

Workforce Institute

san josé • evergreen • community college district



600 South Bascom Avenue – Suite T-101
San Jose, CA 95128-2601
Phone: (408) 918-5100 Fax: (408) 282-0811

AGREEMENT WITH AN INDEPENDENT CONTRACTOR

This Agreement is entered into this **November 8** day of **2016** by and between **WORKFORCE INSTITUTE**, a division of the **SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT** (hereinafter referred to as "District") and **Milpitas Unified School District (MUSD)** (hereinafter referred to as "Contractor"). "Contractor" is authorized by Section 81644 of the California Education Code and California Government Code Section 53060 to perform the services as described in this Agreement. This agreement shall be in effect from **November 14, 2016 to June 30, 2017**.

In consideration of the mutual covenants and in accordance with the terms and conditions set forth in this Agreement, "Contractor" and "District" agree as follows:

AGREEMENT

1. Services.

See Scope of Work and Payment Terms, Attached hereto as **Attachment A**.

(a) Engagement of Contractor. "District" hereby engages "Contractor" to perform and/or provide the Services set forth in the attached **Scope of Work** and "Contractor" hereby accepts such engagement, under the terms and conditions set forth in this Agreement.

(b) Performance of Services. "Contractor" shall, to the best of contractor's ability, render Services in a timely and professional manner consistent with industry standards. Subject to the foregoing, the manner and means by which "Contractor" chooses to complete Services are in contractor's sole discretion and control. In performing Services, unless otherwise agreed to in writing by the parties, "Contractor" agrees to provide personnel, equipment, tools, facilities, and/or other materials, at contractor's sole expense. "Contractor" agrees to comply with all security, confidentiality, safety, and health policies of "District", as directed by "District", while on district grounds. "Contractor" agrees to take all necessary precautions to prevent and agrees to be responsible for, any injury to any persons or damage(s) to property arising from "Contractor's" performance of Services.

(c) No Delegation. "District" selected "Contractor" to render Services personally, and "Contractor" may not subcontract, delegate or assign any of its duties and/or obligations under this Agreement, to any third party without "District's" prior written consent. "District" has sole and absolute discretion to grant or withhold consent to "Contractor" under the Terms and Conditions of this Agreement.

(d) Reporting/Records. "Contractor" agrees to be available to discuss the performance of Services as reasonably requested by "District", the State of California, the Department of Labor (DOL), or any of their authorized representatives; to access any books, records, papers or other pertinent documents for the purpose of auditing and/or monitoring. "Contractor" agrees to retain all records pertinent to this Agreement for a period of three (3) years from the date of final payment for Services under this Agreement or until all claims arising under this Agreement, if any, have been resolved, whichever period is longer, but in any case, at a minimum, three (3) years.

Insert location of ICA on C: Drive

Revised: 07/17/16

(e) Liability Insurance. Acceptance of this agreement constitutes that Contractor is not covered under District's general liability insurance and that Contractor agrees, during the term of this Agreement, to maintain, at the Contractor's sole expense, all necessary insurance for its officers, agents, and employees, including but not limited to worker's compensation, liability, disability, and unemployment insurance. Certificates of insurance shall be provided to District on request, naming District as additional insured.

(f) No Conflict of Interest. "Contractor" warrants that to the best of contractor's knowledge, there is/are no existing contract(s) or duty on contractor's part that conflicts or would cause conflict with or prevent the performance of Services pursuant to this Agreement.

2. Compensation and Expenses.

(a) Compensation. As full compensation for Services, "District" agrees to pay "Contractor" a fee in an amount and according to the terms and conditions set forth in the attached "Scope of Work". "District" shall pay an amount not to exceed \$7,500 to "Contractor" during term of this agreement. "Contractor" shall submit an invoice with required documentation for services provided and "District" shall make payment in accordance with the terms and conditions set forth in the attached Scope of Work.

(b) Expenses. "Contractor" is responsible for their own costs and expenses incurred in rendering Services, including, but not limited to, employees, meals, materials and supplies, and/or any and all other costs incurred by "Contractor". Expenses, costs and/or other charges of any nature incurred by "Contractor" will not be reimbursed without the prior written approval of the "District" and will be reimbursed in accordance with the terms and conditions set forth in the attached Scope of Work.

3. Disclaimer for Retirees.

(a) Acknowledgement. "Contractor" acknowledges that the State of California has enacted laws dealing with the rights of individuals retired under the State Teachers' Retirement or Public Employees' Retirement System to receive compensation from school districts after retirement. California Education Code Section 24214 limits the amount of money a retiree can earn from a school district after retirement and purports to make this limitation whether the person is paid as an employee or as an independent contractor. If "Contractor" is currently a retiree under the State Teachers' or Public Employees' Retirement System, "Contractor" shall so inform "District", in writing, prior to effective start date of this Agreement.

(b) Disclaimer. If, by this Agreement, or any other activities involving school or community college district, "Contractor" earns more than the amount specified in the California Education Code in any one fiscal year, it is the responsibility of "Contractor" to contact the appropriate retirement system to determine continued eligibility to receive retirement allowances. "District" is not responsible for loss or diminution of retirement benefits based on the receipt of moneys pursuant to this contract. If there are any questions concerning "Contractor's" retirement benefits, it is the "Contractor's" sole responsibility to contact the appropriate retirement system.

4. Copyrights and Other Proprietary Rights.

(a) Confidentiality.

(i) Confidential Information. "Contractor" understands that "Contractor" will have access to or become acquainted with Confidential Information owned by the "District". For purposes of this Agreement, "Confidential Information," means any and all proprietary, confidential and/or trade secret information of or relating to the "District", whether or not developed, created or discovered by "Contractor", including, without limitation, all files, displays, intellectual property, curriculum, and any and all other information concerning the "District" and its officers, directors, trustees, employees, partners, agents, administrators, teachers, vendors and students, which is maintained by the "District" as confidential. Confidential Information will not lose its status as such merely because it is (i) embraced by more general information in the prior possession of "Contractor" or others, (ii) expressed in public literature in general terms, or (iii) disclosed orally or in writing or learned in any other manner

by "Contractor" prior to or after the Effective Date of this Agreement. "Contractor" agrees that all Confidential Information is and will remain the exclusive property of the "District".

(ii) Restrictions on Use and Disclosure. "Contractor" agrees to keep the Confidential Information in the strictest confidence and not to use or disclose the Confidential Information other than in connection with the performance of "Contractor's" duties and responsibilities hereunder. "Contractor" will not use, directly or indirectly, publish or disclose, or authorize the publication or disclosure of, or assist any third party in publishing or disclosing, any Confidential Information to anyone, other than those representatives of the "District", the State of California, the DOL, or any of their authorized representatives who need to know the same in connection with the performance of "Contractor's" duties, except with the prior written consent of the "District", in each instance. "Contractor" agrees to abide by the "District's" policies, as established from time to time, for the protection of Confidential Information. Except for this Agreement, "Contractor" is not a party to any other confidentiality/nondisclosure agreement, or agreement of any kind, that conflicts with or would prevent "Contractor" from performing any of "Contractor's" obligations to "District", under this Agreement. "Contractor" will not disclose to "District", use or induce "District" to use any proprietary information or trade secrets of others.

(b) Work Made for Hire. To the extent that Services include, or result in, the creation of a work (the "Work") that contains any copyrights, the "Work" is prepared by "Contractor" for "District" as a work made for hire as defined by United States copyright law, and to the extent the "Work" is not a work made for hire, "Contractor" makes the assignments of rights set forth herein.

(c) Assignment of Work. For good and valuable consideration, "Contractor" hereby grants, transfers, assigns, and conveys, and promises to grant, transfer, assign, and convey, to "District" and its successors and assigns, the entire right, title, interest, and ownership, and all copyrights, patents and other intellectual property and subsidiary rights in and to the "Work", including, but not limited to, the right to secure renewals, reissues, and extensions of any such copyright or copyright registration or patent in the United States of America and in all foreign countries. "Contractor" confirms and assigns to "District" and its successors, all rights, title and interest in the "Work", including the right to reproduce, prepare derivatives of the "Work" based upon the copyrights or patents in the "Work", and distribute by sale, rental, lease or lending, or by other transfer of ownership to "District".

(d) Discretion to Register. District will have absolute and sole discretion as to whether to preserve, maintain or register any copyrights and/or patents in the "Work".

(e) Non "District" copyrighted "Work." Contractor agrees that they will adhere to federal copyright laws. No classroom materials may be reproduced without prior written permission from the original publisher.

5. Term and Termination.

(a) Term. This Agreement commences as of the date first written above and shall continue in effect until terminated in accordance with this Section or upon "Contractor's" completion of Services, whichever first occurs.

(b) Termination. In the event "Contractor" fails to perform Services in accordance with this Agreement, or otherwise materially breaches this Agreement, "District" will be entitled to terminate this Agreement upon written notice to "Contractor".

(c) Effect of Termination. In the event of a termination of this Agreement pursuant to Section 5(b), "Contractor" shall cease performing Services. "District" will pay "Contractor" such portion of the Fees that reasonably account for the value received by "District" from "Contractor". In determining the appropriate amount to pay to "Contractor", the District will consider, if applicable, the cost "District" will incur in order to engage a third-party to complete Services. Termination of this Agreement does not constitute a waiver of a breach of any term of this Agreement and does not constitute a release of any liability for breach of any obligations under this Agreement.

"District" will not be liable to "Contractor" for damages of any kind solely as a result of terminating this Agreement in accordance with the terms and conditions.

(d) Survival. Sections 3, 4, 5, 6, and 8 survive termination of this Agreement.

6. Indemnification. "Contractor" agrees to indemnify and hold "District" and its officers, employees and agents harmless from and against any action, claim, demand or liability, including reasonable attorneys' fees and costs, arising from: (i) "Contractor's" actual or threatened breach of any term of this Agreement; (ii) "Contractor's" negligence or willful misconduct; (iii) "Contractor's" violation of federal, state or local laws, including laws governing self-employed individuals and their respective employees; and (iv) any obligations imposed on "District" to pay withholding taxes or similar items or otherwise as a result of a determination that "Contractor" is not an independent contractor. "Contractor" agrees that "District" has the right to participate in the defense of any such claim through counsel of its own choosing.

7. Independent Contractor Relationship. "Contractor's" relationship with "District" is that of an independent contractor, and nothing in this Agreement may be construed to create a partnership or employer-employee relationship. "Contractor" is not an agent of "District" and is not authorized to make any representation or commitments on behalf of "District". "Contractor" is not entitled to any "District" employee benefits. "Contractor" is solely responsible for all taxes with respect to "Contractor's" receipt of fees under this Agreement. "Contractor" acknowledges that "District" will regularly report to the Internal Revenue Service and other governmental agency, as required by law, all amounts paid to "Contractor" and, since "Contractor" is an independent contractor, "District" will not withhold, or make payments, for social security, unemployment insurance, disability insurance, worker's compensation insurance or any other taxes or fees on "Contractor's" behalf.

8. Miscellaneous.

(a) Notices. Any notice, instruction, or communication required or permitted to be given under this Agreement to any party must be in writing and will be deemed given upon the earlier of the time it is actually received, or five days after deposit in the United States Mail by certified or express mail, return receipt requested, or two days after deposit with a reputable overnight courier, such as Federal Express, return receipt requested, and, in each case, addressed to the principal office of the party as indicated below the signature page to this Agreement or to such other address as the party may authorize in writing.

(b) Cooperation. "District" and "Contractor" each agree to do all things, and execute all documents, reasonably necessary to effectuate the provisions of this Agreement.

(c) Entire Agreement of the Parties. This Agreement constitutes the entire agreement between the parties, superseding any and all prior or contemporaneous agreements, either oral or written, between the parties respecting the matters set forth in this Agreement. The parties acknowledge that no representations, inducements, promises, or agreements, orally or otherwise, have been made which are not embodied in this Agreement and that no other agreement, statement or promise made prior to the date of this Agreement not contained in this Agreement is valid or binding.

(d) Attorneys' Fees. If any action at law or in equity is brought to enforce or interpret the provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

(e) Amendments, Waivers, and Consents. This Agreement may not be amended except in a writing signed by both parties. No waiver or consent is binding, unless waiver or consent is in writing, signed and dated by the party making the waiver or giving the consent.

(f) Successors and Assigns/Parties in Interest. This Agreement will bind and inure to the benefit of the parties and/or their respective successors and assigns its interest only with the prior written consent of the other party. Except as expressly provided in this Agreement, nothing in this Agreement is intended to (i)

confer any rights or remedies on any persons other than the parties, and their permitted successors and assigns, (ii) relieve or discharge the obligation or liability of any third persons to any party to this Agreement, or (iii) give any third person and/or party any right of subrogation or action over or against any party to this Agreement.

(g) Governing Law. The rights and obligations of the parties to this Agreement are governed by, construed and enforced in accordance with, the laws of the State of California, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

(h) Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby.

(i) Construction of Agreement. The terms of this Agreement have been negotiated by the parties hereto, and no provision of this Agreement may be construed against any party as the drafter thereof. This Agreement is executed voluntarily without any duress or undue influence on the part of or on behalf of the parties. The parties acknowledge that they have read and understand this Agreement and its legal effect.

(j) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together, constitute one and the same instrument.

(k) Evaluation of Contractor. Authorized "District" representatives, the State of California, the DOL, or any of their authorized representatives shall have the right to monitor, assess, and/or evaluate "Contractor's" performance, pursuant to this Agreement, by any reasonable means including, but not limited to, inspection(s) of premises, records, reports, audits and interviews with "Contractor", "Contractor's" staff, "Contractor's" employees and/or participants.

(l) Prohibited Activities. If "Contractor" is a non-governmental agency awarded a contract in the amount of one hundred thousand (\$100,000) or more, "Contractor" shall comply with regulations prohibiting use of funds from this Agreement used on activities relating to political lobbying, sectarian, and pro-or-anti-unionization activities. "Contractor" shall also comply with reporting requirements related to fraud, abuse, or criminal activities and certifications regarding lobbying; and debarment, suspension and other related matters, to the extent these are applicable.

(m) Environmental Compliance. "Contractor" shall comply with all applicable standards, orders, and requirements issued relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), SS306 of the Clean Air Act (42 U.S.C. 1857(h), ss 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).

(n) Non Discrimination During the term of this Agreement, "Contractor", shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

If the contractor fails to comply with the manner in which the "Contractor" Establishes and maintains a policy of equal opportunity in employment for all persons and prohibits discrimination on any basis listed in subdivision (a) of Section 12940 of the California Government Code, as those bases are defined in Sections 12926 and 12926.1 of the California Government Code, except as otherwise provided in Section 12940 of the California Government Code, in every aspect of personnel policy and practice in the employment, development, advancement, and treatment of persons employed the "Contractor" shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by "District".

(o) Drug-Free Workplace During the term of this Agreement, "Contractor", certifies that it will continue to provide a drug-free workplace as required by Section 8355 of the California Government Code and the Drug-Free Workplace Act of 1988, and implemented at 34 Code of Federal Regulation (CFR). Part 84, Subpart F, as defined at 34 CFR Part 84, Sections 84.105 and 84.110, publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(p) Dispute Resolution. If there is any dispute or controversy between the parties arising out of or relating to this AGREEMENT, the parties agree that such dispute or controversy will be arbitrated in accordance with proceedings under American Arbitration Association rules, and such arbitration will be the exclusive dispute resolution method under this Agreement. The decision and award determined by such arbitration will be final and binding upon both parties. All costs and expenses, including reasonable attorney's fees and expert's fees, of all parties incurred in any dispute which is determined and/or settled by arbitration pursuant to this AGREEMENT will be borne by the party determined to be liable in respect of such dispute; provided, however, that if complete liability is not assessed against only one party, the parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this AGREEMENT until the dispute is resolved.

The parties have executed this Independent Contractor Agreement as of the Effective Date.

Budget Account 17-97-7054-25619-55100

Business Certification on File: Exempt

Insurance Certification on File: Exempt

W-9 On File: Yes

Contractor email address: :_cjordan@musd.edu_____

Originator: Kishan Vujjeni

For "District":

By: _____
William Watson, Ed.D
Interim Executive Director
Workforce Institute
San Jose/Evergreen Community College District
600 South Bascom Avenue – Suite T-101
San Jose, CA 95128

Date: _____

By: _____
Jonathan Camacho
Supervisor Business Services
Workforce Institute
600 South Bascom Avenue – Suite T-101
San Jose, CA 95128

Date: _____


By: _____
Jodi Marvet
Contract and Risk Manager
San Jose/Evergreen Community College District
40 S. Market St.
San Jose, CA 95113

Date: _____

By: _____
Doug Smith
Vice Chancellor,
Administrative Services
San Jose/Evergreen Community College District
40 S. Market St.
San Jose, CA 95113

Date: _____

For "Contractor":

By:  _____
Wendy Zhang
Milpitas Unified School District
1331 East Calaveras Blvd.
Milpitas, CA 95135
408-635-2600, ext. 6023
wzhang@MUSD.org

Date: _____

