



EAST SIDE UNION HIGH SCHOOL DISTRICT
Memorandum of Understanding
(MOU)

This MOU is made and entered into effective on the ____ day of _____, 20____, between the East Side Union High School District (hereinafter referred to as ESUHSD), and _____ (hereinafter referred to as Provider), in consideration of their mutual covenants, the parties hereto agree as follows:

A. DESCRIPTION OF SERVICES: See Attachment A

B. PURPOSE OF MOU: See Attachment A

C. DUTIES OF PROVIDER: The Provider agrees to provide the following services, materials, and/or products:
See Attachment A

D. DISTRICT OBLIGATIONS: For the period of this MOU, the ESUHSD shall provide the following:
See Attachment A

E. PERIOD OF MOU: The Provider's work as specified in this MOU shall commence on _____ and shall be completed on or before June 30, 20____.

F. INSURANCE: Reference General Terms and Conditions, G.2.

____ The evidence of insurance is attached. OR

____ The insurance requirement of this contract is waived. (Requires Assoc. Superintendent of Business Services' Signed Approval _____)

G. GENERAL TERMS AND CONDITIONS:

1. **INDEMNIFICATION:** The Provider shall indemnify, defend, and save harmless the ESUHSD and its board members, officers, agents, employees, and volunteers from and against any and against all claims, liabilities and losses of any kind (including but not limited to claims for personal injury, property damage or losses or damages of any kind) accruing or resulting to any and all persons and which arise from or in connection with or relate to the activities of Provider and Provider's officers, agents, employees, contractors, and volunteers in the performance of, and the provision of any services in connection with, this MOU. The obligations set forth in this Paragraph G.1 shall survive the expiration or earlier termination of this MOU.
2. **INSURANCE:** During the term of this MOU the Provider will maintain general liability insurance, automobile coverage, and workers compensation coverage in accordance with Attachment B such amounts determined by ESUHSD and as may be reasonably necessary to assure compliance with the Indemnification obligations herein above. The ESUHSD shall be named as additional insured on an endorsement with respect to the liability coverage. The requirement of this provision may be waived in writing by the ESUHSD's Associate Superintendent of Business Services; however, such any waiver shall not affect the Provider's indemnification obligations to the ESUHSD hereunder.
3. **NON-DISCRIMINATION:** Provider shall not discriminate against any person based on race, color, religion, age, sex, gender, actual or perceived sexual orientation, national origin, disability as defined by the Americans With Disabilities Act, medical condition or veteran's status in connection with the provision of any services under the MOU, and shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract on such grounds.

4. CONFLICT OF INTEREST: The Provider represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in relation to this MOU. The Provider represents that it has completely disclosed to ESUHSD all facts bearing upon any possible interests, direct or indirect, which Provider believes any sub consultant, member of ESUHSD, or other officer, agent or employee of ESUHSD or any department presently has, or will have, in this MOU, or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute ground for termination of this MOU by ESUHSD. The Provider agrees to comply with all conflict of interest codes and regulations adopted by ESUHSD and its reporting requirements.

The Provider covenants that it and any sub consultant presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this MOU. Without limitation, the Provider represents to, and agrees with, ESUHSD that the Provider and its sub consultants have no present, and will have no future, conflict of interest between providing ESUHSD the services hereunder and any interest the Provider may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to ESUHSD, as determined in the reasonable judgment of ESUHSD.

- a. The Provider agrees to sign and submit ESUHSD's standard Conflict of Interest forms as required by ESUHSD.

5. LICENSE AND AUTHORITY: The Provider will maintain all necessary licenses during the term of this MOU. If other than a natural person, Provider is duly authorized to enter into this MOU by its governing or controlling body. Evidence or copies of all necessary licenses must accompany this MOU.
6. EQUIPMENT AND FACILITIES: The Provider will provide all necessary equipment and facilities to render his/her services pursuant to this MOU, unless otherwise agreed to by the parties.
7. USE OF ADDITIONAL WORKERS BY PROVIDER: The Provider may, at the Provider's own expense, employ additional workers or other Providers as necessary for the completion of this MOU and shall maintain workers' compensation insurance as required by state law. The ESUHSD shall not control, direct, or supervise the Provider's additional workers in the performance of those services. The Provider assumes full and sole responsibility for the payment of all compensation and expenses of these additional workers or Providers and for all state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings, and shall indemnify and defend the ESUHSD and its board members, officers, employees and agents against any and all claims of liability or responsibility for any and all such compensation, expenses, taxes, insurance, social security and other withholdings.
8. ASSIGNMENT: This MOU shall not be assigned by the Provider without the prior written consent of the ESUHSD.
9. SUCCESSORS AND ASSIGNS: This MOU shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.
10. FINGERPRINTING AND CRIMINAL RECORDS CHECK AND OTHER CLEARANCES; HEALTH TESTING: Provider shall comply with all fingerprinting, background check and testing requirements under State and federal law including but not limited to the fingerprint requirements in Education Code section 45125.1 and the testing requirements in Education Code section 49406 (tuberculosis as to each employee/intern or other person which Provider desires to place in the Program. Verification of compliance with this section shall be provided in writing to the ESUHSD prior to Providers' activities at any ESUHSD facility or program and prior to contact with students.

A worker whom Provider intends to place at ESUHSD shall not be allowed to have contact with ESUHSD students until Provider has provided written confirmation and certification to ESUHSD that the worker has undergone a fingerprint criminal background check conducted by the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), and the worker has no pending criminal charges for violent or serious

felonies as defined in Education Code section 45122.1, any sex offense as defined under Education Code section 44010, or any crime involving a controlled substance offense as defined under Education Code section 45123.

Pursuant to Penal Code section 11105.2(c), Provider shall request from the DOJ notification of subsequent state or federal arrests or dispositions of pending criminal proceedings, for all workers whom Provider desires to place at ESUHSD. Provider agrees that it shall not allow any person to continue to work or volunteer or provide any services at ESUHSD pursuant to this MOU upon receiving a subsequent arrest report from the DOJ indicating that such person been arrested for violent or serious felonies as defined in Education Code section 45122.1, any sex offense as defined under Education Code section 44010, or any crime involving a controlled substance offense as defined under Education Code section 45123.

11. **GOVERNING LAW:** The validity of this MOU and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California.
12. **CHANGES OR ALTERATIONS:** No changes, alterations, or variations of any kind to this MOU are authorized without the prior written consent of the ESUHSD.
13. **HEADINGS:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of this MOU.
14. **TERMINATION:** The ESUHSD may terminate this MOU for good cause (to be determined in the sole and absolute discretion of ESUHSD) upon thirty (30) days advance written notice to Provider without the payment of any penalty or consideration of any kind to the Provider. In the event of such termination, the ESUHSD may proceed with the work or services in any manner deemed proper by the ESUHSD. The ESUHSD or its Superintendent may terminate or suspend this MOU immediately in the event the ESUHSD determines or has a reasonable belief that the presence of Provider and/or its staff, contractors, employees, or volunteers on any ESUHSD site creates or contributes to an unsafe or unhealthy environment at any such location.

The Provider may terminate this MOU upon no less than ninety (90) days written notice to the ESUHSD.

15. **SEVERABILITY:** In the event any portion of this MOU shall be held by a Court to be invalid, such holding shall not invalidate the remainder of this MOU.
16. **AMBIGUITY:** The language herein shall be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
17. **EXPENSES:** Unless otherwise expressly provided herein, the Provider shall be responsible for all costs and expenses incident to the performance of services for the ESUHSD hereunder.
18. **INDEPENDENT CONTRACTOR STATUS:** This contract is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. In executing this MOU, the Provider certifies that no one who has or who will have any financial interest under this MOU is an officer or employee of ESUHSD. Additionally, as the Contractor is not an ESUHSD employee, ESUHSD is not responsible for obtaining workers' compensation insurance coverage for the Contractor.
19. **CONFIDENTIALITY OF STUDENT INFORMATION AND RECORDS:** Provider and its agents, officers, employees, and volunteers shall at all times comply with all state and federal laws and regulations governing student confidentiality, including the Family Educational Rights and Privacy Act ("FERPA"), the California Education Code, and the Health Insurance Portability and Accountability Act ("HIPAA").

H. Communications: Communications between the parties to this MOU may be sent to the following addresses:

ESUHSD:
East Side Union High School District
830 N. Capitol Avenue
San Jose, CA 95133
ATTN:

Provider:
Company Name: _____
Address: _____
City: _____ St: _____ Zip: _____
ATTN: _____

I. UNDERSTANDING AND ACCEPTANCE OF THE PARTIES: This MOU constitutes the entire understanding of the parties. The Provider's signatures below signify both an understanding and acceptance of the MOU contract provisions.

J. ESUHSD REPRESENTATIVE

PROVIDER NAME:

Signature: _____
Print Name: _____
Title: _____
Date Signed: _____
School / Dept.: _____
Address: _____

Phone / Fax: _____
E-Mail Address: _____

Authorized Officer: _____
Signature: _____
Title: _____
Date Signed: _____
Address: _____

Phone / Fax: _____
E-Mail Address: _____
Tax ID/IRS or SS #: _____

K. APPROVALS: This MOU shall become effective upon approval by the ESUHSD's Board of Trustees and execution by the undersigned persons:

Principal/Director (all agreements) _____ Date: _____
Contracts/Risk Manager (all agreements for liability) _____ Date: _____
Associate Superintendent _____ Date: _____
Superintendent/Cabinet _____ Date: _____
Board of Trustees Approval Date: _____

EAST SIDE UNION HIGH SCHOOL DISTRICT

**PROVIDER'S
CERTIFICATE OF EXEMPTION
FROM
WORKERS' COMPENSATION INSURANCE**

I, _____, doing business as _____,
hereby certify that I understand the requirements of the California Labor Code as they relate to Workers' Compensation Insurance. I certify that during the term of this MOU, I shall not employ any person in any manner so as to become subject to the Workers' Compensation requirements. In case any work is sublet, I shall require my sub-Providers similarly to provide Workers' Compensation Insurance for the sub-Providers' employees, all in compliance with State laws.

I agree to fully protect and indemnify the East Side Union High School District (ESUHSD) from and against any and all injury and death claims arising out of the work performed for the ESUHSD. I agree to indemnify the ESUHSD for any penalties and losses resulting to it from failure of either I or my sub-Providers to take out and maintain such insurance.

If, after making this Certificate of Exemption, I should become subject to the Workers' Compensation provisions of the Labor Code, I agree to forthwith comply with such provisions or this MOU shall be deemed revoked.

Print Name: _____

Title: _____

Signature: _____ Date: _____

Address: _____

City, State: _____

Phone: _____