INFORMATION SHEET08/18/15 TRUSTEES' MEETING

ATTACHMENT: 7.4

TO: Jim Bridges

FOR: Board of Trustees

FROM: Mindy Maxedon

ISSUE: Contracted Services Agreement with ProCare Therapy

One of our psychologists resigned their position with the district at the end of June, 2015. The job was posted; however, the job was unfilled.

Attached is an agreement with ProCare Therapy to contract for a .60 FTE psychologist services for the 2015-16 school year. ProCare will provide a psychologist dedicated to our district for the full year.

The total anticipated expenses for ProCare are $84,480 for the year and the expenditure budget will be covered by the savings of the unfilled position.

CLIENT SERVICES AGREEMENT

ProCare

ProCare Therapy (hereafter referred to as "**ProCare**"),and

Jefferson Elementary School District whose location is
(Client Name)

1219 Whispering Wind Drive **Tracy, CA 95377**
(Street Address) *(City, State, Zip)*

(hereafter referred to as "Client")

enter into this non-exclusive Client Services Agreement for the purpose of referring and placing Healthcare Professionals ("HCPs") with Client. This Agreement shall govern the overall terms of the relationship, while a separate Assignment Confirmation (Addendum A) for each placement will outline specifics as to bill rates, personnel, and assignment lengths.

1. **Scope of Services.** ProCare will use its commercially reasonable efforts to provide HCPs for assignment with Client. ProCare will be responsible for payment of each HCP's wages and applicable payroll taxes, deductions, and insurance, including workers compensation, general liability and professional liability coverage for the benefit of the HCPs. If a HCP is unable to complete the specified assignment, ProCare will use its commercially reasonable efforts to find a replacement in a timely manner.

2. **Independent Contractor.** The parties hereto specify and intend that the relationship of each to the other is that of an independent contractor, that each HCP shall be an employee of ProCare and that no qualified HCP shall at any time be an employee of Client, unless the parties shall otherwise agree in writing. ProCare agrees to provide and maintain all payroll services for any qualified HCP placed with Client, to maintain payroll records and to withhold and remit all payroll taxes and social security payments. ProCare does not ordinarily use subcontractors in providing services. Should the need to use a separate staffing firm or independent contractor arise, ProCare will notify Client in advance of the assignment in order to receive approval of this arrangement.

3. **Insurance.** ProCare will maintain Worker's Compensation and Employer Liability insurance in accordance with state regulations. General Liability insurance will be maintained at a minimum level of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate. Excess liability insurance will be maintained at a minimum level of five million dollars ($5,000,000) per occurrence/aggregate. Professional Liability insurance will be maintained at a minimum level of one million dollars ($1,000,000) per occurrence and three million dollars ($3,000,000) aggregate.

4. **Competency.** ProCare will conduct comprehensive pre-employment screening to provide licensed HCPs who meet applicable professional standards. ProCare will endeavor to present only HCPs who are qualified for Client's open position(s) on job requirements established by Client either verbally or in writing. While ProCare will make every effort to pre-screen job candidates based on these requirements, Client acknowledges the candidate assignment decision is ultimately the responsibility of the Client. To this end, ProCare will make available to Client all appropriate HCP records that ProCare may permissibly disclose (e.g. skills checklist(s), work history, etc.) and will facilitate an interview between Client and HCP in order to assist Client in the hiring decision.

5. **On-Site Responsibility.** Client is responsible for providing all support, facilities, training, direction, materials, supplies, and means for the HCP to complete the assignment. Client acknowledges that ProCare is not providing nursing or healthcare services, but rather is providing candidate identification and placement services. As such, Client is responsible for the HCP's adherence to the applicable standard of care and acknowledges that ProCare is not responsible for the HCP's on-site performance. Client warrants that its facilities and operations will comply at all times with all federal, state and local safety and health laws, regulations and standards, including OSHA standards, and that Client will be responsible for providing all safety training and equipment, and for each HCP's compliance with health and safety requirements, including those instituted by Client.

6. **Employment of HCPs.** Client agrees that it will not directly or indirectly, personally or through an agent or agency, contract with or employ any HCP introduced or referred by ProCare for a period of (12) months after the latest date of introduction, referral, placement, or end of the contract assignment. If Client or its affiliate enters into such a relationship or refers HCP to a third party for employment, Client agrees to pay an amount equal to thirty (30) percent of the HCP's first year's annual salary, including any signing bonus, as agreed upon at the time of hiring. Payment is due and payable to ProCare upon start date.

7. **Equal Opportunity.** It is the policy of ProCare to provide equal opportunity to all HCPs for employment. ProCare and Client will screen based on merit only. All HCPs will be free from discrimination due to race, religion, color, sex, national origin, age, or disability.

8. **Payment Terms.** Client will be billed bi-weekly for all services provided during the previous two weeks. Payment is due upon receipt of invoice and shall be considered in default thirty (30) days from issuance of ProCare invoice, after which time a default charge will be imposed at one and one-half percent (1½%) per month on unpaid balances (annual percentage rate of eighteen percent (18%)) or the maximum legal interest rate, whichever is lower. Client agrees to pay all necessary collection costs of amounts past due, including

reasonable attorney's fees and costs. ProCare reserves the right, at its option, to discontinue any extension of credit. Please provide billing address below:

Client to complete billing information	Client Name:	**Jefferson Elementary School District**
	Billing Address:	**1219 Whispering Wind Drive**
	City, State, Zip:	**Tracy, CA 95377**
	Attention:	**Angelica Thomas**
	Telephone:	**209-839-1842**

9. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER WHATSOEVER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS, LOST DATA, LOSS OF USE OF DATA, OR LOST OPPORTUNITY, WHETHER OR NOT PLACED ON NOTICE OF ANY SUCH ALLEGED DAMAGES AND REGARDLESS OF THE FORM OF ACTION IN WHICH SUCH DAMAGES MAY BE SOUGHT. THE FEES AND BILLINGS DUE UNDER THIS AGREEMENT ARE NOT CONSIDERED SPECIAL DAMAGES OR LOST PROFITS AND SHALL NOT BE LIMITED BY THESE PROVISIONS.

10. **Incident and Error Tracking.** Client will report to ProCare any performance issues, incidents, errors and other events related to the care and services provided by ProCare employees. ProCare will document reported incidents in employee's personnel file and track all such events for quality assurance purposes. All supporting documentation is required within seventy-two (72) hours of the occurrence.

11. **Reporting of Work-Related Injuries.** Client will maintain a safe working environment and provide all appropriate personal protective equipment as deemed appropriate for unit to which ProCare's HCP has been assigned. Client ensures compliance with all applicable OSHA or state Department of Labor obligations to include general training on the reporting of work-place injuries, incidents, and occupational exposure to bloodborne pathogens occurring at Client facility. Records of such occurrences must be maintained by the Client and accessible to ProCare within guidelines set forth by governing entities. In the event of work-place injury, incident or exposure, each affected HCP will contact their immediate Client-appointed supervisor and report to the applicable treating department as per Client protocol. HCP shall also report work-place injury, incident or exposure to ProCare concurrently with Client. If ProCare's HCPs are not eligible for treatment of work-place injury, incident or exposure by Client or if reporting requirements change during the term of this Agreement, Client is responsible for written notification of such information to both ProCare and ProCare's HCP.

12. **Termination with Cause.** If Client requests removal of HCP due to performance issues, misconduct or failure to pass any physical, drug screen or other assessment, immediate written and verbal notice is required within forty-eight (48) hours including all supporting documentation specifying the reasons and facts of the termination. If the Client does not provide such documentation within the required timeframe, Client will be assessed as liquidated damages and not as a penalty, an amount equal to one (1) week of billing. The parties agree that ProCare's HCPs are an integral part of its operation and a resource that may have been developed over a number of years. Any delay or absence of a written and verbal notice could result in lost revenue or other consequences not foreseen at this time and therefore the liquidated damages are not unreasonable to the probable loss to be suffered by ProCare in the event of your breach of this provision. Client will be responsible for all professional fees (and expenses if applicable) up to the point of termination. Termination with cause must be documented prior to termination in accordance with the Incident and Error Tracking procedures set forth in paragraph 10 of this agreement. ProCare shall have seventy-two (72) hours to refill the position in the event of termination with cause.

13. **Termination without Cause.** Client may cancel an assignment with ninety (90) days written notice. Client is responsible for all charges and fees prior to cancellation date and through the 90-day period of notice. In the event Client is unable to provide ninety (90) days notice of termination, Client will be billed for ninety (90) days at the agreed upon regular bill rate and minimum hours. In the event of termination without cause, Client will be responsible for any housing and travel costs actually incurred by ProCare as a result of such cancellation.

14. **Guaranteed Minimum Hours.** Client agrees to provide HCP the guaranteed number of work hours per day or week as specified in the attached Assignment Confirmation Addendum A. Cancellation of prescheduled shift(s) or reduction in work hours by Client will be billed reflecting the guaranteed minimum work hours.

15. **Unscheduled Facility Closure Policy.** ProCare will incur fixed expenses over the entire course of an HCP's contract assignment with Client related to the HCP's housing and per diem costs. The parties agree that in the event of an unforeseen or unexpected interruption in an HCP's assignment resulting from an unscheduled closure, complete or partial, of Client's facilities due to natural or manmade disasters, such as, and without limiting the generality of the foregoing, fire, storms, flooding, earthquake, labor unrest, riots, and/or acts of terrorism or war (each an "Unscheduled Closure"), Client will be invoiced and shall pay for each such affected HCP's services at the reduced rate of $100/day for each day that the HCP(s) is unable to work by virtue of such Unscheduled Closure.

CLIENT SERVICES AGREEMENT

ProCare

16. **Multiple Locations.** If client requires HCP to travel to and perform services at more than one location, Client will compensate ProCare for travel time between facilities at the regular hourly bill rate and for mileage up to the current acceptable IRS reimbursement rate.

17. **Issue Resolution.** In the event Client encounters an issue that is not satisfactorily resolved by its ProCare representative, Client should escalate the issue to the appropriate ProCare manager by calling: 888-899-1331. Please ask for your account representative's manager.

18. **Indemnification.** Each party will indemnify, defend and hold harmless the other against third party claims arising from breaches of the parties' respective obligations under this Agreement.

19. **Confidentiality.** Each party acknowledges that as a result of this Agreement, they will learn confidential information of the other party. Confidential information is defined as that information which is private to each party but is shared by one to the other party as required to accomplish this Agreement. It is agreed that neither party will disclose any confidential information of the other party to any person or entity. Neither will it permit any person nor entity to use said confidential information. The only exceptions will be: (a) Information shared to the appropriate individuals within the respective organizations as necessary to execute this Agreement, (b) disclosures as required by law. Confidential Information of ProCare shall include, but is not limited to, any and all unpublished information owned or controlled by ProCare and/or its employees, that relates to the clinical, technical, marketing, business or financial operations of ProCare and which is not generally disclosed to the public including but not limited to employee information, technical data, policies, financial data and information to include contract terms and provisions, billing rates, permanent placement fees whether disclosed orally, in writing or by inspection. If the receiving party shall attempt to use or dispose of any of the Confidential Information, or any duplication or modification thereof, in any manner contrary to the terms of the foregoing, the disclosing party shall have the right, in addition to such other remedies which may be available to it, to obtain an injunctive relief enjoining such acts or attempts as a court of competent jurisdiction may grant, it being acknowledged that legal remedies are inadequate.

20. **Survival.** The parties' obligations under this Agreement which by their nature continue beyond termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

21. **Governing Law.** This Agreement shall be governed by the laws of the state of Florida.

22. **Credentialing.** ProCare will provide Client with a Department of Justice / FBI background check for each HCP provided pursuant to this Agreement so that Client can determine whether HCP can legally work with students in a certificated position in California and ProCare will also provide Client with evidence that HCP has completed and passed the tuberculosis risk assessment required by California Education Code section 49406.

23. **Entire Agreement.** This Agreement represents the entire agreement between the parties and supersedes any prior understandings or agreements whether written or oral between the parties respecting the subject matter herein. This Agreement may only be amended in a writing specifically referencing this provision and executed by both parties. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, subject to the limitations contained herein. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal and shall be subject to reformation to the extent possible to best express the original intent of the parties. This Agreement and attached Assignment Confirmation contain terms that may only be altered when agreed upon in writing by both parties.

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(Please return all pages of this Client Services Agreement)

Jefferson Elementary School District	**ProCare Therapy, Inc.**
Client Name	
Client Representative Signature	ProCare Representative Signature
MINDY MAXEDON	Brittany Thomas
Print Name	Print Name
CBO	Director of Educational Resources
Title	Title
7-30-15	
Date	Date

ADDENDUM A

ProCare

Assignment Confirmation – Client

This Assignment Confirmation is entered into on **July 21st, 2015** and supplements the Client Services Agreement between **Jefferson School District** and ProCare Therapy.

ProCare Employee

Mark Hammond, hereinafter referred to as HCP, has been placed with **Jefferson School District.** HCP is scheduled to begin work for Client on **August 11th, 2015** subject to the status of the credentialing process and licensure and to complete the assignment **May 26th, 2016.**

Assignment Details

Client will pay ProCare for hours worked by HCP on the following terms:

Position:	Part-Time Contract School Psychologist
Position Details:	0.6 contract School Psychologist for the 2015-2016 school calendar year. Typical work week will consist of 3 working days, Monday through Friday, including teacher work days/in-service days. Employee will not work on any school holidays, breaks, or closures.
Bill Rate:	$88.00 per hour
Minimum Hours:	8.00 hours per day excluding any delayed starts, early release days,
Overtime Rate:	1.5 times Bill Rate
Holiday Rate:	1.5 times Bill Rate
Billing Workweek:	Monday – Sunday
Miscellaneous:	a) Sales tax or gross receipts tax will be added to professional fees if required or allowed by state law and client is not a tax exempt entity. b) If ProCare HCP should be required to travel between locations at the specific request of the Client, the Client will be responsible for mileage reimbursement of $0.55 per mile. c) Client agrees that it will not directly or indirectly, personally or through an agent or agency, contract with or employ any HCP introduced or referred by ProCare for a period of (12) months after the latest date of introduction, referral, or end of contract placement. If Client or its affiliate enters into such a relationship or refers HCP to a third party for employment, Client agrees to pay an amount equal to $18,500 or thirty-five (35) percent (whichever is greater) of the HCP's first year's annual salary, including any signing bonus, as agreed upon at the time of hiring. Payment is due and payable to ProCare upon start date.

INVOICES

All invoices pursuant to this Assignment Confirmation will be mailed to: ***(please verify)***

Jefferson School District
Attn: Angelica Thomas
1219 Whispering Wind Dr
Tracy, CA 95377

MMaxedon
Client Signature

MINDY MAXEDON
Print Name

CEO
Title

7-30-15
Date

ProCare Representative Signature

Brittany Thomas
Enter Name of Client Recruiter

Director of Educational Resources
Title

Date

CLIENT SERVICES AGREEMENT

ProCare

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Client Representative Signature	ProCare Representative Signature
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Print Name	Print Name
CBO	Director of Educational Resources
Title	Title
7-30-15	7-30-15
Date	Date

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Attn: Angelica Thomas
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Tracy, CA 95377

Client Signature	ProCare Representative Signature
MINDY MAXEDON	Brittany Thomas
Print Name	Enter Name of Client Recruiter
CEO	Director of Educational Resources
Title	Title
7-30-15	7-30-15
Date	Date