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Attachments to Fax:	
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AGREEMENT FOR STAFFING SERVICES

This Agreement for Employee Staffing Services (“Agreement”) is entered into in the State of Arizona on July 1, 2015 (“Effective Date”), by and between City of San Luis (“Client”), and Educational Services, Inc., an Arizona corporation (“Contractor”).

RECITALS

- A. Contractor is a corporation in the business of providing employee-staffing services.
- B. Client is an entity within the State of Arizona that requires qualified workers.
- C. Client desires to obtain certain temporary staffing services (“Services”) from Contractor and Contractor is willing to provide Services to Client upon the terms and conditions contained in this Agreement to provide for the allocation between Client and Contractor of responsibilities with respect to covered workers (“Workers” pursuant to Section 2 below).
- D. The parties acknowledge and agree that Contractor is not a Professional Employer Organization, as it does not provide Professional Employer Services as such terms are defined respectively in Arizona Revised Statutes (“A.R.S.”) §§ 23-561(8) and (9) and consequently the provisions of A.R.S. §§ 23-561 through 23-576 are inapplicable to this Agreement.
- E. This Agreement shall not (1) offset, modify or amend any Federal, Arizona or local licensing, registration or certification required by the Client or for any Worker employed under this Agreement; (2) diminish, abolish or remove any rights of Workers against the Client or obligations of the Client to any Workers (e.g., retirement benefits, retiree health insurance, etc.), if any, that existed before the effective date of this Agreement; or (3) establish new or additional enforceable rights of a Worker against the Contractor or the Client that are not specifically allocated to the Contractor under this Agreement.

AGREEMENT

In consideration of the foregoing premises, and mutual promises contained herein, Client and Contractor agree as follows:

1. Relationship of the Parties

Contractor is an independent contractor and shall perform its obligations under this Agreement as an independent contractor. Contractor agrees that persons performing Services hereunder are not employees of Client. All workers provided by Contractor shall be employees of Contractor. Client has the right to direct and control Workers only to the extent necessary to conduct the Client’s business and operations and to comply with licensing and certification requirements that apply to the Client or to any Worker.

2. Worker

In this Agreement, the term “Worker” or “Workers” means an individual(s) (a) who is employed by the Contractor in Arizona to work in Arizona, (b) who pursuant to this Agreement is performing Services for Client, (c) who is listed on Contractor’s roster of Workers delivered to Client, (d) who has completed Contractor’s required enrollment forms, and, where applicable, is certified to be an administrator or licensed as required by law for the position in which employed by the Contractor, (e) who has entered into an agreement with Contractor, (f) who has provided all data required by Contractor for payroll processing and workers’ compensation coverage, and (g) who has been entered onto Contractor’s payroll system. The parties understand, agree, and acknowledge that no individual will be considered a “Worker” under this Agreement unless and until all of the conditions set forth in this section have been satisfied with respect to such individuals.

Contractor will neither hire nor place into employment positions with the Client any employee who has not received all necessary endorsements for the position assigned.

Neglect or failure of a worker to carry out the Client’s policies is sufficient cause for dismissal from employment with Contractor and removal from association with the Client.

Workers who are placed with Client through Contractor and who have responsibilities including control over personnel decisions shall not take reprisal against an employee because the employee reports in good faith information regarding immoral or unprofessional conduct.

Contractor will maintain equal employment opportunity and anti-discrimination policies, including complaint procedures that address discrimination and/or harassment claims.

3. Contractor Cost Agreements

A copy of a standard cost agreement is attached as **Exhibit A**. Contractor shall be solely responsible for guaranteeing that a Worker performs in accordance with the Contractor’s agreements.

4. Term of Agreement

The initial term of this Agreement will be one (1) year following the Effective Date. Upon the expiration of the initial term, this contract may be renewed annually upon mutual agreement of both parties. This contract does not automatically renew at the end of each year.

5. Non-Appropriation Clause

Client may cancel this contract if funding is not available due to budget constraints.

6. Termination

a) Without Cause. Notwithstanding any other provision of this Agreement, Contractor or Client may terminate this Agreement with respect to any Worker at any time without cause upon the submission of at least fifteen (15) days’ written notice to the other party, or for non-appropriation at the end of Fiscal Year for lack of funds.

- b) With Cause. Notwithstanding any other provision of this Agreement, Client may terminate this Agreement at any time with respect to any Worker by written notice to Contractor upon the occurrence of any of the following:
- a. A material breach by Contractor or a Worker of any of Contractor's or Worker's obligations under this Agreement or under a Worker's contract.
 - b. If a Worker embezzles or misappropriates Client funds or property, defrauds Client, is convicted of a felony or of any crime involving moral turpitude, has his or her teaching certification or other licensing required for the position for which employed by Contractor revoked or suspended, fails to maintain a valid fingerprint card if one is required by Client, commits an act or omission which constitutes a breach of the Worker's contract, violation of the policies of the Client applicable to Client's own employees, unprofessional conduct or which adversely affects the reputation of Client.
 - c. Death or permanent disability of a Worker occurring any time during the term of this Agreement, in which event this Agreement (as it relates to that employee) shall terminate as of his or her death or permanent disability.
 - d. If a Worker is unwilling, unable or fails to satisfactorily comply with Client rules, guidelines, policies, procedures and regulations. Termination of the Agreement under this provision shall not occur unless written notice of the alleged non-compliance is first given to Contractor and Contractor fails to cure the non-compliance within ten (10) business days following receipt of such written notice. Notwithstanding this notice period, Client may at any time require that any Worker be immediately removed from any Client worksite or assignment. Furthermore, the Client will have complete discretion in deciding whether an employee is immediately terminated for violation of Client's policies, or given ten (10) day notice and opportunity to cure the violation per this subsection.
 - e. If it is later discovered that a Worker has made any material misrepresentations or has failed to provide any material representations in connection with the information provided to Contractor.
- c) Agreement. The Agreement between Contractor and Client may be terminated by either Party for any reason at any time prior to the expiration of the Term, by providing ninety-day (90) written notice to the other Party, in the manner described in Section 22.

7. Scope of Services

The Contractor shall supply Workers and shall perform the following services and/or activities in fulfillment of its obligations under the terms of the Agreement. Specifically, but without limitation, the Contractor shall:

- a) Recruit and provide Workers as needed by Client.

- b) Maintain a recruiting and hiring program that is in compliance with federal and state laws, rules and regulations, equal opportunity and anti-discrimination policies applicable to, and restricting, the hiring and selection process, including, but not limited to, Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans With Disabilities Act (“ADA”), the Age Discrimination in Employment Act (“ADEA”), the Fair Credit Reporting Act (“FCRA”), the Arizona Civil Rights Act (“ACRA”) and the Arizona Employment Protection Act (“AEPA”).
- c) Maintain a system of statewide personal background checks on all Workers provided to Client to include pre-screening, credentialing, licensure, statewide criminal background check, and fingerprinting, the results of which shall be made available to Client upon request to the extent permitted by law. Contractor shall ensure that all Workers possess certifications and licenses necessary to enable them to perform their assignments.
- d) Provide the Worker with information regarding his or her obligation to comply with all of Client’s safety, drug/alcohol, work policies, anti-harassment, anti-discrimination, anti-retaliation and conduct policies.
- e) Inform the Worker in writing that s/he is employed by Contractor and not employed by the Client.
- f) Inform the Worker in writing that job related illness/injury reports are to be made to the supervisor or Contractor contact and provide information on where and how reports are to be made to the Contractor contact.
- g) Provide the Worker with an Employee Handbook that will identify and explain Contractor’s policies and procedures, as well as the policies and procedures of the Client that will be followed during the course of the Worker’s employment with Contractor.
- h) Pay Workers in compliance with applicable wage and hour laws, including, but not limited to the Fair Labor Standards Act (“FLSA”) and Arizona Labor Code. Contractor shall maintain complete and accurate records of all wages paid to a Worker assigned to provide services to Client. Contractor shall be exclusively responsible for and will comply with applicable law governing the reporting and payment of wages, payroll-related and unemployment taxes attributable to wages paid to Workers assigned to provide services to Client.
 - a. Hourly employees will not be allowed to accrue comp time and will be paid at overtime rate, 1 ½ times their regular hourly rate, for any hours worked over 40 hours in a work-week. The Contractor work-week runs from Sunday through Saturday. If an authorized timesheet approver (employee of Client) approves a Worker timesheet with overtime hours on it, Contractor must pay that overtime and will bill Client accordingly for that overtime.
- i) Be responsible for, and hold the Client harmless from, claims of Workers arising from any act, error or omission of Contractor allocated to Contractor or shared by Contractor and Client under this Agreement.

8. Approval of Supplied Workers

Client has the right, but not the obligation, to pre-approve or decline to pre-approve, any Worker provided by Contractor to fill a position for which the Client has contracted with the Contractor to provide a Worker. The Client has the right to reject any Worker prior to or at the time of placement. Client may recommend or decline to recommend that Contractor impose discipline upon any Worker, and Contractor may, in its own right, impose discipline, up to and including dismissal, upon any Worker.

9. Service Fees

Client will pay Contractor a service fee in accordance with the Fee Schedule, attached as **Exhibit B**. Contractor may adjust the service fee for statutory increases in payroll taxes and insurance, including but not limited to increases in FICA (OASDI/Medicare), federal and state unemployment taxes (but not for increases in income taxes of Contractor), workers' compensation premiums/experience modifier, as declared annually by the National Council on Compensation Insurance, Inc., or any changes in job functions or positions of Workers, and other insurance premiums or any government mandated statutory insurance requirement that is not already known or currently required, or any government mandated wage increase, and any such adjustments will be effective on the date of the increase or change.

For the purposes of establishing a fee differential for Workers that select medical coverage from Contractor's medical plan as required by the Patient Protection and Affordable Care Act (PPACA), for every Worker that selects medical coverage from Contractor's benefit plan(s), the Client will be assessed a one-time surcharge equal to the lesser of \$1.00 per covered month that the Worker is insured through the Contractor's medical plan, or \$10.00 in total. This surcharge will be assessed at the termination of the Worker's contract.

10. Pre-Payment Incentive or Payroll Deposit

Contractor pays Workers for their services to Client before receiving corresponding payment from Client. Therefore, Client may elect to receive a pre-payment incentive of 10% off Contractor Administrative Fee as a discount or payable as a rebate.

Clients that do not take advantage of the pre-payment incentive shall provide a payroll deposit to Contractor, to ensure guaranteed, uninterrupted payroll service in the event of slow or late payment by Client. The payroll deposit for each Worker consists of an amount equal to 10% of the Total Service Fee from Exhibit A of the Worker's individual Subscriber Service Agreement. The deposit for each Worker will be billed prior to that Worker's start date with Client, and will be used for Worker payroll at the end of the Worker's term. The billings to Client will be reduced appropriately

11. Payment Terms

Contractor would like Client to view this agreement as a payroll partnership and not a regular procurement activity. As such, Contractor will bill Client with invoices as "Net 30". An 8% fee will be charged for late payments.

12. Workers' Compensation

- a) Except as otherwise provided in this Agreement, Contractor will be considered the "employer" of all Workers for the purposes of providing workers' compensation insurance within the meaning of A.R.S. § 23-901. Contractor shall provide workers' compensation and employer's liability insurance in accordance with the statutory requirements of the State of Arizona, including Employer's Liability insurance with limits of liability of not less than \$500,000 each accident and \$500,000 bodily injury or disease. The workers' compensation policy shall be endorsed to include the Alternate Employer Endorsement and shall include a waiver of subrogation in favor of Client from the workers' compensation insurer. Contractor shall, upon Client's request, upon termination of this Agreement, provide to Client records regarding the loss experience for workers' compensation insurance provided to Workers pursuant to this Agreement.
- b) Client and Contractor understand, agree, and acknowledge that no individual will be covered by Contractor's workers' compensation insurance, or be issued a payroll check unless and until that individual has, prior to commencing work for the Client, satisfied the requirements and definition of a "Worker" under Section 2 of this Agreement.
- c) Client understands, agrees, and acknowledges that the workers' compensation insurance that Contractor will provide under this Agreement will only cover individuals who are listed on the Contractor's roster of Workers provided to the Client as set forth in Section 2 of this Agreement, and that such Contractor's workers' compensation insurance will not cover other individuals who might perform services for Client, whether as employees, independent contractors, or otherwise. The parties agree that a percentage of the service fee paid by Client shall be for payment of workers' compensation insurance premiums. Client agrees to provide workers' compensation insurance or maintain a program of approved self-insurance covering Client's own employees.

13. Client's Liability Insurance

Client will provide liability indemnity protection to the Workers performing Services under this Agreement to the extent that the Worker is providing services for the Client, and the Worker is acting within the course and scope of the authorization granted.

14. Contractor's Liability Insurance

Contractor shall maintain in full force and effect at all times during the term of this Agreement Commercial General Liability ("CGL") insurance with limits of liability of not less than one-million dollars (\$1,000,000) per occurrence, and if such Commercial General Liability insurance contains a general aggregate limit of liability, the limit of liability shall be at least two-million dollars (\$2,000,000). The CGL policy shall be written on an occurrence form and shall cover liability arising from the independent negligence or other wrongful act, error or omission of the Contractor and its employees that is not the direct consequence of the Services provided by Workers under the terms of this Agreement.

15. Patient Protection and Affordable Care Act (PPACA)

Contractor offers several medical benefit plan options that meet both “Minimum Value” and “Minimum Essential Coverage”. Contractor is the employer of record for its Workers and is the applicable large employer (ALE) with the risk for 4980H penalty exposure. Contractor is responsible for determining hours of service as a full-time employee status for variable-hour Workers for purposes of section 4980H through the look-back measurement method requirements.

16. Administration

- a) Contractor is responsible for administrative employment matters such as payment of all federal, state and local employment taxes, providing workers’ compensation insurance, as well as fringe benefit programs for Workers. Contractor agrees to pay and hold harmless Client from any and all taxes, assessments or governmental charges in connection with all or any of the Services provided under the terms of this Agreement.
- b) Client will immediately forward to Contractor any garnishment orders, involuntary deduction orders, notices of IRS liens, and other forms of legal process received by Client affecting payment of wages to Workers and will cooperate with Contractor in responding thereto.
- c) Workers will receive payment for services rendered pursuant to this Agreement solely through Contractor. It is a material breach of this Agreement for Client to pay any Worker in cash or by any other means for any Services rendered. Any individual whom a Client pays directly for any Services rendered will not be considered a Worker under this Agreement as to the Services for which the Client provides payment.
- d) Contractor shall warrant compliance with all federal immigration laws and regulations that relate to Workers and that it has verified employment eligibility of each Worker through the e-verify program. Contractor shall acknowledge that a breach of this warranty shall be deemed a material breach of this Agreement subject to penalties up to and including termination of the Agreement.
- e) Contractor further acknowledges that Client retains the legal right to inspect the papers of any Worker of Contractor who works under this Agreement to ensure compliance by Contractor. Contractor shall facilitate this right by notice to Workers and their supervisors.

17. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

USERRA protects civilian job rights and benefits for veterans and members of Reserve components. As Workers have primary employment history with Client, and Contractor has no ability to influence Client staffing decisions, it will be Client’s responsibility to comply with USERRA and provide for necessary employment and/or reemployment positions in the event that Workers are called away for military service. Contractor must be notified of dates for Worker separation due to military service and will suspend billing of the Client for that Worker accordingly. Client will provide two-week notice that Worker is returning for reemployment and Contractor will resume billing accordingly.

18. Safe Work Environment

- a) Contractor and its Workers will comply with all health and safety laws, regulations, ordinances, directives, and rules imposed by controlling federal, state, or local governments, and will immediately report all work related accidents involving the Worker within 24 hours to Client.
- b) Client will provide Workers with personal protective equipment as required by federal, state, local law, regulations, ordinance, directive, or rule.
- c) Contractor or its workers' compensation carrier has the right to inspect the Client's premises and operation, but is not obligated to conduct any inspections. Contractor reserves the right to audit safety activities. Contractor or its insurers may give reports to Client on the conditions found at Client's worksites. Client will supply documentation related to safety activities as prescribed by law (e.g., safety meeting, training, maintaining OSHA log). Neither the Contractor's insurer nor Contractor warrants the result of the inspections or the absence thereof, or that the operations or premises are in compliance with any laws, regulations, codes, or standards.

19. Indemnification

Contractor agrees to defend and indemnify Client and its governing board members, officers, directors, employees, insurers, indemnitors, and agents for and hold them harmless from all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, attorney's fees, including injuries to Contractor's employees (including Workers) ("Claims"), arising from, connected with, relating to, or resulting from this Agreement and/or Contractor's or Worker's performance of Services under this Agreement, including without limitation all claims arising from, connected with, relating to, or resulting from any actual or claimed negligent acts or omissions of Contractor or its officers, directors, shareholders, employees, and agents, provided that this indemnification agreement shall only be applicable to the extent that Claims are not covered under the terms and conditions of the coverage provided to the Contractor and the Worker by any applicable insurance coverage, and that such Claims are not the sole result of any act, error or omission of the Client.

Client agrees to defend and indemnify Contractor and its officers, directors, employees, insurers, indemnitors, and agents for, and hold them harmless from, all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, arising from, connected with, relating to, or resulting from this Agreement to the maximum allowable by law.

Contractor will indemnify Client for any assessment, assessable payment, fine or penalty imposed upon Client pursuant to 26 U.S.C. § 4980H, or any successor statutes, or any regulations enacted thereunder.

20. Adjudication of Agreement

If any court or arbitrator of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the parties desire and agree that the remaining parts of this Agreement will nevertheless continue to be valid and enforceable.

21. Modifications or Waiver of Agreement

No modification or waiver of this Agreement will be valid unless the modification or waiver is in writing and signed by the designated representative of the Client and a principal of Contractor. The failure of either party at any time to insist upon the strict performance of any provision of this Agreement will not be construed as a waiver of the right to insist upon the strict performance of the same provision, at any future time.

22. Notices

All notices or other communication required or permitted under this Agreement shall be in writing and shall be made by hand delivery or overnight courier, or prepaid first class certified mail. Notice to ESI shall be sent to:

Educational Services, Inc.
21819 N. Scottsdale Road STE 100
Scottsdale, AZ 85255

Notice to Client shall be sent to Client at the address set forth on the signature page hereto.

23. No Rule of Strict Construction

Both parties have approved the language of this Agreement, and no rule of strict construction will be applied against either party.

24. Headings

The descriptive headings of the paragraphs and subparagraphs of this Agreement are intended for convenience only, and do not constitute parts of this Agreement.

25. Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

26. Arbitration

In the event of any dispute between the parties to this Agreement arising out of, relating to, or in connection with the provisions of this Agreement or the performance hereunder, the parties hereby agree that any such dispute may be submitted to binding arbitration. The arbitrator shall be selected by mutual agreement. The arbitrator's decision and/or award shall be final and binding. The prevailing party, if any, shall be entitled to reasonable attorney's fees and costs.

27. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to the conflict of law provisions thereof.

28. Validity

This Agreement shall be valid and enforceable only after the designated representative of both Client and Contractor has signed it.

29. Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the Client may, within three (3) years after its execution cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Client is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

30. Record Retention

Contractor agrees that it shall maintain all books, accounts, reports, files and other records relating to the performance of the Contract for a period of five (5) years after the completion of the Contract and to make such documents open to the Client for inspection and audit at reasonable times.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated at their respective signatures below.

Effective Date: July 1, 2015

"Client"

Educational Services Inc.

Signature: _____

Signature: Phil Tavasci

Name: _____

Name: Phil Tavasci

Title: _____

Title: Managing Partner

ADDRESS FOR NOTICE:

Street Address

City, State, Zip Code

EXHIBIT A

Educational Services, Inc.

**Employee Cost Agreement Example**

Client:

FY: 15/16

We are pleased to honor your request for the position of XXX. Applicant is being recommended for this position. Please review the information below and return a signed original copy to ESI. Upon receipt of purchase order from the client, Applicant will be assigned to this position.

Start Date:

End Date:

Number of Contract Days:

Hours per day (if specified):

Benefits: Employee will have the remainder of leave given on 1/5/15. Any unused Sick or Vacation days can be brought back to XXX at the end of the ESI Contract.

Special Requirements: None

Item	Description	Rate	Amount
Employee Gross Wages			
Payroll Liabilities			
ESI Admin Fee			

Total

Rates subject to change during contract period.

Billing is one month in advance.

Mohave Educational Services Cooperative
Mesc Contract No. 12E-ESI-0517

Purchase Order MUST accompany signed Employee Cost Agreement

This contract is not valid without a Purchase Order that predates the start date on the Employee Contract.

21819 N. Scottsdale Rd, Suite 100
Scottsdale, AZ 85255
Phone: 480-719-3271
Toll-free: 844-614-7784
Fax: 480-907-1957

EXHIBIT B

Fee Schedule

- **1Government Procurement Alliance (IGPA Contract No. 12-13)**
 - ✂ **Return-to-Work, General and Substitute Leasing**
 - Standard Fee: 3.50% of gross salary
 - Volume Discount Tier I (25+ leased employees): 3.25% of gross salary
 - Volume Discount Tier II (50+ leased employees): 3.00% of gross salary
 - Multiple-Year Discount (Returning ESI employee 1+ year): 3.00% of gross salary
 - District may pass all or any portion of the fee to leased employee.
 - Substitute Leasing: \$8/Day

- **Mohave Educational Services Cooperative (Mohave Contract No. 12E-ESI-0517)**
 - ✂ **Return-to-Work and General Leasing**
 - 1.00% fee to District. Remaining fee balance charged to participating employee.
 - The district is always charged a 1.00% fee. The variable fee is what we will charge the employee.

- **Strategic Alliance for Volume Expenditures (SAVE Contract No. 14-06MP)**
 - ✂ **Return-to-Work and General Leasing**
 - Standard Fee: 4.00% of gross salary
 - Volume Discount Tier I (25+ leased employees): 3.50% of gross salary
 - Volume Discount Tier II (50+ leased employees): 3.00% of gross salary
 - District may pass all or any portion of the fee to leased employee.

EXHIBIT C

ESI employees are required to follow the Client Calendar and adhere to Client Policies with the same standards of conduct as regular employees. Daily activities are closely monitored by the Client's supervisor. If the supervisor has any concerns with the performance of one of our employees or their conduct we wish to be notified immediately so that we can, in collaboration with the Client, take any necessary action. Since we are the employer of record it is important that we are accountable for and responsive to any ESI employee concerns.

Please notify supervisors that monitor ESI employees so that they, too, understand the relationship and accountability of ESI employees to the District. Employee behaviors detrimental to the workplace will not be tolerated and immediate action for removal will be instigated by placing the employee on administrative leave until an investigation has been completed and a collaborative decision made by the Client and ESI.

If there are any complaints of sexual harassment or discrimination based on sex, race, color, national origin, religion, age, or disability report it immediately to ESI Human Resources at (844) 614-7784.

Thank you for collaborative participation in this venture with ESI.