

AGREEMENT FOR CONSULTING SERVICES



THIS AGREEMENT, made this 9 day of January 2017 by and between Milpitas Unified School District in Milpitas, CA, a political subdivision of the State of California, hereinafter called "DISTRICT", and the Association of Two-Way & Dual Language Education - ATDLE, hereinafter called "CONSULTANT". ATDLE consists of a duly qualified consultants in the areas of Two-Way Bilingual Immersion Education and will provide technical assistance and professional development services to the DISTRICT's Dual Language /Two Way Bilingual Immersion Program team. ATDLE is a non-profit agency and acts under a 501©3 and has attached a signed w9 form with the organization's federal identification number.

The DISTRICT and CONSULTANT hereby agree as follows:

1. Description of Services:

CONSULTANT agrees to provide services to DISTRICT in the form of technical assistance to support the development of a Dual Language Immersion Master Plan for the district which will outline the fundamental components of the district's DLI program from Transitional Kindergarten to High School.

Five dates have been determined to include the following:

- A. Monday, January 30, 2017 from 3:00 - 6:00 pm to include a technical assistance hour with district administration to be followed by a task force meeting
- B. Tuesday, February 21, 2017 from 3:00-600 pm tto include a technical assistance hour with district administration to be followed by a task force meeting
- C. Monday, March 20, 2017 from 3:00-6:00pm to include a technical assistance hour with district administration to be followed by a task force meeting
- D. Monday, April 24, 2017 from 3:00-6:00 pm to include a technical assistance hour with district administration to be followed by a task force meeting
- E. Monday, May 22, 2017 from 3:00-6:00 pm to to include a technical assistance hour with district administration to be followed by a task force meeting

Work with a graphic designer to complete the Dual Language Immersion Master Plan for Board review and approval.

2. Contract Documents:

The contract documents consist of the Agreement for Consulting Services, the General Provisions, any specifications, drawings, specific and or general conditions, attachments, and completed insurance forms.

3. Compensation:

As full compensation for all services contemplated by this Agreement, CONSULTANT shall be recompensed \$10,000.

4. Term of Agreement:

The term of this Contract shall be from January 30, 2017 to May 31, 2017 inclusive, subject to the provisions of Section 7 of the General Provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

District:

Consultant:

By: _____

By: Rosa G. Molina



Name/Title

Executive Director, ATDLE
Name/Title

GENERAL PROVISIONS

(AGREEMENT FOR CONSULTING SERVICES)

- 1) CONSULTANT'S WARRANTY: District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by district shall not operate as a waiver or release.
- 2) STATUS OF CONSULTANT: The parties intend that CONSULTANT, in performing the services herein specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONSULTANT is not to be considered an agent or employee of DISTRICT and is not entitled to participate in any pension plans, insurance, bonus or similar benefits DISTRICT provides its employees.
- 3) CONFLICT OF INTEREST: CONSULTANT represents that it presently has no interest which would conflict in any manner or degree with the performance of services contemplated by this Agreement. CONSULTANT further represents that in the performance of this Agreement, no person having such interest will be employed. If Consultant participates in the planning, development, or negotiation of a contract for the District, consultant may not subsequently acquire a financial interest in that contract in violation of Government Code section 1090. Section 1090 violations include, but are not limited to, entering into a contract to perform any part of a project if Consultant assisted the District in preparing the plans and specifications for that project.
- 4) EXTRA (CHANGED) WORK: Only the Superintendent may authorize extra (and/or changed) work. The parties expressly recognize that DISTRICT and School personnel are without authorization to either order extra (and/or changed) work or waive contract requirements. Failure of the CONSULTANT to secure proper authorization for extra work shall constitute a waiver of any and all right to adjustment in the contract price or contract time due to such unauthorized extra work and the CONSULTANT thereafter shall be entitled to no compensation whatsoever for the performance of such work.
- 5) NONDISCRIMINATION: CONSULTANT shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, handicap or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
- 6) TRANSFER OF RIGHTS: CONSULTANT assigns to DISTRICT all rights throughout the work in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications now or later prepared by CONSULTANT in connection with the project, if any. CONSULTANT agrees to take such actions as are necessary to protect the rights assigned to DISTRICT in this Agreement, and to refrain from taking any action which would impair those rights. CONSULTANT'S responsibilities under this contract include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as CONSULTANT may direct, and refraining from disclosing any versions of the

plans and specifications to any third party without first obtaining written permission of DISTRICT.

7) OWNERSHIP OF WORK PRODUCT: DISTRICT shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, correspondence or other pertinent data and information gathered or computed by CONSULTANT prior to termination of this Agreement by DISTRICT or upon completion of the work pursuant to this Agreement.

8) INDEMNIFICATION:

a) CONSULTANT shall indemnify, defend with counsel acceptable to district and hold harmless to the full extent permitted by law, DISTRICT and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the project or its failure to comply with any of its obligations contained in these contract documents, except such Liability cause by the active negligence, sole negligence or willful misconduct of the District. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONSULTANT or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

b) CONSULTANT shall be liable to DISTRICT for any loss or damage to DISTRICT property arising from or in connection with CONSULTANT'S performance hereunder.

9) INSURANCE: With respect to the performance of work under this Agreement, CONSULTANT shall maintain and shall require all of its subcontractors to maintain insurance as described below:

a) Required/ Not Required: Worker's compensation insurance with statutory limits as required by the Labor Code or the State of California. Said policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the DISTRICT".

b) Required/ Not Required: Commercial or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include, but not be limited to: premises and operations liability, independent contractors liability, and personal injury liability.

c) Required/ Not Required: Automobile liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and nonowned vehicles.

d) Each said comprehensive or commercial general liability and automobile liability insurance policy shall be endorsed with the following specific language:

- i) DISTRICT, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
 - ii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.
 - iii) The insurance provided herein is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT and no insurance held or owned by DISTRICT shall be called upon to contribute to a loss.
 - iv) This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to DISTRICT.
- e) X Required/ Not Required: Professional Liability (Errors and Omissions) Insurance for all activities of the CONSULTANT arising out of or in connection with this Agreement is an amount no less than \$500,000 combined single limit for each occurrence endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to DISTRICT."
- f) Documentation:
- a) The following documentation shall be submitted to the DISTRICT:
 - i) Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said certificates shall be submitted prior to the execution of this Agreement.
 - ii) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.
 - iii) Upon DISTRICT's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of DISTRICT's request.
- g) Policy Obligations:
- (a) CONSULTANT's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- h) Material Breach:
- (a) If CONSULTANT, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from the CONSULTANT resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to CONSULTANT, County may deduct from sums due to

CONSULTANT any premium costs advanced by DISTRICT for such insurance. These remedies shall be in addition to any other remedies available to DISTRICT.

- 10) METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS: All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notice, bills and payments sent by mail shall be addressed as follows:
- i) DISTRICT: Will submit payment to ATDLE within 30 days of receipt of the invoice
 - ii) CONSULTANT: Will submit an invoice for payment upon completion of the training after May 30, 2017.
- 11) and when so addressed, shall be deemed given upon receipt via United States Mail, postage prepaid, provided it is forwarded "certified", or "registered" with proof of receipt. In all other instances, notices, bills, and payments shall be deemed given at the time of actual personal delivery. Changes may be made in names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.
- 12) MERGER: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 13) TERMINATION:
- a) DISTRICT may terminate this Agreement by giving thirty (30) calendar days written notice to CONSULTANT. In the event DISTRICT elects to terminate the Agreement without cause, it shall pay CONSULTANT for services rendered to such date.
 - b) If either party fails to perform any of its obligations hereunder, within the time and in the manner hereunder provided or otherwise violates any of the terms of the Agreement, either party may terminate this Agreement by giving written notice of such termination, stating the reason for such termination. In such event, CONSULTANT shall be entitled to receive payment for all services satisfactorily rendered provided, however, that there shall be deducted from such amount the amount of liquidated damage, if any, sustained by DISTRICT by virtue of any breach of the Agreement by CONSULTANT.
- 14) ATTORNEY'S FEES: In the event either party brings an action or proceeding for damages arising out of the other's performance or to establish the right or remedy of either party under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs as part of such action or proceeding, including non-reimbursable litigation expenses such as expert witness fees and investigation expenses. No lawsuit pertaining to any matter arising out of or under this Agreement shall be instituted in any state other than California.

- 15) CONSULTANT'S WARRANTY: DISTRICT has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT's work by DISTRICT shall not operate as a waiver or release.
- 16) TAXES: CONSULTANT agrees to file federal and state tax returns and pay all applicable state and federal taxes on amounts paid pursuant to this Agreement. In case DISTRICT is audited for compliance regarding any applicable taxes, CONSULTANT agrees to furnish DISTRICT with proof of payment of taxes on those earnings.
- 17) DUE PERFORMANCE: Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such written assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received.
- 18) NO THIRD-PARTY BENEFICIARIES: There are no intended third-party beneficiaries of this Agreement.
- 19) NO WAIVER OF BREACH: The waiver by DISTRICT of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 20) FINGERPRINTING. By execution of the Agreement/Contract, the CONSULTANT acknowledges that Education Code Section 45125.1 applies to contracts for the provision of school and classroom janitorial, school site administrative, school site grounds and landscape maintenance, pupil transportation and school site food-related services. Section 45125.1 requires that employees of entities providing such services to school districts must be fingerprinted by the California Department of Justice for a criminal records check, unless the DISTRICT determines that the CONSULTANT and CONSULTANT's employees will have limited contact with pupils. In making this determination, the DISTRICT will consider the totality of the circumstances, including factors such as the length of time the CONSULTANT and CONSULTANT's employees will be on school grounds, whether pupils will be in proximity with the site where the CONSULTANT and CONSULTANT's employees will be working, and whether the CONSULTANT and CONSULTANT's employees will be alone or with others. The DISTRICT further reserves the right to determine, on a case-by-case basis, to require any entity providing school site services to comply with the requirements of this paragraph.

a) DISTRICT Determination of Fingerprinting Requirement Application

- i) The DISTRICT has considered the totality of the circumstances concerning the Project and has determined that the CONSULTANT and CONSULTANT's employees:**

ii) _____ are subject to the fingerprinting requirements of Education Code Sections 45125.1 and Paragraph (b) below, is applicable.

iii) X are not subject to the fingerprinting requirements of Education Code Section 45125.1 and Paragraph (c) below, is applicable.

b) If the DISTRICT has determined that fingerprinting is required, the CONSULTANT expressly acknowledges that: (1) CONSULTANT and all of CONSULTANT's employees working on the school site must submit or have submitted fingerprints in a manner authorized by the Department of Justice, together with the requisite fee as set forth in Education Code Section 45125.1; (2) CONSULTANT shall not permit any employee to come in contact with students until the Department of Justice has ascertained that the employee has not been convicted of a serious or violent felony; (3) CONSULTANT shall certify in writing to the Governing Board of the DISTRICT that none of its employees who may come in contacts with students have been convicted of a serious or violent felony; and (4) CONSULTANT shall provide to the Governing Board of the DISTRICT a list of names of its employees who may come in contact with students. The CONSULTANT is required to fulfill these requirements at its own expense.

c) Even if the DISTRICT has determined that fingerprinting is not required, the CONSULTANT expressly acknowledges that the following conditions shall apply to any work performed by the CONSULTANT and/or CONSULTANT's employees on a school site: (1) CONSULTANT and CONSULTANT's employees shall check in with the school office each day immediately upon arriving at the school site; (2) CONSULTANT and CONSULTANT's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, CONSULTANT and CONSULTANT's employees shall not change locations without contacting the school office; (4) CONSULTANT and CONSULTANT's employees shall not use student restroom facilities; and (5) If CONSULTANT and/or CONSULTANT's employees find themselves alone with a student, CONSULTANT and CONSULTANT's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

District:

Consultant:

By: _____

By: 

Rosa G. Molina,
Executive Director, ATDLE

Name/Title

Name/Title

Date: January 9, 2017

ATDLE's Scope of Work:

Technical Assistance Meetings with the District Lead 3:00-4:00 pm				
Meeting 1	Meeting 2	Meeting 3	Meeting 4	Meeting 5
District Meeting 1. Review Calendar of Informational meetings for Parents 2. Discuss and review MUSD's Enrollment Process to include the parent compacts 3. Review the district's marketing materials (brochures and ppts.) 4. Check in with HR and the hiring process of new staff	District Meeting 1. Check on the Status of Recruitment of students 2. Review the budget for the two – three new classrooms in the Fall of 2017 3. Check in on the status of the hiring of new DLI staff	District Meeting 1. Review funding for the new classrooms 2. Review planning for new classrooms to included curriculum, libraries and 3. Review the numbers of recruitment of new students 4. Review the linguistic balance of each classrooms	District Meeting 1. Review the PD plan for new teachers 2. Set Curriculum training calendar for new teachers 3. Set calendar of Parent Meetings for the new parents in May (orientation meeting) 4. Check in on the status of the hiring of new DLI staff	District Meeting 1. Review unplanned components with the start up lists 2. Check in on the final numbers for students in the new K classes and additional 1 st grade students.
Master Plan Meetings 4:00-6:00 pm				
Overview	Chapter 1-2-3-5	Chapter 4 & 6	Chapter 5	Chapter 6-7-8
<ul style="list-style-type: none"> •Introductions and contributions •Burning questions •Overview of Tasks •Connections with mission/Vision •Laying out the tasks 	<ul style="list-style-type: none"> •MUSD Mission and Vision •Program History and Demographics •Benefits for WSBLDL Program •Research base for implementation •Review Sample TWBI Schedules •MUSD's Program pathway 	<ul style="list-style-type: none"> •Program elements TK-12 •Elementary programs •Pre-K K-5 Model •Curriculum •Assessments in two languages •Appendix including: Parent compact Schedules Assessments Curriculum maps 	<ul style="list-style-type: none"> •Secondary Programs MS Model HS options •8th grade end of course placement •AP/IB/Options •Electives •Concurrent courses 	<ul style="list-style-type: none"> •Policies •Enrollment process •Late enrollees •Different languages •Program strands •Staffing •Seal of biliteracy •Assessment matrix •Marketing and parent outreach •TWBI/DL Professional Development Tiers

