

PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is made and entered into this 21 day of March, 2019 by and between the CALEXICO UNIFIED SCHOOL DISTRICT, hereinafter referred to as "DISTRICT" and FRANKLINCOVEY CLIENT SALES, INC., a Utah corporation, hereinafter referred to as "CONTRACTOR." The DISTRICT and CONTRACTOR are sometimes referred to herein as a "PARTY" and collectively as the "PARTIES."

RECITALS

WHEREAS, the DISTRICT requires the services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting, leadership training and/or administrative matters, and such services and advice are not available within the DISTRICT, and cannot be performed satisfactorily by DISTRICT employees; and

WHEREAS, CONTRACTOR possesses the necessary expert knowledge, experience, and ability to perform services not available through DISTRICT personnel, and CONTRACTOR is specially experienced and competent to provide to the DISTRICT certain specialized services; and

WHEREAS, DISTRICT desires to obtain the following specialized services: "The Leader in Me – Launching Leadership/Creating Culture" training at Jefferson Elementary School, 1120 East Seventh Street, Callexico, CA 92231-2956; and

WHEREAS, CONTRACTOR has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this AGREEMENT.

ARTICLE I **SCOPE OF SERVICES AND RESPONSIBILITIES**

1. Services to be Provided by the CONTRACTOR. The CONTRACTOR shall provide to the DISTRICT on the terms set forth herein all the services articulated in this AGREEMENT, and as set forth in the attached Exhibit "A" (the "SERVICES"). The PARTIES agree, however, that if there are any conflicts, discrepancies or ambiguities in the terms and conditions of this AGREEMENT and the SERVICES, the terms of the AGREEMENT shall govern and control.

2. Classification. To the extent it is determined under applicable law that CONTRACTOR fails to meet the statutory prerequisites for classification as a professional expert operating under a personal services agreement, CONTRACTOR resigns any and all rights and privileges derived from this AGREEMENT and any resulting relationship, which resignation is deemed accepted under such circumstances by the DISTRICT.

3. CONTRACTOR's Certifications, Representations and Warranties. CONTRACTOR makes the following certifications, representations, and warranties for the benefit

of the DISTRICT. CONTRACTOR acknowledges and agrees that the DISTRICT, in deciding to engage CONTRACTOR pursuant to this AGREEMENT, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this AGREEMENT and the course of CONTRACTOR's engagement hereunder:

a. CONTRACTOR is qualified in all respects to provide to the DISTRICT all of the services contemplated by this AGREEMENT and, to the extent required by any applicable laws, CONTRACTOR has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such services as are called for hereunder.

b. CONTRACTOR, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this AGREEMENT shall at all times comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

c. The CONTRACTOR will furnish, at its expense, those services that are set forth in this AGREEMENT and Exhibits and represents that the services set forth in said Exhibits are within the technical and professional areas of expertise of the CONTRACTOR. The DISTRICT shall request in writing if the DISTRICT desires the CONTRACTOR to provide services in addition to or different from the services described in this AGREEMENT and Exhibits. The CONTRACTOR shall advise the DISTRICT in writing of any services that in the CONTRACTOR's opinion lie outside of the technical and professional expertise of the CONTRACTOR.

4. CONTRACTOR represents that the CONTRACTOR has no existing interest and will not acquire any interest, direct or indirect, which would create a conflict of interest in violation of any applicable laws, and that no person having any such interest shall be employed by CONTRACTOR.

ARTICLE II

COMPENSATION TO THE CONTRACTOR

1. The DISTRICT shall compensate the CONTRACTOR as follows:

a. The DISTRICT agrees to pay the CONTRACTOR in accordance with the fee set forth in the Exhibit "A" for the SERVICES performed pursuant to this AGREEMENT. In no event shall the total payment to CONTRACTOR exceed Dollars (\$) as set forth in Exhibit "A" for performing the services required by this AGREEMENT.

b. CONTRACTOR shall invoice costs monthly, or another periodic basis approved by the DISTRICT, for the services provided pursuant to this AGREEMENT from the time the CONTRACTOR starts providing services under this AGREEMENT. All costs must be supported by an invoice, receipt, or other acceptable documentation as determined by the DISTRICT.

