shall continue to be District's property.
- D. WestEd will limit internal access to any PII to individuals working on the Project with legitimate interests in the PII and whose work reasonably requires access to the PII.
- E. Any PII that is shared pursuant to this DSA will only be used for the purposes of the Project.
- F. All PII that is shared pursuant to this DSA will be returned or destroyed: (1) within 365 days of the Project completion date or (2) when the PII is no longer needed for the purposes of the Project, whichever occurs first. The current Project completion date is June 30, 2021, however, in the event that this date is extended by the U.S. Department of Education and the PII continues to be needed for Project purposes, the PII destruction date will automatically extend to 365 days beyond the extended Project completion date.
- G. De-identified Data may be retained by WestEd after the completion of the Project, and may be further used, shared, released or disclosed by WestEd without consent, to the extent permitted under FERPA.
- H. If WestEd publishes any reports or other publications created with the use of Data, WestEd will not include information that could lead to the identification of any individual whose information is included in the Data.

5. WestEd's Responsibilities:

- A. WestEd will use the Data for education research or evaluation purposes only.
- B. WestEd will oversee the processes for transferring Data from school districts to WestEd through Box.com. As such, Data will be encrypted in transit using 256-bit TLS protocol.
- C. WestEd will retain all Data in a place physically secure from access by unauthorized persons and ensure that any computer on which the Data reside is encrypted and password protected.
- D. WestEd will only report on aggregated data.



E. WestEd shall designate a liaison to facilitate communications between WestEd and District for coordinating the activities necessary to carry out this DSA. WestEd’s contact person for this project is:

Karina Jaquet
2470 Mariner Square Loop, 2nd Floor
Alameda, CA 94501
kjaquet@wested.org
510-302-4253

6. District’s Responsibilities:

- A. District will transfer Data to WestEd within 60 days of WestEd’s requests as they occur over the study period, usually 1-2 times per year.
- B. District will transfer Data to WestEd using Box.com.
- C. District will answer any questions about the data that is shared with WestEd to facilitate the analysis for the evaluation.
- D. District shall designate a liaison to facilitate communications between District and WestEd for coordinating the activities necessary to carry out this DSA. District’s contact person for this project is:

_____	_____
Name	Street
_____	_____
City, State, Zip Code	Email

Phone	

7. General Provisions:

- A. Amendments. This DSA may be amended at any time by mutual agreement of the Parties without additional consideration, provided that before any amendment shall take effect, it shall be in writing and signed by both parties.
- B. Assignment. Neither party shall voluntarily or by operation of law, assign or otherwise transfer its rights or obligations under this DSA without the other party’s prior written consent. Any purported assignment in violation of this paragraph shall be void.
- C. Severability. The provisions of this DSA are severable and the unenforceability of any provision of this DSA shall not affect the enforceability of any other provisions hereof.
- D. Relationship between the Parties. Nothing in this Agreement shall be construed to grant either Party the right to make commitments of any kind for or on behalf of the other Party, without the prior written consent of the other Party. Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize an employment relationship between the parties or a joint venture, partnership, or formal entity of any kind.
- E. Dispute resolution. The Parties shall exercise their best efforts to settle any claim, controversy, or dispute (collectively "Disputes") concerning questions of fact or law arising out of or relating to this Agreement. The Parties shall discuss any such Dispute no later than 30 days after either Party gives written notice to the other Party of a Dispute, including the legal and factual basis for such Dispute. At such meeting (the “Negotiations”), a representative of each Party who has authority to resolve the Dispute shall be in attendance. No suit, arbitration or other proceeding may be commenced before the Parties have met pursuant to this provision, except as described herein.

In the event that a Dispute cannot be resolved through such good faith Negotiations, the Parties agree that such Dispute shall be finally settled through binding arbitration. The arbitration shall be administered



by JAMS, in San Francisco, California, pursuant to its Comprehensive Arbitration Rules and Procedures. No Party shall file an arbitration demand or complaint until the Parties have engaged in good faith Negotiations and such Negotiations have ended in an impasse. The decision of the arbitrator shall be final and conclusive upon the Parties. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

Notwithstanding the foregoing, either Party may seek injunctive or provisional relief to protect confidential information at any time.

- F. Choice of Law. This DSA shall be governed by and construed in accordance with the laws of the State of California, excluding California’s choice-of-law principles. All claims relating to or arising out of this contract, or breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of California, excluding its choice-of-law principles.
- G. Notices. All notices permitted or required under this DSA shall be in writing and shall be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, to each Party’s respective contact listed above, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices of intent to terminate this DSA shall be provided to the applicable contact above, and in the case of termination by District, notice to WestEd shall also be delivered to:

Virgilio Tinio
WestEd
730 Harrison Street
San Francisco, CA 94107
contracts@wested.org

- H. Order of Precedence. In the event of a conflict between this DSA and the Subcontract, the terms of the Subcontract will control except as to: (1) the confidentiality of Data; (2) compliance with state, local, or federal law, including FERPA with respect to the Data; and (3) the Parties’ respective obligations regarding PII. Nothing in this DSA is meant to modify other rights or obligations, including but not limited to the scope of work or payment obligations set forth by the Subcontract.
- I. Negotiation and Execution. This DSA has been negotiated by both Parties and shall not be strictly construed against either Party. This DSA may be executed in one or more original or faxed counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each of the persons signing this DSA represents that he or she has the authority to sign on behalf of and bind their respective party.

IN WITNESS WHEREOF, the Parties have, by their respective duly authorized representative, executed this DSA as of the day and year first written above.

WestEd

By: _____

Name: _____

Title: _____

Date: _____

Perris Union High School District

By: _____

Name: _____

Title: _____

Date: _____