

**EL SEGUNDO UNIFIED SCHOOL DISTRICT  
CONSULTANT SERVICES AGREEMENT**

This CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into between the EL SEGUNDO UNIFIED SCHOOL DISTRICT ("District"), and \_\_\_\_\_ ("Consultant") (collectively "the Parties").

**WHEREAS**, the District requires specialized services and/or advice in connection with \_\_\_\_\_,  
where such services and/or advice are not presently available to the District; and

**WHEREAS**, Consultant is specially experienced, competent, and licensed in conformance with the laws of the State of California if/as necessary to provide to the District certain specialized services and/or advice in the foregoing area; and

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

**NOW, THEREFORE**, the Parties named above hereby agree as follows:

1. **TERM OF AGREEMENT**

The term of this Agreement shall commence \_\_\_\_\_ and shall continue through \_\_\_\_\_, unless sooner terminated pursuant to the provisions of Section 5 of this Agreement. The term of this agreement shall automatically be extended for additional terms of one (1) year unless either Party gives written notice, at least thirty (30) days prior to the expiration of the then-current term, that the Agreement shall not be extended.

2. **SCOPE OF SERVICE**

Consultant shall advise District and District's Superintendent in the following areas:

- a. \_\_\_\_\_
- b. \_\_\_\_\_

3. **TERMS OF SERVICE**

a. **Report on Activities**

Consultant shall periodically report to District's Superintendent on the status of its efforts and activities in the furtherance of the services described above. Such report shall indicate [SPECIFIC REQUIRMENTS OF REPORT]. Said report shall be made upon request of District not more frequently than once in any two (2) week period, and in any event shall be made quarterly whether requested or not.

b. **Independent Contractor**

In performing services described above, Consultant shall do so as an independent contractor and is not and shall not be deemed to be an employee or agent of the District or any other person acting on behalf of District. As such, Consultant shall not be entitled to any benefits or forms of compensation, including but not limited to unemployment insurance or Worker's Compensation benefits, other than as specifically provided in Paragraph 4 of this Agreement. Consultant shall assume full responsibility for the payroll and expenses of its employees, and payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for any of the fees paid to Consultant by the District, or by Consultant to its employees, for services rendered under this Agreement.

c. **Performance of Duties**

Consultant agrees that it shall at all times act in a manner consistent with industry professional standards and is consistent with professional skill and care to perform all of the duties that may reasonably be assigned to it hereunder, and that it shall devote such time to the performance of such duties as may be necessary to achieve the stated goals of this Agreement.

4. **COMPENSATION**

In consideration for the services provided by Consultant as described above, District agrees to compensate Consultant as follows:

a. PAYMENT TERMS: \_\_\_\_\_

\_\_\_\_\_

b. REIMBURSEMENT OF EXPENSES: \_\_\_\_\_

\_\_\_\_\_

c. INVOICE REQUIREMENTS – Consultant shall submit an original invoice upon completion of the assignment.

d. Payment of any and all fees due under this Agreement shall be made within \_\_\_\_ business days of the receipt of Consultant's invoice.

5. **DOCUMENTS AND RECORDS**

a. Any and all drawings, specifications and other documents prepared by Consultant or its employees in relation to the services provided hereunder shall be and remain the property of the District. Such documents shall be tendered to the District on demand, and in any event upon completion of the services required under this Agreement.

b. Records of Consultant's personnel and reimbursable expenses pertaining to any services provided under this agreement, and all records of accounts between the District and

Consultant shall be kept on a generally recognized accounting basis and shall be available to the District or District=s authorized representative for inspection at mutually convenient times.

6. **TERMINATION**

a. **Causes for Termination**

This Agreement shall terminate immediately upon the occurrence of any one of the following events:

- i. The expiration of the term hereof.
- ii. The occurrence of circumstances that make it impossible for the business of Consultant to continue.
- iii. Consultant's breach of its duties hereunder, unless cured by Consultant within five (5) business days of District giving written notice of breach to Consultant, and;
- iv. District's breach of its duties hereunder, unless cured by District within five (5) business days of Consultant giving written notice of breach to District.
- v. Failure by District to pay any fees due under the terms of Paragraph 4 of this Agreement.

b. **Termination Without Cause**

This Agreement may be terminated without cause by either Party upon thirty (30) calendar days written notice.

c. **Compensation Upon Termination of Agreement**

- i. The termination of this Agreement under this paragraph shall not relieve the District of its obligation to make any payment of fees which would or could have been required by Consultant pursuant to Paragraph 4 of this Agreement, for services actually rendered, had it not been so terminated.
- ii. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the District or in the possession of Consultant.
- iii. In the event termination is for a substantial failure of performance by Consultant, all damages and costs associated with the termination, including increased consultant and replacement consultant costs shall be deducted from payments to Consultant.
- iv. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute,

Consultant agrees to continue the work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind the Agreement nor stop the progress of the work, but Consultant's sole remedy shall be to submit such controversy to resolution pursuant to the terms herein.

7. **CONFIDENTIALITY**

Consultant acknowledges that in furtherance of this Agreement and the goals thereof, District and its agents or employees may disclose information to Consultant which is confidential in nature. Consultant acknowledges that the confidentiality of the information disclosed and any information generated and documents produced under this Agreement is critical and Consultant shall take all reasonable steps to ensure that such information and/or documents are not disseminated, discussed or divulged to third parties without the prior consent of District, or under lawful court order.

8. **OWNERSHIP**

The intermediate and final products of Consultant's services under this Agreement shall be the exclusive property of District. The final product and associated documents as they relate to the District shall not be released to outside or third parties for any reason without the explicit expressed consent of the District.

9. **INDEMNIFICATION**

a. To the fullest extent permitted by law, Consultant agrees to indemnify, defend and hold District, its officers, agents, employees, Board of Education, attorneys, and successors from any and all claims or demands arising out of the actual or alleged negligent performance (including actual or alleged non-performance) by Consultant in connection with any consulting activities performed hereunder. Such indemnification shall apply to any claim, liability, loss, injury to or death of persons, or damage to property caused by any act, neglect, default or omission of Consultant, or any person, firm or corporation employed by Consultant, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the District, arising out of, or in any way connected with the services provided hereunder, including injury or damage either on or off District property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the District or its employees.

b. CONSULTANT, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim, liability, or loss, and shall pay or satisfy and judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

10. **INSURANCE**

Consultant shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect

Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. Workers' Compensation and Employer's Liability Insurance in accordance with the laws of the State of California.

b. Comprehensive general and auto liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence, including:

- i. owned, non-owned and hired vehicles;
- ii. blanket contractual;
- iii. broad form property damage;
- iv. products/completed operations; and
- v. personal injury.

c. If this Agreement is for architectural or engineering services, professional liability insurance, including contractual liability, with limits of \$500,000, per occurrence. Such insurance shall be maintained during the term of this Agreement and renewed for a reasonable period of time. In the event that Consultant subcontracts any portion of Consultant's duties, Consultant shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination.

d. Each policy of insurance required in (b) above shall name the District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess, secondary, and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation; and, shall waive all rights of subrogation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Consultant shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event Consultant shall reimburse District upon demand for the cost thereof.

## 11. **LIMITATION OF LIABILITY**

It is expressly agreed that District's liability for any actions arising under this Agreement shall be limited to the compensation described in Paragraph 4 of this Agreement, as pertains to those of Consultant's duties which have been completed hereunder.

12. **DEPARTMENT OF JUSTICE CLEARANCE**

Education Code section 45125.1 provides that any entity providing certain contract services to a school district must certify that employees and agents who may come into contact with pupils have not been convicted of a serious or violent felony as defined by law. Those employees and agents must be fingerprinted and the Department of Justice (DOJ) must report to the school district if they have been convicted of such felonies. No person with any such convictions may be assigned to work under the contract. Depending on the totality of circumstances including (1) the length of time the employees will be on school grounds, (2) whether pupils will be in proximity of the site where the employees will be working, and (3) whether the employees will be working alone or with others or under supervision, the District may determine that the employees will have only limited contact with pupils and neither fingerprinting nor certification is required.

Consultant understands and agrees that Consultant may be required to obtain Department of Justice ("DOJ") Criminal Record Clearance of any of Consultant's officers, employees and agents who will provide any services in direct and/or unsupervised contact with students. If applicable, Consultant will obtain DOJ clearance(s) and will execute the Certification of Compliance, attached as Addendum A, prior to any services being provided. Consultant represents and warrants that it will not allow any person convicted of a violent or serious felony, as set forth in Education Code section 45122.1, or a sex offense, as set forth in section 45123, to come into direct and/or unsupervised contact with students in performing any services hereunder.

13. **DRUG-FREE WORKPLACE**

Consultant shall be required to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code sections 8350 *et seq.*), which requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. Consultant shall execute the Certification Regarding Drug-Free Workplace, attached as Addendum B, prior to any services being provided.

14. **MEDIATION**

In an effort to resolve any conflicts that arise during the term of this Agreement, District and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation prior to litigation unless the Parties hereto mutually agree otherwise.

15. **ASSIGNMENT**

Neither Party to this Agreement shall transfer, sublet, subcontract, or assign any rights or obligation under, or interest in, this Agreement (including but not limited to fees that are or may be due) without the prior written consent of the other Party.

16. **INTEGRATION, MODIFICATION, CONSTRUCTION, AND SEVERABILITY**

a. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. There exist no other agreements, promises, inducements, or understandings other than those expressly provided herein.

b. This Agreement may only be amended by written instrument signed by the Parties and shall be construed under and governed by the laws of the State of California, without regard for its conflict of law provisions.

c. If any part of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining parts of this Agreement shall remain in full force and effect, with such illegal, invalid or unenforceable parts severed from this Agreement.

17. **REPRESENTATION**

Each Party acknowledges that it has been represented by independent counsel of its own choice throughout all of the negotiations which preceded the execution of this Agreement, and that each Party, being fully informed, has duly executed this Agreement of its own free will and choice with the consent and approval of such independent counsel.

18. **ATTORNEY'S FEES**

In the event that it becomes necessary for either Party to initiate legal proceedings to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover all costs incurred in connection with such proceedings, including but not limited to, reasonable attorney's fees, and the reasonable fees of other professionals required to enforce either Party's rights under this Agreement.

19. **NOTICES AND OTHER COMMUNICATIONS**

All notices and other communications required by or permitted hereunder shall be in writing and shall be made by hand delivery, first class mail, or facsimile and addressed as follows:

**If to District:**

NAME:

TITLE:

EL SEGUNDO UNIFIED SCHOOL DIST.

641 Sheldon Street

El Segundo, CA 90245

Fax: 310-322-4334

**If to Consultant:**

NAME:

TITLE:

ADDRESS:

Fax:

All such notices and communications shall be deemed to have been duly served on the day delivered by hand, if personally delivered; three (3) business days after deposit in any United States Post Office on the Continental United States, postage prepaid, if mailed; or when answered, if faxed. Either Party may change its address herein by notice of such change given in accordance with this section.

20. **MISCELLANEOUS PROVISIONS**

a. **Number and Gender**

Whenever the singular number is used on this Agreement and when required by the context, the same shall include the plural. The masculine gender shall include the feminine and neuter genders, and word “person” shall include a corporation, firm partnership, or other form of association.

b. **Waiver**

The failure of any Party to strictly enforce any provision of this Agreement shall not be deemed to act as a waiver of any provision, including provisions not so enforced.

c. **Further Assurances**

From time to time each Party shall execute and deliver such further instruments and shall take such other action as any other Party may reasonably request in order to discharge and perform their obligation and Agreement hereunder and to give effect to the intentions expressed in this Agreement.

d. **Headings and Numbers**

The various headings and numbers herein and the grouping of provisions of this Agreement into separate divisions are for the purpose of convenience only and shall not govern, aid or limit the interpretation of the provisions of this Agreement. The language in all parts of this Agreement shall in all cases be construed by its fair meaning as if prepared by all Parties to the Agreement and not strictly for or against any of the Parties.

21. **EXECUTION**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and together will constitute a binding and enforceable agreement as if all Parties had executed the same copy hereof.

22. **BOARD APPROVAL**

The terms and conditions of this Consultant Services Agreement are subject to approval of the District’s Governing Board.

**IN WITNESS WHEREOF**, the undersigned declare that they have read this document consisting of nine (9) typewritten pages, and understand its terms and freely enter into this Agreement.



**APPROVED AND ACCEPTED:**

CONSULTANT

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

\_\_\_\_\_

EL SEGUNDO UNIFIED SCHOOL DISTRICT

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

\_\_\_\_\_

NAME:

TITLE:

## **ADDENDUM A**

### **CONSULTANT CERTIFICATION OF COMPLIANCE**

The Parties represent and agree that Consultant's contact with students shall be as follows:

- a. ☐ Indirect, unsupervised contact (e.g. classroom presentations to a student group as a general population).
- b. ☐ Direct and focused contact with students (e.g. small group work, tutoring, counseling, etc.).
- c. ☐ Other direct or unsupervised contact with students.

**If A, B, or C is checked, the following is expressly made a material provision of this Agreement:**

**Department of Justice Criminal Record Clearance is mandatory and is required before this Agreement can be approved or any services can be provided hereunder. Clearance may be completed by District for a fee, unless Consultant's clearance(s) is/are already on file with the District. Otherwise, certification shall be attached hereto and made a part of this Agreement, attesting to compliance with law. Consultant, its agents or employees, may not perform any services under this contract until the criminal clearance requirements are fulfilled.**

- d. ☐ No student contact. Services are to be performed without direct or indirect contact with students and contacts will be limited to adults only.
- e. ☐ Limited, supervised student contact. Services may result in indirect contact with students, but never outside of the direct supervision of an adult employee of the District or a person whose fingerprint certification is on file with the District.

**If D or E is checked, the following applies:**

The District has determined that section 45125.1 is applicable to this Agreement, and that the employees and agents assigned to work at a school site under this Agreement will have only *limited* contact with pupils, provided the following conditions are met at all times:

- i. Employees and agents shall not come into contact with pupils or work in the proximity of pupils at any time except under the direct supervision an adult employee of the District or a person whose fingerprint certification is on file with the District.
- ii. Employees and agents shall use only restroom facilities reserved for District employees and shall not use student restrooms at any time.

- iii. Consultant will inform all employees and agents who perform work at any school or District site of these conditions and require its employees, as a condition of employment, to adhere to them.
- iv. Consultant will immediately report to District any apparent violation of these conditions.
- v. Consultant shall assume responsibility for enforcement of these conditions at all times during the term of this Agreement.

If, for any reason, the Consultant cannot adhere to the conditions stated above, the Consultant shall immediately so inform the District and shall assign only employees and agents who have been fingerprinted and cleared for employment by the Department of Justice. In that case, the Consultant shall provide to the District the names of all employees and agents assigned to perform work under this Agreement. Compliance with these conditions, or with the fingerprinting requirements, is a condition of this Agreement, and the District reserves the right to suspend or terminate the Agreement at any time for noncompliance.

I hereby certify and attest that the above requirements have been met.

CONSULTANT

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

\_\_\_\_\_  
NAME:

EL SEGUNDO UNIFIED SCHOOL DISTRICT

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

\_\_\_\_\_  
NAME:

TITLE:

## **ADDENDUM B**

### **CONSULTANT CERTIFICATION REGARDING DRUG-FREE WORKPLACE**

The Drug-Free Workplace Act of 1990 (Government Code sections 8350 *et seq.*) requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The person's or organization's policy of maintaining a drug-free workplace;
  - 3) The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above. I understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the

Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Sections 8350 *et seq.*

I acknowledge that I am aware of the provisions of Government Code Sections 8350 *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

CONSULTANT

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

\_\_\_\_\_  
NAME: