



KM EDUCATIONAL CONSULTING

CONSULTING AGREEMENT

June 15, 2023

THIS CONSULTING AGREEMENT (“Agreement”) is entered into this 15th day of June 2023, by and between THE BOARD OF DIRECTORS OF Motivated Youth Academy (“Charter School”), and KM EDUCATIONAL CONSULTING AND EXECUTIVE COACHING SERVICES, LLC (“Consultant”), with respect to the following:

RECITALS

WHEREAS, Charter School wishes to avail itself of Consultant’s advice and abilities and Consultant is willing to offer that advice and those abilities on the terms and conditions set forth herein; and

WHEREAS, Charter School has a need for the professional services of an individual with the particular training, ability, knowledge, experience, and/or expertise possessed by Consultant; and

WHEREAS, Charter School hereby agrees to pay the agreed upon rate of pay as stipulated in Article 2.1 below; and

WHEREAS, Consultant agrees to perform the services stipulated in Article 1.1 for the period of time stated in Article 3.1 as set forth below; and

WHEREAS, Labor Code Section 2776 authorizes the Parties to enter into a bona fide business-to-business contracting relationship if the Consultant is free from the direction and control of Charter School and the relationship meets all terms set forth in Section 2776.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Charter School and Consultant hereby agree as follows:

SECTION ONE
CONTRACT FOR SERVICES

1.1 Services. Consultant will provide highly specialized consultation, insight, support, and advisement on a regular basis to Charter School, especially with major projects and initiatives; serve as a liaison for Charter School Board of Directors acting as a liaison in communications with sponsoring District/Local Education Agency/ies (LEA(s)); foster and promote professional networking among school district, county office, and charter school leadership; provides executive coaching services (non-instructional); engage in regular communication with Charter School to provide information and support. It is understood that the services provided by Consultant, pursuant to this Agreement, may be provided on a “day-to-day,” “as-needed,” or on a “when requested basis.”

1.2 Method of Performance. Consultant represents that Consultant has the qualifications, experience, and ability to perform Consultant’s duties under the terms of this Agreement in a professional manner. The relationship of Consultant to Charter School, shall at all times be, that of an independent contractor. Under no circumstance shall Consultant look to Charter School as Consultant’s employer, or as Consultant’s partner or agent. Consultant may not act as agent for, or on behalf of Charter School, or to represent Charter School, or bind Charter School in any manner without approval of Charter School.

Charter School and Consultant expressly acknowledge and agree that Consultant is engaged in a business that is distinct from that of Charter School, and the work being performed by Consultant is not a regular or integral part of Charter School’s business. The Parties further acknowledge and agree that Consultant shall perform all work free from the direction, control, and supervision of Charter School.

1.3 Standard of Care. Consultant’s services shall be performed in a manner consistent with that degree of skill and care exercised by consultants performing similar services under the same or similar circumstances and conditions. Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services to be performed by Consultant within this Agreement.

1.4 Right of Entry. Charter School hereby grants to Consultant, during the term of this Agreement, the right for Consultant to enter into and upon the Properties of Charter School for the purposes of performing Consultant’s obligations set forth within this Agreement.

1.5 Right to Engage in Other Activities. Charter School fully understands and

acknowledges that Consultant presently, and in the future, will engage in other business activities, and may continue to do so without having or incurring any liability by reason thereof. Consultant shall not have any obligation to offer any interest in any other activities to Charter School.

SECTION TWO **COMPENSATION AND REIMBURSEMENT**

2.1 Compensation and Reimbursement. For the services to be performed herein, Charter School agrees to compensate and reimburse Consultant on the following terms:

- (a) Consultant shall receive \$150.00 per hour for the efforts expended by Consultant.

- (b) Consultant shall also be entitled to full reimbursement of any and all actual costs and expenses incurred by Consultant which are directly related to Consultant's performance herein. Such costs and expenses include, without limitation to, overnight and courier deliveries, airfare, car rental, parking, meals and lodging. Travel time shall be billed at fifty percent (50%) of Consultant's hourly rate. Any reimbursement for out-of-pocket expenses (mileage, airfare, lodging, meals, etc.) approved by Charter School will be included as income and subject to IRS Form 1099 reporting. Consultant shall not be entitled to reimbursement for Consultant's general business expenses, including without limitation to, Consultant's own business offices, office supplies, office equipment, utilities, and employees' salaries and benefits. Consultant will supply Consultant's own tools and supplies, and will pay for all of Consultant's own operating expenses.

- (c) Charter School shall not be responsible for the payment of any health and welfare benefits, unemployment insurance, Employees Retirement System, Workers' Compensation Insurance, Social Security or Medicare taxes, or collection of federal or state income tax withholding for or on behalf of Consultant, nor shall Consultant be eligible for, receive, or be entitled to any right or privilege relating to medical or family leave, health or disability benefits, vacation pay, sick leave or other employee benefits of any kind.

2.2 Invoices. Consultant shall deliver a monthly invoice to Charter School setting forth the total effort (in hours) expended with a description of the services performed, adequate

enough to identify the task and project to which it relates (together with invoices and supporting proof of payment documentation relating to expenses), for the

calendar month just ended. Payment of each invoice shall be made within thirty (30) calendar days of Charter School receipt of said invoice.

SECTION THREE **TERM OF AGREEMENT**

3.1 Term. The term of this Agreement shall be ten (12) months beginning July 1, 2023, and will continue in effect until June 30, 2024. The term of this Agreement may be extended with the written consent of the Parties. This Agreement may be amended in accordance with Section 6.9 or terminated in accordance with Section 3.2.

3.2 Termination. Notwithstanding the foregoing, this Agreement may be terminated on the occurrence of any of the following: (a) sixty (60) days written notice from either Party; (b) bankruptcy or insolvency of either Party; or (c) dissolution of either Party. Prior to the expiration of the Term, Charter School may terminate the services of Consultant upon material breach of this Agreement, for failure to perform the contracted Services, or if compelled by any applicable law, including but not limited to Penal Code Sections 667.5(c) and 1192.7(c). Upon termination Consultant shall cease all services, except as may be required within the Notice of Termination.

SECTION FOUR **LIMITATION OF LIABILITY, INDEMNIFICATION & INSURANCE COVERAGE**

4.1 Limitation of Liability. Consultant assumes no responsibility under this Agreement other than to perform the services called for in this Agreement in good faith. Consultant shall not be liable to Charter School or any other person or entity for any claims, liabilities, debts or obligations resulting from (a) any errors in judgment made in good faith arising out of Consultant's performance herein, except to the extent of any actual damages to Charter School to the extent caused by Consultant's fraud or willful misconduct in the course of discharging Consultant's duties under this Agreement.

4.2 Indemnification. Charter School shall protect, defend, indemnify and hold Consultant and its directors, officers, agents and employees free and harmless from and against any and all claims, expenses and liabilities (including, without limitation attorneys' fees and costs of investigation and defense) which they may incur as a result of providing any services to or for Charter School in accordance with the requirements and restrictions of this Agreement, except to the extent that such expense or liability is caused by Consultant's fraud or willful misconduct in the course of discharging Consultant's duties under this Agreement.

Consultant shall protect, defend, indemnify and hold Charter School and its directors,

officers, agents and employees free and harmless from and against any and all claims, expenses and liabilities (including, without limitation attorneys' fees and costs of investigation and defense) which they may incur as a result of providing any services to or for Consultant in accordance with the requirements and restrictions of this Agreement, except to the extent that such expense or liability is caused by Charter School's fraud or willful misconduct in the course of discharging Charter School's duties under this Agreement.

4.3 Compliance with All Laws. Consultant shall at all times, and at Consultant's own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted.

4.3 Liability Insurance. Consultant, at its sole cost and expense, shall maintain a General Liability policy of insurance in the minimum amount of \$1,000,000 aggregate and name the Charter School as additional insured to cover appropriate General Liability Coverage. A Certificate of Insurance indicating such coverage will be provided to Charter School upon request.

4.4 Workers' Compensation Insurance. Consultant agrees to provide workers' compensation insurance for Consultant's employees and agents and agrees to hold harmless and indemnify Charter School for any and all claims arising out of any injury, disability, or death of any of Consultant's employees or agents. A Certificate of Workers' Compensation Insurance will be provided to Charter School upon request.

SECTION FIVE **ARBITRATION OF DISPUTES**

5.1 Binding Arbitration. Except as otherwise set forth in this Section, any disputes regarding any matters pertaining to this Agreement shall be resolved by neutral, binding arbitration and not by any court action except as provided for judicial review of arbitration proceedings by California law. Except as otherwise set forth herein, the arbitration proceedings shall be conducted by and in accordance with the rules of JAMS and held in the JAMS office that is in or geographically nearest to San Diego County, California.

5.2 Arbitrator and Award. The Parties (and JAMS) shall use commercially reasonable efforts to cause the arbitration to be concluded and an award (the "*Award*") given to the Parties in writing within four (4) months after either Party requests arbitration.

