

**SAN JOSÉ UNIFIED SCHOOL DISTRICT  
SERVICE AGREEMENT OVER \$25,000**

| <b>Budget Clearing Form</b><br>(To be completed by School/Department)   |  |
|---|--|
| <b>CONTRACTOR FULL NAME</b><br>Kaplan, Inc.   |  |
| <b>DBA (DOING BUSINESS AS)</b><br>Kaplan Higher Education Corp.   |  |
| <b>SSN or TAX ID NO.</b>  | <b>BUSINESS LICENSE NO.</b>  |
| <b>DESCRIPTION OF SERVICE:</b><br>7 classes accommodating up 185 students for foundation of ACT & SAT Course - Math Classes.          |  |
| <b>CONTRACT TERM FROM</b> 10/8/2018   | <b>TO</b> 12/31/2018   |
| <b>BUDGET NO.</b><br>032-534-000-0010-0-100-5810-1110-1000 \$25,000.00<br>032-534-000-0010-0-100-5110-1110-1000 \$27,150.00           | <b>AMOUNT</b><br>\$52,150.00   |
| <b>BOARD DATE</b> 9/13/2018   | <b>REQUISITION NO.</b>   |
| <b>SCHOOL/DEPARTMENT</b> San Jose High School   |  |
| <b>PREPARED BY:</b><br>Leticia Loera<br><hr/> <b>Name</b><br>Secretary<br><hr/> <b>Position</b><br>66200<br><hr/> <b>Phone Number</b> | <b>AUTHORIZED BY (BUDGET CONTROL ADMINISTRATOR):</b><br>Gloria Marchant<br><hr/> <b>Signature</b><br><i>G. Marchant</i><br><hr/> <b>Name</b><br>Principal<br><hr/> <b>Position</b> |

# **SAN JOSÉ UNIFIED SCHOOL DISTRICT SERVICE AGREEMENT OVER \$25,000**

This Service Agreement ("Agreement") is made this 7th day of September, 2018, between San José Unified School District ("District"), and Kaplan, Inc. ("Contractor"), a/an (Please choose one)

☐ Individual ☐ Partnership ☒ Corporation ☐ LLP ☐ LLC ☐ Other (Please specify): \_\_\_\_\_

1. **SERVICES.** Contractor shall perform the following services ("Services"): (If a separate scope of services or proposal generated by the District or the Contractor is available, attach exhibit(s) and reference it here. Please do not attach a separate contract.)

Customized Scope and Sequence for Kaplan-Taught Foundations ACT&SAT: Math - Seven (7) classes accommodating up to 185 students: includes 15 one-hour instruction sessions led by Kaplan staff per class, 3 one-hour progress checks led by Kaplan per class; and print materials.

2. **LOCATION.** Work will be performed at the following: (e.g., District-wide or specific District sites - a list of sites may also be attached and referenced here) San Jose High School

3. **COMPENSATION.** District agrees to pay Contractor for Services as follows (check and complete one of the following):

- ☐ At the rate of \$ \_\_\_\_\_ per \_\_\_\_\_, with the total amount not to exceed \$ \_\_\_\_\_.
- ☐ In an amount not to exceed \$ \_\_\_\_\_, invoiced to the District in increments as Services are actually completed.
- ☒ In 1 installments of \$52,150.00 each, for a total amount not to exceed \$ \$52,150.00.

Payment shall be made for all undisputed amounts within thirty (30) days after the Contractor submits a detailed invoice to the District's Accounts Payable Department.

4. **TERM/TERMINATION** The term of this Agreement shall commence on October 8, 2018 and shall continue through December 31, 2018. The District may terminate this Agreement immediately for any reason at any time, by giving written notice to the Contractor. Such written notice shall be sufficient to stop further performance of services by Contractor. In the event of termination prior to the end of the term of this Agreement, Contractor shall invoice the District for any work performed and documented expenses incurred prior and up to the date of termination, and shall promptly return any District property or records, and any copies thereof, in its possession to the District. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.

