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EXPLORING NEW HORIZONS PROGRAM SERVICE AGREEMENT (Pigeon Point)

THIS AGREEMENT (the "Agreement") is entered into as of the date of both parties signing this agreement, by and between **EXPLORING NEW HORIZONS**, a California nonprofit public benefit corporation ("ENH"), and Roosevelt Elementary **, a California School (the "School")**. ENH and the School are collectively referred to herein as the "Parties."

WHEREAS, ENH is exempt from federal income tax under Internal Revenue Code Section 501(c) (3) and corresponding provisions of state law;
WHEREAS, the charitable purposes of ENH include conducting outdoor education for grade school children as part of their regular school education curriculum;
and WHEREAS, ENH's provision of services to the School pursuant to this Agreement will fall within the scope of ENH's charitable purposes;
NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, ENH shall provide on behalf of the School an outdoor education program for the School's students (the "Program"), to be conducted at the Pigeon Point Campus of ENH at the Pigeon Point Lighthouse Station in Pescadero, California (the "Program Location") for 3 3- **Day Program(s)** during the period of:
Jan 19-21, 24-26 and 26-28, 2022 **(the "Term").** ENH shall provide the following services (the "Services") in connection with the Program:

a. Program Orientation Presentations. Prior to the commencement of the Term, ENH shall:
   i. Teacher Meeting: Conduct an online teacher meeting with the School's classroom teachers at times mutually acceptable to the Parties to answer any questions.

   ii. Parent Presentation: Provide the School with the link to an online narrated orientation slideshow, including a FAQ section and ENH contact email and phone so parents may contact us directly with questions. The School's classroom teachers will share this link with the parents of the participating students, so parents can watch it at any time and contact ENH with any questions.

   iii. Student Presentation: Provide the School with the link to a student presentation that the School's classroom teachers will run themselves to orient their students.

b. Activities. ENH shall organize and conduct the outdoor educational activities.

c. Supplies. ENH shall provide all materials and supplies required to implement the Program.

d. Room and Board. ENH shall provide for the duration of the Term housing and meals for all students, classroom teachers and cabin leaders, whose numbers are estimated to be as follows:
   i. 25 **Students per Program (total** 75 **)**

   ii. 9 **Cabin Leaders per Program: 1 Classroom teacher + up to** 8 **Cabin leaders per Program (total** 27 (1 teacher & 8 cabin leaders per week) **)**

e. Cabin Leaders: ENH relies upon adult cabin leaders for a successful program. The number of allowed cabin leaders varies based upon the number of attending students:
   i. Programs with 10 or fewer students may bring up to 3 cabin leaders.
   ii. Programs with 11 to 20 students may bring up to 6.
   iii. Programs with more than 21 students may bring up to 9.
   iv. A maximum of 10 total adults are allowed per program.

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v. The School shall pay ENH an amount equal to **$75** per cabin leader per week
vi. Any exceptions must be arranged by the Pigeon Point Program Director no less than two (2) months prior to the start of the program dates.

f. Transportation. The School shall be responsible for arranging, and ENH shall not be responsible for, all other transportation for participating students, classroom teachers and cabin leaders to and from the Program Location before, during, and after the program.
i. Should the participating school require assistance traveling to and from Año Nuevo, ENH will arrange transportation at an additional cost to the school. ENH will be responsible for the coordination to transport all students, classroom teachers and cabin leaders but all costs incurred will be passed along to the School. *Negotiated bus rate and number of anticipated buses will be provided on program invoice.*
ii. ENH shall provide a van to transport materials and supplies as required by the Program and to serve as an onsite emergency vehicle.
iii. The School or teacher must have a vehicle at the Site to transport students to the hospital in case of a non-emergency medical situation if needed. In the event of a non-emergency medical situation, an ENH staff member will accompany the classroom teacher and student to the hospital.

2. Fees; Payment.
a. The School shall pay ENH for the Services in an amount equal to the number of students and cabin leaders enrolled in the Program.

b. **The School shall pay ENH the Fee as follows:**
i. **Due no later than** 12/29/2021 **:**

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1. $20,700 **for the minimum sum of students (** 69 **).** The amount due is the minimum sum of students (90% of the enrollment number) multiplied by $300 per student ("the Fee"), and

2. $900 **for the cabin leaders**

ii. Due no later than ten (10) days after the School's receipt of an invoice from ENH:
1. The remaining balance of the total fee.

c. If the School fails to enroll this minimum number of students, the Fee shall be calculated as if the minimum number of students indicated above were enrolled in the Program.

d. Schools may adjust the estimated number of students enrolled in the program 90 days before attending the program as needed.

e. The School shall remit all deposits and payments to:

Exploring New Horizons
PO Box 1514
Felton, California 95018

f. For purposes of calculating the termination fee in Section 8(a) or Section 8(b), or the Cancellation Amount in Section 8(b), the Fee shall be determined based on (i) the number of students enrolled in the Program on the date of termination, or on the date of cancellation, as applicable, or (ii) the minimum number of students set forth in Section 2(a), whichever number is greater.

3. Default. If the School fails to make any payment pursuant to Section 2 within ten (10) days after the date on which such payment was due, ENH may in its discretion (a) continue to conduct the Program, in which

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case ENH shall have the right to enforce all its rights and remedies granted by this Agreement, including, without limitation, the right to collect the Fee, or (b) cancel or suspend the Program, in which case ENH shall be entitled to recover from the School any amount necessary to compensate ENH for all detriment proximately caused by the School's failure to perform its obligations under this Agreement, including without limitation the amount ENH would have earned by providing services to another organization or organizations during the Term. At ENH's discretion, unpaid installments of the Fee under the terms of this Agreement may bear interest from the date due at the maximum rate then allowable by law. ENH's remedies are not exclusive and are cumulative with any other remedies allowed by law.

4. Alternate Sites. In the event that the Site becomes unavailable due to circumstances beyond ENHs' control, including but not limited to, loss of lease of Site, natural disasters, and eminent domain proceedings, ENH will make every possible effort to provide an alternate site location with the same or similar services, for the same dates, and at the same price. The School may agree to accept services at an alternate site location in the above circumstances, and the terms of this contract shall continue to apply. If ENH is not able to offer an alternate site location with the same or similar services, for the same dates, and at the same price, it will make every effort to offer the School alternate dates, services, and/or pricing at another location and come to an agreement with the school on the alternate offer. The School may elect to accept the alternate offer, or terminate this contract. In the event the School elects to terminate the contract, all funds will be returned by ENH to the School.

5. Representations and Warranties. Each Party represents and warrants that (i) it is duly organized, validly existing and in good standing under the laws of its state of incorporation, (ii) it has the legal right, power and authority to execute, deliver and perform its obligations under this Agreement, and (iii) all approvals requisite to the valid and binding execution, delivery and performance of this Agreement by such Party have already been obtained and are in full force and effect.

6. Independent Status of ENH. The School shall not have any right to direct or control the Program or the means, manner, or details by which ENH provides the Services. ENH may, in its sole discretion, employ and supervise such cabin leaders, Program staff and other employees or agents as ENH deems necessary or convenient to perform the Services. The School may not control, direct, or supervise ENH's employees or agents in the performance of the Services. This Agreement does not create a partnership between the Parties. Nothing in this Agreement shall be deemed to restrict or prohibit ENH from providing services to other organizations that are the same as or similar to the Services described herein.

7. Student Waivers. Prior to the beginning of the Term, the School shall cause a parental guardian of each student participating in the Program to sign a waiver with respect to such participation and shall cause each executed waiver to be delivered to ENH. No student shall be enrolled or allowed to participate in the Program without first providing such executed waiver to ENH.

8. Disciplinary Action. ENH may remove any student from the Program who, in ENH's sole discretion, creates a significant disciplinary problem for the Program staff or who otherwise disrupts the Program. ENH shall not be responsible for transporting such student from the Program Location in the event of removal from the Program. The School shall not be entitled to any refund of any portion of the Fee for any student who leaves the Program for disciplinary reasons.

9. Cancellation.

a. In the event the School cancels its participation in the Program more than one hundred twenty (120) days prior to the beginning of the Term, the School shall promptly notify ENH in writing of such cancellation. ENH shall refund all amounts paid by the School to ENH under this Agreement, less a termination fee of fifty percent (50%) of the Fee, calculated as set forth in Section 2(d) above.

b. In the event the School cancels its participation in the Program less than one hundred twenty (120) days prior to the beginning of the Term, the School shall promptly notify ENH in writing of such cancellation and shall pay to ENH at the time of such notice of cancellation the sum of ninety percent

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(90%) of the Fee (the "Cancellation Amount"). The School may set off against the Cancellation Amount any payments already made by the School to ENH pursuant to Section 2.

c. If ENH is unable to perform the Services due to unavoidable causes such as fire damage to the Program Location or other loss of facilities prior to the beginning of the Term, ENH shall notify the School and shall refund all portions of the Fee previously deposited by the School to ENH. If such damage or loss of facilities occurs at any point during the Term such that ENH is unable to continue conducting the Program, ENH shall notify the School, and the School shall be responsible for paying only the amount of the Fee proportionate to the period of the Term during which ENH actually provided the Services.

d. COVID-19

i. If, at any time before participation in the Program, the School must cancel its participation in the program **due to official state or county health department Covid-19 regulations prohibiting overnight field trips**, the School shall promptly notify ENH in writing of such cancellation.

- ENH will then refund all portions of the Fee previously deposited by the School to ENH and no further amount will be due.
- If, however, there are no official state or county health department Covid-19 regulations prohibiting overnight field trips, the school shall be held to the contract.

ii. If, at any time before participation in the Program, official state or county health department Covid-19 regulations limit the number of participants allowed on a field trip at one time, the minimum number will be lowered to this limit if the limit is lower than the minimum number of students.

- If, however, there are no official state or county health department Covid-19 regulations limiting the number of participants allowed on a field trip at one time, schools will be held to their minimum number of participants.

10. Insurance. ENH shall provide accident and health coverage for all students, classroom teachers and cabin leaders participating in the Program. The School shall maintain such general liability insurance as the School is required by law to maintain and shall include ENH as additional insured on such policy. Upon request of either Party, the other Party shall provide certificates of such insurance.

11. Waivers. The failure of either Party to exercise any of its rights under this Agreement shall not be deemed to be a waiver of such rights.

12. No Assignment. This Agreement shall not be assignable by either Party without the prior written consent of the other Party.

13. Notice. All notices, requests, waivers, approvals, consents, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered personally, or three days after being deposited with the United States Postal Service, or one day after being deposited for delivery with a nationally recognized overnight delivery service, with all charges, fees and first-class postage prepaid, properly addressed, as follows:

If to the School**,** at the following address (please fill in appropriate information):

School: Roosevelt

Address: 951 Dowling Blvd
San Leandro

Contact: David Kumamoto

Phone: 510.618.4350

Email: dkumamoto@slusd.us

If to ENH, at the following address:

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Exploring New Horizons
PO Box 1514
Felton, California 95018

Jacob Sackin
(831) 252-7868
jacob@exploringnewhorizons.org

14. Arbitration. The Parties agree that, with respect to all controversies, claims, disputes or counterclaims arising out of or relating to this Agreement, the Services or the Program, whether it involves a disagreement about the meaning, interpretation, application, or validity of this Agreement, and whether based on statute, tort, contract, common law, or otherwise (a "Dispute"), to attempt to resolve the Dispute by good faith negotiation. If the Parties are unable to resolve the Dispute by good faith negotiation, either Party may refer the matter to binding arbitration. The arbitration shall take place in the County of Santa Cruz, State of California in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

15. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, or for interpretation of any of its provisions, including without limitation, an arbitration pursuant to Section 13, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and court costs, from the other party.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Entire Agreement; Amendments. This Agreement shall supersede any prior oral or written understandings or communications between the Parties and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both Parties hereto.

18. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision hereof.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

EXPLORING NEW HORIZONS,
A California non-profit Corporation

By: DocuSigned by: Jacob Sackin 74D3711731204BB...
Title: Executive Director
Date: 5/10/2021

SCHOOL
A California School

By: DocuSigned by: 8B70A6BEADE247B...
Title: Principal
Date: 5/10/2021