5.3 Evidence and Procedure. The arbitration shall be conducted as informally as possible and neither the rules of admissibility of evidence nor the Evidence Code of the

State of California shall be applicable. The arbitrator shall be the sole judge of the admissibility of, and the probative value of all evidence offered. Each Party shall, in good

faith, make a full disclosure of all issues and evidence to the other Party prior to the hearing.

5.4 Entry of Judgment; Allocation of Fees. The decision of the arbitrator shall be binding on the Parties and may be entered as a judgment in any court having jurisdiction. In no event shall the Award of the arbitrator include any component for punitive or exemplary damages. The arbitrator shall, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing Party.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Consultant's Initial

Charter School's Initials

SECTION SIX **MISCELLANEOUS**

6.1 Notices. All notices, requests, demands, reports or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail (postage prepaid, return receipt requested), sent by facsimile or email or delivered via overnight courier and shall be deemed received upon the earlier of (a) if personally delivered or via overnight courier, the date of delivery to the address of the person to receive such notice; (b) if mailed, upon the date of receipt as disclosed on the return receipt; or (c) if sent by facsimile or email, when sent. Any notice, request, demand, report or other communication sent by facsimile or email must be confirmed within

forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. All notices, requests, demands, reports or other communications shall be addressed to the addressee as identified herein. Either Party may change their below-referenced address by written notice to the other of said change in accordance with this Paragraph.

6.2 Attorneys' Fees. Should any Party institute any action to enforce this Agreement or any provision hereof or for damages by reason of any action related to this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other Party all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in connection with such action.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles thereof. The place of the performance of this Agreement shall be San Diego, California.

6.4 Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

6.5 Time of Essence. Time is of the essence hereof.

6.6 Waiver. The waiver of any breach of any provision hereunder by any Party hereto shall not be deemed to be a waiver of any preceding or subsequent breach hereunder.

6.7 Authority. The persons executing this Agreement on behalf of each of the Parties hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of said entity in accordance with its corporate bylaws, partnership agreement or limited liability company operating agreement, and that this Agreement is binding upon said entity in accordance with its terms.

6.8 Assignment. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by either Party without the prior written consent of the other.

6.9 Entire Agreement; Amendment. This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose. This Agreement may only be amended or modified by an agreement in writing signed by the Parties hereto or their respective successors in interest.

6.10 Severability. If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or

shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

6.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

6.12 Confidentiality. The Parties acknowledge that they may acquire certain information that is non-public, confidential or proprietary in nature regarding the other (the “*Confidential Information*”) during the term of this Agreement. The Parties therefore agree that they will not disclose, without the prior written consent of the other, any Confidential Information; provided, however, either Party may disclose Confidential Information (a) to their directors, employees, auditors or counsel (collectively “*Representatives*”) to whom it is necessary to show the Confidential Information, each of whom shall be informed of the confidential nature of the Confidential Information and instructed to comply with this Section to the same extent as is required of the Parties herein (and each Party shall be responsible for any breach of this Section by any person to whom it discloses Confidential Information); (b) in any statement or testimony pursuant to a subpoena or order by any court, governmental body or other agency asserting jurisdiction over a Party, or as may otherwise be required by law (provided that the Party shall provide the other Party with prior notice of the disclosure permitted by this Section (b), unless such notice is prohibited by subpoena, order or law); and (c) upon the request or demand of any regulatory agency or authority having jurisdiction over a Party. Upon a Party’s request, the other Party agrees that it will return to the asking Party all copies of Confidential Information, except to the extent that such retention is required under applicable law. Consultant further agrees that access to confidential information is not a provision or conveyance or disclosure to Consultant by Charter School of confidential information in violation of the Family Educational Rights and Privacy Act or of any similar state law.

6.13 Board Approval. This Agreement is subject to approval by the Charter School Governing Board and shall become final when ratified by the Governing Board at a duly noticed meeting.

IN WITNESS WHEREOF, the Parties hereto have duly authorized and executed this Agreement as of the date first above written.

MOTIVATED YOUTH ACADEMY:

THE BOARD OF DIRECTORS OF MOTIVATED YOUTH ACADEMY

By: _____ William Hall, President

Contact Information:

The Board of Directors of Motivated Youth Academy

Attention: William Hall

Email: whall@collaborativecharters.org

CONSULTANT:

KM EDUCATIONAL CONSULTING AND EXECUTIVE COACHING SERVICES LLC

By: _____

Kurt Madden, President

Contact Information:

KM Educational Consulting and Executive Coaching Services, LLC

Attention: Kurt Madden

3185 Fryden Court

San Diego, California 92117

Telephone: 619-701-0590

E-Mail: kurt@kmeducationalconsultant.org