2. The CONTRACTOR shall submit one (1) invoice monthly to the DISTRICT for the fees incurred during the billing period and reimbursable expenses (if any). Invoices for fees must reflect the date of the service, identify the individual performing the service, state the hours worked and rate charged, and describe the service performed. Invoices requesting reimbursement for reimbursable expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g. receipts, invoices) including a copy of the DISTRICT's authorization for invoiced item(s). Invoices requesting payment for overtime must reflect straight time and overtime hours being charged, and must include a copy of the DISTRICT's written authorization to incur additional overtime expense. No payments will be made by the DISTRICT to the CONTRACTOR for monthly invoices requesting reimbursables or overtime absent the prior written authorization of the DISTRICT. The DISTRICT shall make payment to the CONTRACTOR of the approved invoiced amount within forty-five (45) days of the DISTRICT's receipt of the approved invoice.

3. The DISTRICT may withhold the whole or a part of any payment to such extent as may be necessary to protect the DISTRICT from loss, including costs and attorneys' fees, on account of: (1) defective or deficient work product not remedied; (2) failure of the CONTRACTOR to make payments properly to its employees; or (3) failure of CONTRACTOR to perform its services in a timely manner.

ARTICLE III

REIMBURSABLE EXPENSES

1. Reimbursable expenses are in addition to compensation for basic and extra services, and shall be paid to the CONTRACTOR at the cost of the expenses incurred by the CONTRACTOR. There will be reimbursable expenses contemplated under this AGREEMENT.

ARTICLE IV

TERMINATION

1. This AGREEMENT may be terminated by either PARTY upon fourteen (14) days' written notice to the other PARTY in the event of a substantial failure of performance by such other PARTY, including insolvency of CONTRACTOR.

2. In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience in accordance with Article IV, Paragraph 3 below, and CONTRACTOR shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by CONTRACTOR.

3. This AGREEMENT may be terminated without cause by DISTRICT upon twenty (20) days' written notice to the CONTRACTOR. In the event of a termination without cause, the DISTRICT shall pay CONTRACTOR for all services performed and all expenses incurred under this AGREEMENT supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONTRACTOR for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of

termination of this AGREEMENT, consideration shall be given to both completed work and work in process of completion and to other documents whether delivered to the DISTRICT or in the possession of the CONTRACTOR.

4. In the event of a dispute between the PARTIES as to performance of the work or the interpretation of this AGREEMENT, or payment or nonpayment for work performed or not performed, the PARTIES shall attempt to resolve the dispute. Pending resolution of this dispute, CONTRACTOR agrees to continue the work diligently to completion. If the dispute is not resolved, CONTRACTOR agrees it will neither rescind the AGREEMENT nor stop the progress of the work, but CONTRACTOR's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the AGREEMENT has been completed, and not before. The PARTIES may agree in writing to submit any dispute between the PARTIES to arbitration. The DISTRICT agrees to pay the CONTRACTOR the undisputed amounts due under this AGREEMENT.

5. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE IV OF THIS AGREEMENT SHALL GOVERN ALL TERMINATION RIGHTS AND PROCEDURES BETWEEN THE PARTIES. ANY TERMINATION PROVISION THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

ARTICLE V

ADDITIONAL CONTRACTOR SERVICES

1. CONTRACTOR shall notify the DISTRICT in writing of the need for additional services required due to circumstances beyond the CONTRACTOR's control. CONTRACTOR shall obtain written authorization from the DISTRICT before rendering such services. The DISTRICT may require CONTRACTOR to perform additional services which are, in the DISTRICT's discretion, necessary. Compensation for such services shall be negotiated and approved in writing by the DISTRICT. Such services shall include:

a. Any other services not otherwise included in this AGREEMENT or not customarily furnished in accordance with the generally-accepted practice in the CONTRACTOR's industry.

ARTICLE VI

ACCOUNTING RECORDS OF THE CONTRACTOR

1. Records of the CONTRACTOR's direct personnel and reimbursable expenses pertaining to any extra services provided by the CONTRACTOR, which are in addition to those services already required by this AGREEMENT, and any records of accounts between the DISTRICT and CONTRACTOR shall be kept on a generally-recognized accounting basis and shall be available to the DISTRICT or DISTRICT's authorized representative at mutually convenient times.

ARTICLE VII
INDEMNITY & INSURANCE

1. To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold DISTRICT entirely harmless from all liability arising out of:

a. Workers' Compensation and Employers Liability: Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONTRACTOR's employees arising out of CONTRACTOR's work under this AGREEMENT; and

b. General Liability: Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONTRACTOR or the DISTRICT, or any person, firm or corporation employed by the CONTRACTOR or the DISTRICT upon or in connection with this AGREEMENT, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent contractors who are directly employed by the DISTRICT;

c. The CONTRACTOR, at its own expense, cost, and risk, shall defend and indemnify the DISTRICT as to any and all claims, actions, suits, or other proceedings, arising out of Article VIII, Paragraphs 1(a) and (b) above, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

d. THE PARTIES UNDERSTAND AND AGREE THAT ARTICLE VIII, SECTION 1 OF THIS AGREEMENT SHALL BE THE SOLE INDEMNITY, AS DEFINED BY CALIFORNIA CIVIL CODE SECTION 2772, GOVERNING THIS AGREEMENT. ANY OTHER INDEMNITY THAT IS ATTACHED TO THIS AGREEMENT AS AN EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE PARTIES.

e. ANY ATTEMPT TO LIMIT THE CONTRACTOR'S LIABILITY TO THE DISTRICT IN AN ATTACHED EXHIBIT SHALL BE VOID AND UNENFORCEABLE BETWEEN THE DISTRICT AND THE CONTRACTOR. IN NO EVENT SHALL THE CONTRACTOR'S LIABILITY BE LIMITED TO ANY AMOUNT INCLUDING, BUT NOT LIMITED TO THE AMOUNT OF FEES RECEIVED BY THE CONTRACTOR FOR PERFORMING SERVICES RELATED TO THIS AGREEMENT.

2. CONTRACTOR shall purchase and maintain policies of insurance with an insurer or insurers, authorized to do business in the State of California and acceptable to DISTRICT which will protect CONTRACTOR and DISTRICT from claims which may arise out of or result from CONTRACTOR's actions or inactions relating to the AGREEMENT, whether such actions or

inactions be by themselves, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California. However, such amount shall not be less than ONE MILLION DOLLARS (\$1,000,000).

b. Commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) per annual aggregate; and automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) combined single limit for each accident and for bodily injury and property damage liability, including:

1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. Professional liability insurance, including contractual liability, with limits of Two Million Dollars (\$2,000,000), per Claim and Three Million Dollars (\$3,000,000.00) per annual aggregate. Such insurance shall be maintained during the term of this AGREEMENT and renewed for a period of at least three (3) years thereafter and/or at rates consistent with the time of execution of this AGREEMENT adjusted for inflation.

d. Each policy of insurance required in Article VIII, Section 2(b) above shall include DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; and, shall waive all rights of subrogation. CONTRACTOR shall notify DISTRICT in the event of a material change in or failure to renew each policy. Contractor shall provide not less than thirty (30) days' written notice prior to cancellation Prior to commencing work, CONTRACTOR shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONTRACTOR fails to secure or maintain any policy of insurance required hereby, DISTRICT may at its sole discretion secure such policy of insurance in the name of and for the account of CONTRACTOR and in such event CONTRACTOR shall reimburse DISTRICT upon demand for the cost thereof.

e. In the event that CONTRACTOR subcontracts any portion of CONTRACTOR's duties, CONTRACTOR shall require any such subcontractor to

purchase and maintain insurance coverage for the types of insurance referenced in Article VIII, Sections 2(a), (b), (c), and (d) in amounts which are appropriate with respect to that subcontractor's part of work which shall in no event be less than \$1,000,000 per occurrence.

