

## ATTACHMENT A

### INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES (Educational Travel Services to Washington, D.C. & Sacramento, CA)

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between the El Monte City School District, ("District") and \_\_\_\_\_ ("Consultant"), (together, "Parties").

**WHEREAS**, the District has received Federal grants through the 21st CCLC Elementary and Secondary School Emergency Relief III Summer grant program and the ASES Elementary and Secondary School Emergency Relief III Summer grant program; and

**WHEREAS**, when procuring services under a Federal award, the District must generally acquire the services through competitive procurement, pursuant to 2 CFR 200.317; and

**WHEREAS**, the following specialized professional services did not qualify under any of the federal noncompetitive procurement provisions, so the District published a Request for Proposals; and

**WHEREAS**, the District wishes to use the aforementioned Federal grants to provide educational travel services for the District's students to visit Washington, D.C. & Sacramento, CA; and

**WHEREAS**, based on the foregoing criteria, Consultant is specially trained and experienced and competent to provide to the District the following specialized professional services; and

**WHEREAS**, Consultant has indicated its willingness and commitment to provide the following specialized professional services to the District on the terms hereafter set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Consultant shall provide educational travel services for the District's students to visit Washington, D.C. & Sacramento ("Services"). Services are further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference.
2. **Term.** Consultant shall commence providing Services under this Agreement on \_\_\_\_\_, 202\_\_ and will diligently perform as required and complete performance in accordance with the schedule set forth in **Exhibit "B"** to this Agreement and incorporated herein by this reference, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

Time is of the essence with respect to all provisions of this Agreement. The performance of Services shall be undertaken and completed by Consultant in such sequence as to assure their full completion in accordance with the purposes of this Agreement.

3. **Submittal of Documents.** The Consultant shall not commence the Services under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  ✓  </u>	Signed Agreement
<u>  ✓  </u>	Workers' Compensation Certification
<u>  ✓  </u>	Fingerprinting/Criminal Background Investigation Certification
<u>  ✓  </u>	COVID-19 Vaccination/Testing Certification
<u>  ✓  </u>	Insurance Certificates and Endorsements
<u>  ✓  </u>	W-9 Form
<u>      </u>	Other: _____

4. **Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). District shall pay Consultant according to the following terms and conditions:

4.1. **Payment.** Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Consultant submits an invoice to the District in a form acceptable to District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverable Services to be produced is found in **Exhibit "B"** to this Agreement. If Consultant works at more than one site, Consultant shall invoice for each site separately.

4.2. **Extra Work.** Services provided outside of those in Exhibit "A" constitute Extra Work, and may be performed only with the District's advance, written authorization. Such Extra Work shall be billed on a time and materials basis. Extra Work shall be billed in accordance with the hourly rates in **Exhibit "C"** as applicable to Consultant.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Services for District, except as follows:

5.1. **[Reserved.]**

6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement, except as follows:

6.1. **[Reserved.]**

7. **Performance of Services.**

7.1. **Standard of Care.** Consultant represents that Consultant has the ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for Services to California school Districts.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover.

Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.

7.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

7.3. **Staffing.** Consultant has been selected to perform the Services herein because of its skills and expertise. Unless Consultant receives District's advance written authorization, only Consultant or the following subconsultant(s) shall provide the Services:

7.3.1. **[Reserved.]**

7.4. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

8. **Independent Contractor.** Consultant represents and warrants that Consultant is an independent contractor or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees.

9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for the Services.

10. **Ownership of Work/Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District.

11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other

representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. **Disputes.** In the event of a dispute between the Parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

13. **Termination.**

13.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for Services satisfactorily rendered to the date of termination and all expenses incurred under this Agreement supported by documentary evidence. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day of mailing, whichever is sooner.

13.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.2.1. material violation of this Agreement by the Consultant; or

13.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

13.2.3. Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days

cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

**14. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**15. Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

**16. Insurance.**

16.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

<b>Type of Coverage</b>	<b>Minimum Requirement</b>
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence - Single Combined Limit	 \$ 1,000,000
<b>Professional Liability</b>	\$ 2,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000
<b>Sexual Abuse &amp; Molestation</b> Each Occurrence General Aggregate	 \$ 2,000,000 \$ 4,000,000

**16.1.1. Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

- 16.1.2. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Consultant's profession on a Claims Made basis, subject to no more than Twenty-Five Thousand Dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus five (5) years thereafter.
- 16.1.3. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- 16.1.4. District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.
- 16.2. **Proof of Carriage of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Consultant shall deliver updated certificates indicating the required coverages to the District every policy period. Certificates and insurance policies shall include the following:
- 16.2.1. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 16.2.2. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 16.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
- 16.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 16.2.5. If Consultant normally carries insurance in an amount greater than the minimum amounts required herein, that greater amount shall become the minimum required amount of insurance for purposes of the Agreement. Therefore, Architect hereby acknowledges and agrees that all insurance carried

by it shall be deemed liability coverage for all actions it performs in connection with the Agreement.

- 16.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
17. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
18. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
19. **[Reserved.]**
20. **No Conflicts of Interest.** Consultant represents that the Consultant has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Consultant.
21. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all of its subcontractor(s).
22. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
23. **[RESERVED]**
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:

- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or electronic mail, addressed as follows:

**District:**

**El Monte City School District**

3540 N. Lexington Avenue

El Monte, CA 91731

ATTN: Matthew Law, Business Support  
Services Manager, Purchasing Department

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**Consultant:**

**[Consultant]**

[Address]

ATTN: \_\_\_\_\_

Email: \_\_\_\_\_

- Any notice personally given or sent by electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.
28. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
29. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

30. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
31. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
32. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
33. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
34. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
35. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
36. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
37. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
38. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
39. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
40. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: \_\_\_\_\_, 202\_

**El Monte City School District**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 202\_

**[Consultant]**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information regarding Consultant:**

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

\_\_\_\_ Individual

\_\_\_\_ Sole Proprietorship

\_\_\_\_ Partnership

\_\_\_\_ Limited Partnership

\_\_\_\_ Corporation, State: \_\_\_\_\_

\_\_\_\_ Limited Liability Company

\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.**

## **EXHIBIT "A"**

### **DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

[TO BE ADDED FROM CONSULTANT'S PROPOSAL. CONSULTANT'S ENTIRE RFP PACKET IS **NOT** MADE PART OF THIS AGREEMENT.]

[SAMPLE SCOPE FOLLOWS:]

The Consultant shall:

- Organize an educational trip for certain District students to go to Washington, D.C.
- Organize an educational trip for certain District students to go to Sacramento, CA.
- Produce an itinerary outlining all travel, hotel stays, and activities.
- Make reservations for all travel, hotel, and activity arrangements for all participants.
- Be responsible for student travel to, from, and within Washington, D.C.
- Be responsible for student travel to, from, and within Sacramento, CA.
- Provide three meals a day for participants.
- Pay any admissions to museums or attractions on scheduled itinerary.
- Provide access to 24/7 hotline for health-related consultations.
- Provide access to 24/7 hotline for general operational concerns.
- Supply educational materials to supplement educational programming and tours.
- Show proof of requisite insurance.

**EXHIBIT "B"**

**SCHEDULE**

Consultant shall provide Services in accordance with the schedule below:

[TO BE DETERMINED]

## **EXHIBIT "C"**

### **PRICING**

Consultant shall complete all Services required under this Agreement in accordance with the authorized hourly rates listed below:

#### **Authorized hourly rates:**

[TO BE DETERMINED]

No markup is permitted for subconsultant(s).