

**INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN CHARTER OF MAKING WAVES ACADEMY AND
CAROLINE E. NEUHAUS WESLEY OF SAPHIRA EDUCATION ASSOCIATES LLC**

This Agreement is made between Charter of Making Waves Academy (“MWA”, “Client”), a California charter school, with its principal place of business at 4123 Lakeside Dr., Richmond, CA 94806 and Caroline E. Neuhaus Wesley (“Independent Contractor”) of Saphira Education Associates, LLC, with her principal place of business at P.O. Box 952, (26800 Riverview Rd.), Virginia City, NV 89440.

RECITALS

1. Independent Contractor is primarily engaged in the business of writing the MWA Charter Renewal Petition; revising the document as recommended by the Client and by the attorneys Young, Minney & Corr (the Business).
2. Independent Contractor has knowledge and experience in particular aspects of the Business.
3. Client desires to retain Independent Contractor to perform services detailed in Exhibit “A” on the Client’s behalf and Independent Contractor is willing to perform such services. The parties understand and agree that this Agreement is not intended to create an employment relationship between them; rather, their relationship is that of principal and Independent Contractor.

It is the desire of the Client to engage the services of Independent Contractor to serve the Client. Such services and the relationship between the Client and Independent Contractor shall be governed according to the following terms and conditions:

SECTION 1. SERVICES TO BE PERFORMED. At the request of Client, Independent Contractor shall provide consulting services in accordance with the Description of Services attached hereto as Exhibit “A”. Independent Contractor shall also provide such other advice, research or other typical consulting services to Client in furtherance or in relation to the services in Exhibit “A”. Independent Contractor agrees to perform the services detailed in Exhibit A on MWA’s behalf. Said services may be amended from time-to-time at MWA’s sole discretion.

SECTION 2. PAYMENT. In consideration for the services to be performed by Independent Contractor, MWA agrees to pay Independent Contractor at the rate of \$120.00 per hour for the term of this Agreement not to exceed 80 hours. Notwithstanding the foregoing, Independent Contractor and MWA shall discuss the scope of the project and shall be considered as pre-approval. Any deviation of more than ten percent (10%) over said estimate shall also require pre-approval to be eligible for payment. Because certain projects require prompt attention, Client or Client's designee shall provide the soonest response.

Independent Contractor shall render an invoice to MWA bi-weekly as of the weeks covering hours worked on behalf of MWA, including the date performed and a description of the service provided. Said invoice shall be delivered to MWA within three (3) days following the period being reported on. MWA shall pay Independent Contractor upon receipt of each invoice. Overdue invoice payments will incur a 1.5% per month late charge.

SECTION 3. EXPENSES. Independent Contractor shall be responsible for all expenses incurred while performing services under this Agreement. However, MWA shall reimburse Independent Contractor for all reasonable and pre-approved out-of-pocket expenses necessarily incurred in connection with the performance of services under this Agreement, including but not limited to courier services, photocopying, computer research, travel expenses, mileage, parking, and other expenses. Independent Contractor shall submit a detailed invoice to Client reflecting the services performed and expenses incurred. MWA shall pay Independent Contractor upon receipt of each statement.

SECTION 4. MATERIALS. Independent Contractor will furnish all materials, equipment and supplies used to provide the services required by this Agreement.

SECTION 5. INTELLECTUAL PROPERTY OWNERSHIP. Independent Contractor assigns to MWA all patent, copyright and trade secret rights in anything created or developed by Independent Contractor for MWA under this Agreement. This assignment is conditioned upon full payment of the compensation due Independent Contractor under this Agreement. Independent Contractor shall help prepare any documents MWA considers necessary to secure any copyright, patent, or other intellectual property rights at no charge to MWA. However, MWA shall reimburse Independent Contractor for all reasonable actual expenses necessary to carry out the terms of this Section.

SECTION 6. TERM OF AGREEMENT. This agreement will become effective January 10, 2021 and will continue until either party terminates the Agreement, until the cap of 80 hours is met or until January 10, 2022, whichever comes first.

SECTION 7. TERMINATING THE AGREEMENT. During the term of this Agreement, either party may terminate the Agreement without cause at any time by providing ten (10) days advance written notice to the other party.

This Agreement terminates automatically on the occurrence of any of the following events: (a) the bankruptcy or insolvency of either party; (b) sale of business of either party; or (c) the death or permanent disability of either party; (d) material breach of any term or condition of this Agreement; (e) revocation or nonrenewal of the MWA charter; or (f) upon the default of either party under this Agreement, the other party may terminate this Agreement by giving the defaulting party at least ten

(10) days notice of default. In giving notice under 7(f), the non-defaulting party must clearly identify the alleged default and provide the opportunity to cure the default; failure to cure the default by the last day of such notice period will result in automatic termination of this Agreement without further notice.