5. **INSURANCE.** Contractor shall be responsible for any damage, loss or other claim arising out of the performance of its services under this Agreement. Contractor shall carry the insurance indicated below throughout the term of this Agreement. The certificate of liability insurance must have San Jose Unified School District, 855 Lenzen Avenue, San Jose, CA 95126, as the Certificate Holder and as additional insured.

|  |                                       |                  |
|--|---------------------------------------|------------------|
| Commercial General Liability Insurance | Each Occurrence                       | \$2,000,000      |
|  | General Aggregate                     | \$4,000,000      |
| Automobile Liability Insurance         | Each Occurrence – Commercial vehicles | \$1,000,000      |
|  | Injury/one death – Personal vehicles  | \$15,000         |
|  | Injury/multiple death                 | \$30,000         |
|  | Property damage                       | \$5,000          |
| Professional Liability                 | Each Occurrence                       | \$1,000,000      |
|  | General Aggregate                     | \$2,000,000      |
| Abuse and Molestation Liability        | Each Occurrence                       | \$1,000,000      |
|  | General Aggregate                     | \$1,000,000      |
| Workers' Compensation                  |                                       | Statutory limits |
| Employer's Liability                   | Each Occurrence                       | \$1,000,000      |



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**Acceptability of Insurers**

Insurance is to be placed with Insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**Subcontractors**

Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, and any other insurance required of Contractor under this Agreement, in a company or companies lawfully authorized to do business in California as admitted carriers, in like amounts and scope of coverage as that required of Contractor hereunder.

6. **TAXES; INDEPENDENT CONTRACTOR STATUS.** District shall not withhold or set aside Income tax, Federal Insurance Contributions Act Tax, Unemployment Insurance, Disability Insurance, or any other Federal or State funds whatsoever. It shall be the sole responsibility of the Contractor to account for all of the above and Contractor agrees to hold District harmless from all liability for these taxes. While engaged in carrying out the Services Contractor is and shall be an Independent Contractor, and not an Officer, Employee, Agent, Partner, or joint venture of the District.
7. **COMPLIANCE WITH APPLICABLE LAW.** In performing services under this Agreement, Contractor shall comply with all applicable law, including but not limited to Education Code Sections 45125.1 and 49406. Contractor must complete and sign the Contractor Certification attached as Exhibit A. It shall be the sole responsibility of Contractor to obtain any needed business licenses, certificates, permits to conduct business to meet the terms of this Agreement.
8. **WORK PRODUCT.** ~~District is the owner of and entitled to exclusive possession of all records, documents, graphs, photographic or other reproductions of any kind ("Work Product") produced as part of or resulting from this Agreement, and all rights in such Work Product, and no uses thereof except in Contractor's performance of the Services will be permitted except by express written permission of the District. Contractor acknowledges that this Agreement and its work hereunder, including the Work Product, may be subject to disclosure to the public. With respect to records in the District's or Contractor's possession that may be protected from disclosure by applicable law, Contractor agrees to abide by such law. See Page 5.~~
9. **INDEMNIFICATION.** Contractor shall defend, indemnify, and hold harmless the District and its agents, employees, Board of Education, and members of the Board of Education, from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from performance of this Agreement including, but not limited to, the Contractor's use of the sites listed herein; the Contractor's completion of its duties under this Agreement; injury to or death of persons or damage to property or delay or damage to the District, its agents, employees, Board of Education, members of the Board of Education, for any act, omission, negligence, or willful misconduct of the Contractor or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or District described in this paragraph.
10. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the Pupil Records Rider for Digital Records Storage or Digital Educational Software contract requirements (Education Code §49073.1, "Pupil Records").
11. **ENTIRE AGREEMENT; AMENDMENT.** This constitutes the entire Agreement between the District and Contractor supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. This Agreement may only be amended in writing executed by both parties and approved by the District's Board of Education. This Agreement consists of:
- 11.1 Service Agreement
  - 11.2 Exhibit A – Contractor Certification
  - 11.3 Pupil Records Rider for Digital Educational Software Contracts. Required ☒ YES ☐ NO  
(Refer to Section 10; Statement of Compliance)
12. **NO ASSIGNMENT.** This Agreement may not be assigned by the Contractor, nor any part of the services hereunder subcontracted, without the express written permission of the District.



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**13. SEVERABILITY.** In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this Agreement will be affected by such holding, and all of the remaining provisions of this Agreement will continue in full force and effect, unless to do so would invalidate the intent of the parties in entering into this Agreement.

**14. INFORMATION REGARDING CONTRACTOR**

|               |   |                |                                |
|---------------|---|----------------|--------------------------------|
| Contact Name: | <u>Poonum Sidhu</u>                                 | Email Address: | <u>poonum.sidhu@kaplan.com</u> |
| Address:      | <u>750 3rd Avenue, 7th Floor, New York NY 10017</u> |                |                                |
| Telephone:    | <u>(310) 913-9174</u>                               | Facsimile:     | <u>(877) 712-5487</u>          |

**15. GOVERNING LAW; VENUE.** This Agreement shall be governed under the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the appropriate court having jurisdiction over matters arising in Santa Clara County, California.

**16. ATTORNEY'S FEES.** If any action at law or equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which such party may be entitled.

**17. BOARD APPROVAL REQUIRED.** This Agreement shall not be a valid and binding obligation of the District, and Contractor shall not be entitled to payment for services rendered, unless and until executed by both parties and approved by the District's Board of Education.

**18. Executed by the parties at San José, California, on the day and year indicated below.**

**San José Unified School District**

**Contractor**

Date: \_\_\_\_\_

Date: 9/7/18

Signature: \_\_\_\_\_

Signature: Brandon Jones

Print Name: FLORENCE ENG

Print Name: Brandon Jones

Title: Director, Business Support Services

Title: President, Admissions Group

\*Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires Contractor's federal tax identification number or Social Security number, whichever is applicable.

**8. Work Product.**

8.1 Organization acknowledges that Services and all intellectual property rights thereto, including any derivative works, (collectively, "Kaplan IP"), are and shall remain the sole and exclusive property of Kaplan and its licensors. Where Services include access to online content and services ("Digital Assets"), Students, as well as teachers and administrators who reasonably require access to Services, (collectively, "Authorized Users"), receive personal, non-transferable licenses ("Licenses") to Digital Assets. Kaplan IP may not be copied or reproduced in any way, and Authorized Users may not share their access credentials (username; password). Organization shall promptly notify Kaplan of any actual or suspected unauthorized access to, or infringement of, any Kaplan IP and Organization shall cooperate with Kaplan in good faith in taking whatever legal or other action may be appropriate under the circumstances. Organization shall promptly return to Kaplan any unauthorized copies of Kaplan IP that come into its possession or control.

8.2 Kaplan acknowledges and agrees that this Agreement does not confer on Kaplan any rights or license to the trademarks or any other intellectual properties of Organization, except as expressly authorized in this Agreement.



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**"EXHIBIT A"  
CONTRACTOR CERTIFICATION**

**Fingerprint and Background Certification**

Business entities entering into a Service Agreement with the District shall comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations.

One of the two boxes below must be checked, with the corresponding certification provided, and this form attached to the Service Agreement:

- ☒ I, Brandon Jones, am (an authorized representative of/doing business as) President, AdmissionsGroup/K12 Programs of Kap, (Name of Contractor) and hereby certify that Contractor have Conducted the required criminal background check(s) of all persons who will be providing services to the San José Unified School District on behalf of this business District, and that none of those persons have been reported by the Department of Justice ("DOJ") as having been convicted of a serious or violent felony as specified in Penal Code Sections 667.5 and/or 1192.7(c). I understand that this Certificate is not to be signed and submitted until I have received clearance from DOJ regarding those persons named. I have also attached hereto and incorporated herein is a list of the names of the employees of the undersigned who will be providing services to San José Unified School District and who may come in contact with pupils. I agree to keep this list current and to notify San José Unified School District of any additions/deletions as they occur.

Signature [Signature] Date 8/21/18

- ☐ Arrange to have a District employee whom the DOJ has ascertained has not been convicted of a violent or serious felony, continually monitor and supervise the Contractor.

District Representative's Name & Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of the Contractor and the Subcontractor(s) under this agreement are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Signature [Signature] Date 8/21/18

**Tuberculosis Certification**. Contractor and the Contractor Parties shall at all times comply with the tuberculosis certification requirements as set forth below. Specifically, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

- ☐ Contractor and/or Contractor Parties will not be present on a District school site and will not have contact with District students during the term of this Agreement.
- ☒ The following Contractor and/or Contractor Parties shall or may be on a District school site and have contact with District students during the term of this Agreement and, at no cost to District, they have received a tuberculosis test that complies with the requirements of California Education Code Section 49406.

Contractor shall maintain on file the certificates showing that the Contractor Parties were examined and found free from active tuberculosis. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the effective date of this Agreement are subject to the tuberculosis certification requirements and shall be prohibited from having any contact with District students until the tuberculosis certification requirements have been satisfied and District determines whether any such contact is permissible.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature [Signature] Date 8/21/18