ARTICLE VIII **MISCELLANEOUS**

1. CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided to employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, state unemployment compensation or Workers' Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of CONTRACTOR's employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of any applicable prevailing wages and all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONTRACTOR's employees.

2. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONTRACTOR.

3. The DISTRICT and CONTRACTOR, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other PARTY to this AGREEMENT with respect to the terms of this AGREEMENT. CONTRACTOR shall not assign this AGREEMENT.

4. This AGREEMENT shall be governed by the laws of the State of California.

5. Each of the PARTIES have had the opportunity to, and have to the extent each deemed appropriate, obtained legal counsel concerning the content and meaning of this AGREEMENT. Each of the PARTIES agrees and represents that no promise, inducement or agreement not herein expressed has been made to effectuate this AGREEMENT. This AGREEMENT represents the entire AGREEMENT between the DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONTRACTOR.

6. Time is of the essence with respect to all provisions of this AGREEMENT.

7. If either PARTY becomes involved in litigation arising out of this AGREEMENT or the performance thereof, each PARTY shall bear its own litigation costs and expenses, including reasonable attorney's fees.

8. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, all of which shall be sufficient evidence of this AGREEMENT.

9. Confidentiality. The CONTRACTOR shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this AGREEMENT.

10. Severability. If any portion of this AGREEMENT is held as a matter of law to be unenforceable, the remainder of this AGREEMENT shall be enforceable without such provisions.

11. Notices. 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) by U.S. Mail, mailed either by registered, overnight, 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 provisions of this Paragraph. At the date of this AGREEMENT, the addresses of the PARTIES are as follows:

To the DISTRICT:

Calexico Unified School District
Attn: Asst. Superintendent Business Services
901 Andrade Avenue
Calexico, CA 92331
Telephone: 760-768-3888
Email: cvega@cusdk12.org

To the CONTRACTOR:

FranklinCovey Client Sales, Inc.
Attn: Legal Department
2200 West Parkway Blvd.
Salt Lake City, UT 84119
Telephone: 802-817-1776
Email: legal@franklincovey.com

12. Tobacco Prohibited. Any tobacco use (smoking, chewing, etc.) by anyone, is prohibited at all times on any DISTRICT property.

13. Profanity on any DISTRICT property is prohibited, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment.

14. Appropriate Dress is Mandatory. Tank tops, cut-offs and shorts are not allowed to be worn while on any DISTRICT property. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated in Paragraph 15 above.

15. Images. If applicable, the CONTRACTOR is prohibited from capturing on any visual medium images of any property, logo, student, or employee of the DISTRICT, or any image that represents the DISTRICT without express written consent from the DISTRICT.

16. Pursuant to and in accordance with the provisions of Government Code section 8546.7 or any amendments thereto, all books, records and files of CONTRACTOR, or any subcontractor connected with the performance of this AGREEMENT involving the expenditure of

public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor General of the State of California, at the request of DISTRICT or as a part of any audit of DISTRICT, for a period of three (3) years after final payment is made under this AGREEMENT. CONTRACTOR shall preserve and cause to be preserved such books, records and files for the audit period.

17. Education Code section 45125.1: During the entire term of this AGREEMENT, CONTRACTOR shall fully comply with the provisions of Education Code section 45125.1 (Fingerprinting Requirements), when it is determined that the CONTRACTOR will have contact with pupils in the performance of services under this AGREEMENT. See Exhibit "B" attached.

18. This AGREEMENT is not a valid or enforceable obligation against the DISTRICT until approved or ratified by motion of the Governing Board of the DISTRICT duly passed and adopted.

The PARTIES, through their authorized representatives, have executed this AGREEMENT as of the day and year first written above.

FRANKLINCOVEY CLIENT SALES, INC. CALEXICO UNIFIED SCHOOL DISTRICT

By: _____
Type Name & Title

By: _____
Type Name & Title

EXHIBIT “A”

SERVICES

EVENT LOGISTICS

Event	Date	Location	Consultant
Launching Leadership/Creating Culture Combo	3/2/2019 9:30:00 AM - 3/2/2019 5:30:00 PM	Jefferson Elementary - CA	Charlene Smith

PRODUCTS AND SERVICES

1. Product	2. Quantity	3. Unit Price	4. Discount	5. Price	Final Net
Launching Leadership / Creating Culture Combo Consultant Daily Rate	1	\$2,700.00			\$2,700.00
TLIM Launching Leadership Field Guide		\$45.00			\$1,350.00
TLIM Creating Culture Field Guide	30	\$45.00	\$(750.00)		\$600.00
TLIM Creating Culture Window Cling (10pk)	3	\$0.00			\$0.00
Launching Leadership SRC Poster (10pk)	3	\$0.00			\$0.00
Workshop Packet v3	2	\$0.00			\$0.00
Workshop Evaluation Form (25 pk)	2	\$0.00			\$0.00

Please anticipate expenses as they are not included.

Specific Terms and Conditions for the Services:

Cancellation/Rescheduling Fees: Fifteen (15) calendar days' notice is required to cancel or reschedule the Services. If Client provides fewer than fifteen days' notice, Client will be billed a cancellation fee of 75% or a rescheduling fee of 25% of the consultant fee to cover costs incurred by FranklinCovey, as well as any travel costs imposed on FranklinCovey as a result of such cancellation or rescheduling. Client will not be assessed a cancellation/rescheduling fee for any Services canceled or rescheduled by FranklinCovey.

Facilities: Client shall be responsible for providing an appropriate room for the Services and to furnish the room with audio/visual equipment required by FranklinCovey, and all costs associated therewith.

Copyright: FranklinCovey owns or controls all intellectual property rights, proprietary rights, and copyrights to all Services and materials provided for in this agreement. Any unauthorized use, reuse, copying, reproduction, recording, transmittal, modification or revision of the Services and/or materials, if applicable, shall constitute a breach of this agreement and/or federal copyright law. Any materials provided for herein are intended for personal use only by the participants, and are not for resale or public display. Nothing in this agreement implies a grant of license for Client to use the concepts and materials outside the scope of the agreement.

Recordings: Client shall not make or allow to be made any audio and/or video recordings of the Services. Client shall inform the audience and otherwise take reasonable actions to insure that no recordings of the Services are made.

Substitution of Instructor: If for any reason the scheduled FranklinCovey consultant is unable to perform the Services, FranklinCovey will provide a substitute consultant or, at Client's option, reschedule the Services. In the case of a cancellation or rescheduling by FranklinCovey, Client will not be charged a cancellation/rescheduling fee.

Leader in Me Notifications: FranklinCovey may send to teachers, staff, and employees, via email or other means, promotional materials, product updates, upcoming events, and other information pertinent to The Leader in Me process. Anyone receiving such information may opt out at any time.

EXHIBIT “B”

FINGERPRINTING CERTIFICATION AND BACKGROUND CHECKS

CONTRACTOR certifies that pursuant to Education Code section 45125.1, CONTRACTOR has conducted criminal background checks through the California Department of Justice of all employees providing services to the Callexico Unified School District, and that none have been convicted of serious or violent felonies, as specified in Penal Code sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code section 45125.1, below is a list of the names of the employees of the undersigned who may come in contact with pupils. Failure to comply with this law may result in, at the DISTRICT’s sole discretion, termination of the AGREEMENT for cause.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Below is a list of employees who may come into contact with pupils:
