

## INDEPENDENT CONTRACTOR AGREEMENT

This agreement (the "Agreement"), effective the 1<sup>st</sup> of July, 2017, is entered into by and between Mission Bay, Inc ("Contractor"), and the Santa Clara Unified School District ("District").

In consideration of the mutual promises contained herein, Contractor and District agree as follows:

1. **SERVICES:** District hereby retains Contractor as an independent contractor to perform the services (the "Services") for District described in Appendix A to this Agreement. Contractor represents that Contractor has the requisite licenses, experience, and skills to provide the Services.

2. **PAYMENT FOR SERVICES:** In consideration for Contractor's performance of the Services, District shall pay Contractor as set forth in Appendix A.

A. No other compensation or benefits shall be provided by District to Contractor, including but not limited to: expenses, additional compensation, overtime, vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or any other kind of compensation or benefits.

B. It will be Contractor's responsibility to report all income derived from this Agreement to the appropriate government agencies and to pay all applicable taxes. District shall issue Contractor at the end of the year a 1099-MISC for all amounts paid to contractor.

### 3. **TERM AND TERMINATION:**

A. The term of this Agreement is from the Effective Date and shall continue until the date specified in Appendix A or until terminated in accordance with this Paragraph 3. Either party may, for any reason or for its convenience, terminate Contractor's performance of the Services or this Agreement upon thirty (30) days written notice to the other party. Upon receipt of such notice, Contractor shall stop performance of the Services on the date and to the extent specified in such notice.

B. Either party may terminate this Agreement in the event of a breach by the other party of any of its obligations contained herein if such breach continues uncured for a period of ten (10) days after written notice of such breach to the other party. Either party may terminate this Agreement immediately upon written notice to the other party if either party is adjudicated as bankrupt, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, is unable to meet its obligations in the normal course of business as they fall due, or if a receiver is appointed on account of insolvency.

C. In the event of any termination, the payment due the Contractor shall be that provided for in Appendix A, prorated for the period up to and including the effective date of the termination and not previously paid.

**4. RELATIONSHIP OF PARTIES:** At all times during this Agreement, Contractor shall retain its independent status, and Contractor and its employees, if any, are and shall at all times be independent contractors to District.

A. Contractor shall use Contractor's own discretion in performing the tasks assigned, subject to only general direction by District. Contractor will, at Contractor's own expense, furnish all materials necessary for the performance of the Services, including all tools, equipment, and supplies.

B. Contractor shall be solely responsible for the payment of wages and any other remuneration to Contractor's employees.

C. Contractor agrees to indemnify and hold harmless District against any liability for premiums, contributions, or taxes payable under any workers' compensation, unemployment compensation, disability benefit, employee benefit, or tax withholding laws for which District shall be finally adjudged liable as an employer with respect to Contractor or any of Contractor's employees.

D. This is a non-exclusive agreement. Contractor is free to seek and accept work from other persons or entities as long as Contractor does not breach any duties to District. Contractor shall have no authority to bind District by contract or any other form of obligation.

**5. COMPLIANCE WITH LABOR AND EMPLOYMENT LAWS:** Contractor shall comply with all federal and state labor and employment laws applicable to its performance of the Services. Contractor shall indemnify, defend, and hold harmless District, its Board Members, officers, employees, agents, volunteers and other representatives from and against any and all claims, demands, losses, liabilities, damages, and expenses (including attorney's fees) arising from its failure to comply with any such labor and employment law.

**6. INSURANCE:** Contractor will procure and maintain in full force and effect liability insurance of no less than one million dollars (\$1,000,000.00) and workers' compensation insurance as required by State law for Contractor and any of Contractor's employees who perform the Services, and agrees to present proof of such currently effective coverage to the District. Contractor agrees to name District as an additional insured. Insurance required by this provision shall remain continuously in effect throughout the term of this Agreement.

**7. INDEMNIFICATION:**

A. Contractor shall indemnify, defend, and hold harmless District, its Board Members, officers, employees, agents, volunteers, and other representatives from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney's fees) and causes of action for:

- i. Injury to, or death of, any person, including without limitation the employees, agents, volunteers, contractors, licensees, and invitees of Contractor or District, or,
- ii. Any negligence or other wrongdoing of Contractor or Contractor's employees, agents, or representatives in the course of providing Services; or,
- iii. Damage to, or destruction of, any property, whether owned by District or otherwise, arising out of the failure of Contractor to comply with the provisions of this Agreement or arising out of the acts or omissions of Contractor or any of Contractor's employees in the performance of the Services under this Agreement.

B. Such indemnification specifically includes, without limitation, any action brought against the District, or any of its Board Members, officers, employees, agents, volunteers, or other representatives at any time by an employee of Contractor, or by an employee of any agent, contractor, or subcontractor of Contractor by reason of an injury asserted to have been sustained by such claimant during the course of such claimant's performance of a part of the Services defined in the Agreement.

8. **CONFIDENTIALITY:** Contractor acknowledges that confidential information and materials regarding District, its employees, or students may be disclosed to him/her solely for the purpose of assisting him/her in performing his/her duties under this Agreement. Such information and materials are and remain the property of District. Contractor acknowledges that he/she may use such confidential information and material only during his/her term of engagement and solely for the purpose of such engagement, and that this right expires upon the termination of this Agreement. Contractor agrees to take any and all reasonable actions, including those requested by District, to prevent such disclosure and preserve the security of confidential information and materials.

9. **REMEDIES FOR AND ARBITRATION OF DISPUTES:**

A. The parties agree that in case of any dispute or disagreement whatsoever between Contractor and District, or any officer, director, employee or representative of District, arising out of or connected with this Independent Contractor Agreement, or the termination thereof and the circumstances surrounding such termination, including any disputes arising under state or federal civil rights or tort laws, Contractor and District will submit said dispute or disagreement to arbitration before a neutral arbitrator whom they shall mutually select. In the event that the parties are unable to mutually agree upon an arbitrator, Contractor agrees to arbitrate the dispute before an arbitrator selected from the Silicon Valley Area panel of arbitrators then maintained by JAMS pursuant to the arbitration procedures adopted by that organization. Any decision or award reached by an arbitrator selected pursuant to those rules shall be final and binding, and no appeal therefrom shall be had except in accordance with the provisions and limitations of California law.

B. The fees and costs of the arbitrator shall initially be borne by the parties as provided by the rules of the JAMS. The successful party shall be entitled to receive its costs and fees incurred in connection with the arbitration in addition to damages and injunctive relief.

C. In reaching his or her decision, the arbitrator shall have no authority to add to, change or modify any provision of the Independent Contractor Agreement, nor, award damages in excess of the amount allowed by law. In connection with his or her award, the arbitrator shall set forth in a separate written decision his or her findings of fact and conclusions of law. In reaching his or her decision, the arbitrator shall be bound by the terms of the this Independent Contractor Agreement and applicable law, except that in the case of any conflict between the two, the terms of this Independent Contractor Agreement shall control to the extent the result is not unlawful.

D. BOTH PARTIES EXPRESSLY UNDERSTAND THIS PROVISION WAIVES EACH PARTIES' RIGHT TO A JURY TRIAL, TO WHICH EACH PARTY HEREBY AGREES.

E. All claims must be initiated by a written request for arbitration submitted by the claiming party to the other within the California statute of limitations for any such claim being made.

**10. SEVERABILITY:** In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

**11. WAIVER:** The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of its right thereafter to enforce each and every provision.

**12. SURVIVAL:** Any respective obligations of Contractor or District hereunder which by their nature would continue beyond the termination of this Agreement shall survive such termination.

**13. COMPLETE UNDERSTANDING; MODIFICATION:** This Agreement, together with all Attachments hereto, constitutes the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.

**14. GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

# INDEPENDENT CONTRACTOR AGREEMENT

## APPENDIX A

### Term of Agreement:

From the effective day of this Agreement through June 30, 2018 if not terminated earlier as provided in Paragraph 3.

### Description of Services:

At \_\_SCUSD sites\_\_, the Contractor will provide the following Service:

Adult Day Care and Transportation

Contractor will report directly to Special Ed Director and other staff as designated \_\_, in connection with the performance of the duties under this Agreement and shall fulfill any other duties reasonably requested by the District and agreed to by the Contractor.

### Payment for Services:

A. As full compensation for the services rendered pursuant to this Agreement, the District shall pay Contractors at the daily rate of \$79.06(Day Care) & \$8.31(Transportation), with total payment not to exceed 22,017.24 without prior written approval by an authorized representative of the District. Such compensation shall be payable within 30 days of receipt of Contractor's monthly invoice for services rendered supported by reasonable documentation.

B. At termination or completion of Services, District will pay Contractor any earned and unpaid compensation for Services rendered pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be effective as of the date first set forth above.

ON BEHALF OF Mission Bay, Inc.

ON BEHALF OF SANTA CLARA  
UNIFIED SCHOOL DISTRICT

By: 

By: 

Printed Name: Brandon Coker

Printed Name: ~~Chris Lehman~~ Andrea Cole

Title: Vice President

Title: Special Ed Director

Date: 8/10/17

Date: 8/24/17