

## Independent Contractor Agreement PROJECT DESCRIPTION

### 1.0 General Information

This Project Description is entered into and made effective February 1, 2022 (the “Effective Date”) by and between Jim May (“Consultant”), having a principal place of business at 5134 Thornton Street, El Paso, TX 79932 and the East Bay Innovation Academy (“Client”), having a principal place of business at 3400 Malcolm Ave, Oakland CA 94605.

### 2.0 Service Description

Consultant agrees to provide executive coaching services to the Client on an as-requested basis as follows:

For each site leader at both campuses, offer:

- Bi-monthly planned coaching sessions via Zoom (1 hour), based on individual needs, including administrative, instructional, and culture/climate leadership
- As needed perspective sessions via Zoom
- As needed email support

### 3.0 General Terms

- Rate: \$200 per hour, up to \$10,000 through July 2022.
- All independent contractors must submit proof of minimum insurance coverage, as delineated in Table One.

Invoices will be sent monthly for actual time expended, and include a description of services performed and recipient of coaching. All invoices will be issued and payments made in US dollars, due net 30 days. Amount billed in total, will not exceed estimates above without prior written approval from Client via a Change Order or updated project description.

East Bay Innovation Academy  
Agreement: Leadership consultant

## PAYMENT

Billing Address: East Bay Innovation Academy  
3400 Malcolm Ave, Oakland CA 94605  
Contact Phone Number: 510-577-9557  
Bill to email address: info@eastbayia.org

## 4.0 Signatures

**IN WITNESS WHEREOF**, Jim May and East Bay Innovation Academy, each acting under proper authority, have caused this Project Description to be executed as of the Effective Date.

### Consultant

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### East Bay Innovation Academy

Signature: Michelle S. Cho  
Printed Name: Michelle Cho  
Title: Executive Director  
Date: January 27, 2022

# Terms of Business

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## 1 DEFINITIONS

1.1 In these Terms of Business, the following words and expressions will have the following meanings:

“Confidential Information” means all information (whether written or oral) furnished in connection with an Engagement Letter (including any Project Description, Statement of Work and these Terms), together with all copies thereof and all notes, analyses, compilations, forecasts, studies or other documents containing such information.

“Engagement Letter” means any engagement letter (including any attached Project Description) previously entered into between us and you or accompanying these Terms.

“Intellectual Property Rights” means any and all now known or hereafter existing rights associated with intangible property, including but not limited to registered and unregistered, United States and foreign copyrights, trade dress, trade names, corporate names, logos, inventions, patents, patent applications, software, know-how and all other intellectual property and proprietary rights (of every kind and nature throughout the universe and however designated).

“Project Description” means the description of consulting services (if any) attached as an exhibit to the Engagement Letter.

“East Bay Innovation Academy” means East Bay Innovation Academy, its subsidiaries, affiliates, successors or assigns.

“Services” means the advisory, consulting and additional services to be provided to us by you, subject to these Terms, as set forth in the Project Description, including any related Statement of Work.

“Statement of Work” means the statement of work (if any) accompanying or delivered in connection with the Project Description and executed by the parties that describes the Services to be provided to us and which contains other material terms and conditions of the engagement.

“Terms” means these Terms of Business accompanying a Project Description.

“We” “us” “our” and similar expressions refer to the East Bay Innovation Academy.

“You” “your” “the Consultant” and similar expressions refer to the person, firm or company providing the Services, as identified in our Engagement Letter, Project Description and/or Statement of Work.

## 2 AGREEMENT

2.1 These Terms and the Engagement Letter, including any related Project Description and/or Statement of Work, shall govern the provision of the Services by you to us to the exclusion of any other terms and conditions.

## 3 SERVICES/NATURE OF OUR APPOINTMENT

3.1 For each project contemplated, you shall provide us with a Project Description or Statement of Work that will set forth the Services to be provided, your fees and expenses, and other material terms of the engagement. You will use reasonable skill and care to advise and assist us with the project and, where applicable, you will prepare and deliver project deliverables in accordance with the requirements set forth in the applicable Project Description or Statement of Work. We acknowledge and agree that we are ultimately responsible for the results to be achieved from using your Services.

3.2 We agree to give you clear briefings on our proposed projects and requirements from you and give you all relevant information and facts about the Services we require.

3.3 Changes to the Services or changes to any other aspect of the engagement may be requested by either party but may be subject to changes in applicable charges, timetables or other aspects of the Engagement Letter, Project Description or Statement of Work. All agreed changes must be confirmed in writing signed by both parties.

#### **4 FEES AND EXPENSES**

4.1 Fees and expenses will be charged on the basis set out in the Project Description and/or Statement of Work.

4.2 You shall issue us with an invoice on or around the last day of each month in which Services are performed by you and we agree to pay all invoices within thirty (30) days of the date of the invoice.

4.3 All fees and expenses shall be payable without deduction, withholding or set-off and are stated exclusive of sales, use and/or value-added taxes which (if and to the extent applicable) shall be payable at the prevailing rate.

4.4 All contractors must submit a valid W9 before commencing work, and it shall be updated annually or as needed.

#### **5 TERMINATION**

5.1 You shall continue to provide Services as set forth in the applicable Project Description or Statement of Work until completion of the project, unless the engagement is earlier terminated by one of us upon not less than thirty (30) days' written notice to the other.

5.2 Notwithstanding the foregoing either party may terminate the engagement immediately by written notice to the other if the other party: (i) commits a material or persistent breach(es) of any of these Terms (including any Project Description or Statement of Work) and, in the case of a breach or breaches capable of remedy, fails to remedy such breach within 30 days of receipt of written notice describing in reasonable detail the breach(es) and requesting that the same be remedied; (ii) admits in writing its inability to pay its debts generally as they become due; (iii) is subject to a general assignment for the benefit of creditors; (iv) institutes proceedings, or has proceedings instituted against it, seeking relief or reorganization under any laws relating to bankruptcy or insolvency; (v) has a court of competent jurisdiction appoint a receiver, liquidator, or trustee over all or substantially all of such party's property or provide for the liquidation of such party's property or business affairs.

5.3 Termination of the engagement for any reason shall not affect any rights, duties or responsibilities accrued to the parties prior to such termination. Upon such termination, we shall pay all sums due in respect of Services performed and expenditures incurred (or committed to) by you up to and including the effective date of termination. In addition to, and without limiting the generality of the foregoing, these Terms shall survive any expiration or termination of our engagement.

#### **6 CONFIDENTIALITY**

6.1 The parties acknowledge that by reason of the relationship established under the Engagement Letter, they may have access to and acquire Confidential Information of the other party. Each party receiving Confidential Information (the "Receiving Party") agrees to maintain all such Confidential Information received from the other party (the "Disclosing Party") in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the terms of the Engagement Letter, Project Description, Statement of Work and these Terms to its legal and business advisors if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those set forth herein. The Receiving Party further agrees to use the Confidential Information only for the purposes of providing or receiving Services under this or any other contract between the parties.

The foregoing restrictions shall not apply to Confidential Information that: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; or (iv) is independently developed by the Receiving Party without resort to the Confidential Information. Confidential Information may be disclosed to the extent required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and the Receiving Party shall reasonably cooperate with the Disclosing Party's efforts (at the Disclosing Party's expense) to secure such a protective order or other legal remedy to prevent or limit the disclosure.

6.2 The parties' respective obligations hereunder will survive the expiration or early termination of the engagement for a period of 1 year. Upon the expiration or termination of the engagement, each party will, upon the written request of the other party, return or destroy (at the option of the party making the request) all Confidential Information, documents, manuals and other materials specified by the other party.

6.3 Notwithstanding sections 7.1 and 7.2, you acknowledge and agree that we may cite the performance of the Services to you as an indication of our experience in our marketing brochures and other materials and in discussions with existing and/or prospective clients or business partners.

## **7 LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS OF INCOME, PROFIT, OR SAVINGS OF ANY PARTY, INCLUDING THIRD PARTIES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING CONTRACT, EQUITY, STRICT LIABILITY, NEGLIGENCE, FRAUD, MISREPRESENTATION OR OTHER TORT, OR ANY OTHER THEORY), ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH PARTIES ACKNOWLEDGE THAT THE CONSIDERATION AGREED UPON BY THE PARTIES IS BASED IN PART UPON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF EAST BAY INNOVATION ACADEMY RELATING TO THE ENGAGEMENT EXCEED THE AMOUNT PAID OR PAYABLE TO EAST BAY INNOVATION ACADEMY IN CONNECTION WITH SUCH ENGAGEMENT.

## **8 INSURANCE**

8.1 Contractor shall obtain and maintain during the term of this Agreement insurance policy to satisfy minimum insurance coverage and limits as delineated in Table One "Minimum Recommended Insurance and Coverage Limits for Small Vendors and Contractors" appended to the end of this document.

8.2. Within five days of the effective date of this Agreement, the Contractor shall provide to East Bay Innovation Academy a certificate of insurance evidencing the required insurance coverage.

## **9 LAW AND JURISDICTION**

9.1 These Terms shall be governed in all respects by the laws of the State of California without regard for the choice of law provisions thereof.

9.2 Should any dispute arise between the parties each will attempt to resolve the dispute in good faith by senior level negotiations. Where both parties agree that it may be beneficial each will seek to resolve the dispute through mediation using the services of a mediator selected by mutual agreement. If the dispute is

not resolved through negotiation or mediation, both parties shall submit to the exclusive subject matter jurisdiction, personal jurisdiction and venue of the United States District Court for the Northern District of California located in Oakland, California. If there is no jurisdiction in the United States District Court for the Northern District of California, then jurisdiction shall be in the Superior Court of California, County of Alameda.

## 10 GENERAL

10.1 Neither party may assign any of the rights or delegate duties hereunder without the express prior written consent of the other.

10.2 No amendment, waiver or any other change in any term or condition of these Terms, the Engagement Letter, Project Description or any Statement of Work will be valid or binding unless mutually agreed to in writing by both parties. The failure of either party to enforce any term or right arising pursuant to these Terms does not constitute a waiver of such term or right and shall in no way affect that party's right later to enforce or exercise the term or right.

10.3 The invalidity or unenforceability of any term or right arising pursuant to these Terms shall not adversely affect the validity or enforceability of the remaining terms and rights.

10.4 These Terms together with the Engagement Letter and any related Project Description and/or Statement of Work constitute the entire agreement and understanding between the parties with respect to their subject matter and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in communications between the parties prior to these Terms, except as set out herein and in the Engagement Letter and any related Project Description and/or Statement of Work.

10.5 Any notice which either party may desire or may be required to give to the other party under these Terms will be in writing, addressed to the party at its address set forth in the Engagement Letter, Project Description or Statement of Work, as the case may be, unless written notice of a change of address is given. Notices will be deemed given on the earlier of: (i) actual receipt, if and when personally delivered; (ii) two business days after being placed for delivery, if sent by a nationally recognized overnight courier; (iii) when sent by confirmed facsimile transmission with a copy delivered by another means specified in this Section; or (iv) on the third (3rd) business day after being sent by registered or certified mail, postage prepaid, return receipt requested.

10.6 The Engagement Letter and any Statement of Work may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. We agree that the Engagement Letter and any related Statement of Work may be delivered by facsimile and such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures and that each party may use such facsimile signatures as evidence of the execution and delivery of an Engagement Letter and Statement of Work to the same extent that an original signature could be used.

10.7 In the event of a conflict between these Terms and any Project Description or Statement of Work, the terms of the Project Description or Statement of Work, as applicable, shall govern, but only in regard to the specific Services provided under that Project Description or Statement of Work.

**Table One**

<b>Minimum Recommended Insurance Coverage and Limits For Small Vendors and Contractors</b>			
<b>Type of Contractor</b>	<b>Recommended Coverage</b>	<b>Recommended Coverage Limits</b>	<b>Other</b>
Maintenance/Repair (painting, plumbing, HVAC, roofing, landscape, etc.)	Commercial General Liability (or equivalent which would include products/completed operations, blanket contractual, broad form property damage and personal/advertising injury)	Each Occurrence \$1,000,000 General Aggregate \$2,000,000 Products/Completed Operations \$1,000,000 Personal and Advertising Injury \$ 500,000	Additional Insured Endorsement  Indemnity / Hold Harmless Agreement
	Service Providers (copier/fax service, computers, security, drug dogs, activity venues, equipment, etc.)	Automobile Liability Including: <input type="checkbox"/> Owned Vehicles <input type="checkbox"/> Non-Owned Vehicles <input type="checkbox"/> Hired Vehicles <i>(Required for vehicles driven on school property)</i>  Workers' Compensation* Employers' Liability	Combined Single Limit \$1,000,000  Limit California - Statutory Each Occurrence \$ 500,000 Indemnity / Hold Harmless Agreement

**For the contractor categories below, the following coverages are recommended in addition to those listed above:**

Welders, plumbers (work with open flames)	Fire Damage	Each Occurrence \$1,000,000	Indemnity / Hold Harmless Agreement
Hazardous Materials, Waste Haulers, Pest Control, etc.	Pollution Liability (may require project-specific coverage)	Each Occurrence \$1,000,000	Indemnity / Hold Harmless Agreement
Professional Services (accountants, architects, attorneys, education consultants, nurses, therapists, etc.)	Professional Liability (or Medical Malpractice, as applicable)	Each Occurrence \$1,000,000	Indemnity / Hold Harmless Agreement
Payroll company, Data managers	Cyber Liability	Each Occurrence \$1,000,000	Indemnity / Hold Harmless Agreement

- \*Owner to be covered or must provide proof of valid health insurance.
- If vendor will have unsupervised access to students (not recommended) they must have background check and general liability must include sexual molestation coverage.
- Certificates of insurance are to provide for 15 days advance notice to charter school in the event of cancellation of coverage.
- All subcontractors are to be included under the above policies or must provide separate, compliant evidence of insurance and "Other" provisions.