SECTION 8. INDEPENDENT CONTRACTOR STATUS. Independent Contractor is an Independent Contractor, not an employee of MWA. Independent Contractor's employees or subcontractors are not MWA's employees. Independent Contractor and MWA agree to the following rights consistent with an independent contractor relationship:

- (a) Independent Contractor has the right to perform services for others during the term of this Agreement.
- (b) Independent Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed to the extent the provision of Independent Contractor's services are consistent with the responsibilities set forth herein in Exhibit A as dictated by the Client or designee.
- (c) Independent Contractor has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (d) Independent Contractor or Independent Contractor's employees or subcontractors shall perform the services required by this Agreement; MWA shall not hire, supervise or pay any assistants to help Independent Contractor.
- (e) Neither Independent Contractor nor Independent Contractor's employees or subcontractors shall receive any training from MWA in the skills necessary to perform the services required by this Agreement.
- (f) MWA shall not require Independent Contractor or Independent Contractor's employees or subcontractors to devote full time to performing the services required by this Agreement.
- (g) Neither Independent Contractor nor Independent Contractor's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of MWA.

SECTION 9. WORKERS' COMPENSATION. MWA shall not obtain workers' compensation insurance on behalf of Independent Contractor or Independent Contractor's employees. If Independent Contractor hires employees to perform any work under this Agreement, Independent Contractor will obtain workers' compensation insurance for those employees to the extent required by law.

SECTION 10. LOCAL, STATE AND FEDERAL TAXES. Independent Contractor shall pay all income taxes and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. MWA will not:

- (a) Withhold FICA from Independent Contractor's payments or make FICA payments on Independent Contractor's behalf;
- (b) Make state or federal unemployment compensation contributions on Independent Contractor's behalf, or
- (c) Withhold state or federal income tax from Independent Contractor's payments.

If Independent Contractor is required to pay any federal, state or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to MWA. Independent Contractor shall not pay any interest or penalties incurred due to late payment or nonpayment of any taxes by MWA.

SECTION 11. CONFIDENTIALITY. Independent Contractor acknowledges that during the engagement it will have access to and become acquainted with various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by MWA and/or used by MWA in connection with the operation of its business including, without limitation, MWA's business and product processes, methods, pupil/personnel record information, accounts and procedures.

Client hereby acknowledges that all items containing or disclosing information and data relating to the business of Independent Contractor are the exclusive property of Independent Contractor, whether developed or made by Client or by any other person. Similarly, Independent Contractor hereby acknowledges that all items containing or disclosing information and data relating to the business of Client are the exclusive property of Client, whether developed or made by Independent Contractor or by any other person. Such items, include, for example, materials, configurations, systems, proposals, methods, processes, manuals, letters, notes, notebooks, reports, sketches, formulas, memoranda, records, files, computer programs, machine designs, technical data, stockholder, employee, supplier, and client/customer lists, information related to business strategies, and financial, marketing and commercial information relating to either party, inventions, technology costs, profits, markets, sales information or the like. Independent Contractor and Client each agree that such items, copies, or reproductions thereof, shall not be delivered or disclosed by either of them to any other person, company, or organization except in the proper performance of that party's responsibilities under this Agreement. Upon request by the other party, each party agrees that it shall promptly deliver to the other all such items, copies, or reproductions thereof, together with any other property of the other party which it has in its custody or control, except such items as the other party shall, by written permission, allow it to retain. This obligation to maintain confidentiality shall survive the termination of this Agreement.

Independent Contractor agrees to comply with the Gramm-Leach-Bliley Act (GLBA) to protect the security and confidentiality of Client and Client's customers. Independent Contractor agrees not to disclose or use at any time prior to, during or following the term of this Agreement, any non-public personal information provided by Client as that term is defined in the Gramm-Leach-Bliley Act (Public Law 106-102, 15 U.S.C. § 6801 et seq.), other than to carry out the purposes for which Client disclosed such information. Independent Contractor and Client agree to maintain appropriate information security measures that meet the security and confidentiality objectives required by the Gramm-Leach-Bliley Act and regulations adopted thereunder. Independent Contractor further agrees that it will take appropriate actions to address incidents of

unauthorized access to any non-public personal information provided by Client as that term is defined by Gramm-Leach-Bliley act, including notification to the Client as soon as possible of any such incident.

SECTION 12. EXCLUSIVE AGREEMENT. This is the entire Agreement between Independent Contractor and MWA. All previous agreements between the parties, if any, whether written or oral, are merged herein and superseded hereby.

SECTION 13. MODIFYING THE AGREEMENT. This Agreement may be supplemented, amended, or modified only by the mutual agreement of all parties. No modification of this Agreement shall be binding unless in writing and expressing an intent to modify the Agreement and signed by all parties.

SECTION 14. DISPUTE RESOLUTION. If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Los Angeles County. Any costs and fees other than attorneys' fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in Los Angeles County. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorneys' fees, will be allocated by the arbitrator.

SECTION 15. LIMITED LIABILITY. This provision allocates the risks under this Agreement between Independent Contractor and MWA. Independent Contractor's pricing reflects the allocation of risk and limitation of liability specified below. However, Independent Contractor shall remain liable for bodily injury or personal property damage resulting from grossly negligent or willful actions of Independent Contractor or Independent Contractor's employees or agents while on MWA's premises to the extent such actions or omissions were not caused by MWA. **NO PARTY TO THIS AGREEMENT SHALL BE LIABLE FOR THE OTHER'S LOST PROFITS, OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.**

SECTION 16. NOTICES. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (a) When delivered personally to the recipient's address as stated on this Agreement;
- (b) Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement, or
- (c) When sent via electronic mail at the last address of the recipient known to the person giving notice.

Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.

If to Independent Contractor:
Caroline E. Neuhaus Wesley, Ed.D.
Saphira Education Associates, LLC.
P.O. Box #952
Virginia City, NV 89440

cnwesley@saphiraeducation.com

If to Charter of Making Waves Academy:
Alton B. Nelson Jr.
Making Waves Academy
4123 Lakeside Dr.
Richmond, CA 94806

ceo@mwacademy.org

SECTION 17. NO PARTNERSHIP. This Agreement does not create a partnership relationship. No party has authority to enter into contracts on the other's behalf.

SECTION 18. INTERPRETATION AND OPPORTUNITY FOR COUNSEL. In the event of a controversy or dispute between the parties concerning the provisions herein, this document shall be interpreted according to the provisions herein. The parties hereto acknowledge and agree that each has been given an opportunity to independently review this Agreement with legal counsel.

SECTION 19. APPLICABLE LAW. This Agreement will be governed by the laws of the State of California.

SECTION 20. REPRESENTATIONS AND LIMITATIONS. Independent Contractor represents that she and her subcontractors or Independent Contractor it hires have the qualifications and ability to perform the services under this Agreement in a professional manner, without the training, advice, control or supervision of the Client. Client acknowledges that Independent Contractor has not made any promise or guarantee about the outcome of any project or services to include approval, and nothing in this Agreement shall be construed as such a promise or guarantee. Independent Contractor disclaims all other representations and warranties, either express or implied, including, without limitation, warranties of merchantability and fitness for any particular purpose. Client acknowledges that it is fully responsible for submitting the scope of work meeting requirements and identified expectations. Independent Contractor does not warrant the work performed by Client or by any third-party Contractor, or that all errors or defects have been or will be eliminated from systems, or that the operation of any systems will be error-free.

SECTION 21. WAIVER, MODIFICATION OR CANCELLATION: There are no other valid agreements between the parties regarding the subject of services to be performed by Independent Contractor, and this Agreement supersedes any and all other negotiations, understandings and agreements between the parties as to the rendering of any services by Independent Contractor for Client in any capacity. Any waiver, alteration or modification of any of the provisions of this Agreement or cancellation or replacement of this Agreement shall not be valid unless in writing and signed by the parties.

SECTION 22. ENFORCEABILITY: In the event that any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining portions shall remain in full force and effect. Any party may waive or excuse the failure of the other party to perform any provision of this Agreement, provided, however, that any such waiver shall not preclude the enforcement of this Agreement upon subsequent breach, whether or not similar in character to any waived breach.

IN WITNESS WHEREOF, the parties have executed this Independent Contractor's Agreement on the date and year first above written.

SIGNATURES

ON BEHALF OF MWA:

Alton B. Nelson, Jr., Ed.M.

Title: CEO

Date: _____

**ON BEHALF OF INDEPENDENT CONTRACTOR
FOR SAPHIRA EDUCATION ASSOCIATES
LLC:**



Caroline E. Neuhaus Wesley, Ed.D.

Title: Founder/President

Date: 1/10/2021

Exhibit A

SCOPE OF SERVICES

List of services to be performed by Independent Contractor with full support of MWA and the Charter School's Chief Financial Officer as directed by MWA:

1. Write Charter Renewal Petition for submission to the Contra Costa County Board of Education (CCCBOE) according to the CCCBOE Charter Renewal Petition Forms and Rubrics at the time of submission to CCCBOE in September of 2021.
2. The work on the Charter Renewal Petition will begin upon execution of the contract and will need to be revised once CCCBOE revises the Charter Renewal Protocol to align to AB 1505.
3. Collaborate with the MWA team and the team lead, Evangelia Ward-Jackson, Senior School Director, to complete the Charter Renewal Petition.
4. Make any revisions to the Charter Renewal Petition as recommended by the attorneys, Young, Minney & Corr and Client.
5. Respond to requests as requested by Client or designee to include additional documents, support or guidance needed for the submission of the Charter Renewal Petition.