

Tulare County Office of Education

Tim A. Hire, County Superintendent of Schools

REQUEST TO HIRE AN INDEPENDENT CONTRACTOR

To: Director, Human Resources
Jennifer Francone –
Jennifer.francone@tcoe.org

From: Ivette Lopez – ivette.lopez@tcoe.org **Department:** Educational Resource Services

Date: December 18, 2020 **Phone:** _____

Please develop and execute a contract or agreement reflecting the following information:

Independent Contractor/Entity: Hatching Results, LLC

Tax Identification Number: 39-2061303

Address: 2907 Shelter Island Drive # 150-287
San Diego, CA **Zip:** 92106

Phone: (707) 497-4395 **Email:** admin@hatchingresults.com

Special Training: Contractor is specially trained, experienced, and competent in the field of consulting for equity, master scheduling, use of data, counseling systems.

Services Provided: Hatching Results will support provide consulting services for internal capacity building with CVNIC:College-Ready.
[Must provide a one sentence summary and attach a detailed Scope of Services, Exhibit A]

Date(s) of Service: January 12, 2021 – May 2021

Fee: \$40,000
[Must attach a detailed Fee Schedule, Exhibit A]

Is this position grant-funded? Yes: No:

If yes, what is the name and type of grant? Bill and Melinda Gates Foundation NSI Network grant

Provide a one sentence summary of grant: The grant supports participating schools to apply improvement science to increase the number of African American, Latinx, and socially-economically disadvantaged students who are accepted into a post-secondary institution.

Budget: 010-90535-1-0-210000-58000-0-22-0 %
[Provide complete budget number(s)]

Method of Payment: Warrant based on approved invoice

Payment made to Whom? Hatching Results, LLC

FOR OFFICE USE ONLY

Contractor's Certificate re: Fingerprinting Requirements on File? YES NO

Current W-9 on File? YES NO

ILopez
Initiator's signature

12/18/20
Date

J. Francone
Jen Francone, ERS Administrator

12/18/2020
Date

Charlene Stringham 12/21/20
Assistant Superintendent's signature Date

Internal Business' authorization

Date

Superintendent's authorization

Date

PO# 213046
PO Req# 213442
Vendor #: 86391

**TULARE COUNTY SUPERINTENDENT OF SCHOOLS
INDEPENDENT CONTRACTOR SPECIAL SERVICES AGREEMENT**

This INDEPENDENT CONTRACTOR SPECIAL SERVICES AGREEMENT ("Agreement") is made and entered into, effective 12/29/2020 (the "Effective Date"), by and between the Tulare County Superintendent of Schools ("SUPERINTENDENT") and Hatching Results, LLC ("CONTRACTOR"), with reference to the following:

- A. SUPERINTENDENT requires consulting services to develop/provide:
consulting services for internal capacity building with CVNIC: College-Ready

- B. CONTRACTOR is specially trained, experienced and competent in the field of:
consulting for equity, master scheduling, use of data, and counseling systems

- C. Government Code section 53060 and Education Code section 35160 authorizes SUPERINTENDENT to contract with persons who are specially trained and experienced and competent to perform special services.

- D. SUPERINTENDENT wishes to hire CONTRACTOR as an independent contractor pursuant to the authority of Government Code section 53060 and Education Code section 35160.

- E. Grant Funded
 - Yes, Grant Name: Bill and Melinda Gates Foundation NSI Network Grant
Grant Type: Supports participating schools to apply improvement science to increase the number of African-American, Latinx, and socially-economically disadvantaged students who are accepted into post-secondary institution
 - No

- F. Pursuant to Education Code section:
 - 45103.1(b)(1), the contract is for new school district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.
 - 45103.1(b)(2), the services contracted are not available within the district, cannot be performed satisfactorily by school district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the school district.
 - 45103.1(b)(3), the services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.
 - 45103.1(b)(4), the policy, administrative, or legal goals and purposes of the district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary school district hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

- 45103.1(b)(5), the nature of the work is such that the criteria for emergency appointments apply. "Emergency appointment" means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work.
- 45103.1(b)(6), the contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the school district in the location where the services are to be performed.
- 45103.1(b)(7), the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

ACCORDINGLY, IT IS AGREED:

1. **Contractor Services.** CONTRACTOR shall provide services ("Services"), as set forth in Exhibit A, entitled "Scope of Services," which exhibit is made part of this Agreement by reference.
2. **Contractor Qualifications.** CONTRACTOR represents and warrants to SUPERINTENDENT that CONTRACTOR, and all of CONTRACTOR's employees, agents or volunteers (the "CONTRACTOR Parties"), have in effect and shall maintain in full force throughout the term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. CONTRACTOR, and any CONTRACTOR Parties, performing services shall be competent to perform those services.
3. **Term.** This Agreement shall begin on 1/12/2021, and shall terminate upon completion of the Services, but no later than 5/30/2021 ("Term"), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the SUPERINTENDENT or designee shall be sufficient to stop further performance of the Services by CONTRACTOR, or the CONTRACTOR Parties. In the event of early termination, CONTRACTOR shall be paid for satisfactory Services performed to the date of termination. Upon payment by SUPERINTENDENT, SUPERINTENDENT shall be under no further obligation to CONTRACTOR, monetarily or otherwise, and SUPERINTENDENT may proceed with the work in any manner SUPERINTENDENT deems proper.
4. **Termination.** SUPERINTENDENT may terminate this Agreement at any time by giving thirty (30) days advance written notice to CONTRACTOR. Notwithstanding the foregoing, SUPERINTENDENT may immediately terminate this Agreement at any time by service of written notice to CONTRACTOR:
 - a. if CONTRACTOR materially breaches any of the terms of this Agreement,
 - b. if any act or omission of CONTRACTOR or the CONTRACTOR Parties exposes SUPERINTENDENT to potential liability or may cause an increase in SUPERINTENDENT's insurance premiums,
 - c. CONTRACTOR is adjudged as bankrupt,
 - d. CONTRACTOR makes a general assignment for the benefit of creditors, or a receiver is appointed because of CONTRACTOR's insolvency.
5. **Cost of Services.** For services rendered, CONTRACTOR shall be paid according to the fee schedule set forth in Exhibit B, entitled "Fee Schedule," which exhibit is made part of this Agreement by reference. The total amount payable to CONTRACTOR shall not exceed the sum of \$ 40,000.00.

6. **Method and Conditions of Payment**

- a. CONTRACTOR shall provide an invoice for services to SUPERINTENDENT. SUPERINTENDENT, according to the fee schedule set forth in Exhibit B, shall provide and file IRS form 1099 to report CONTRACTOR'S calendar year earnings.
- b. The payment of compensation for work performed is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement.

7. **Headings.** Section headings are provided for organizational purposes only, and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

8. **Indemnity.** CONTRACTOR shall defend, indemnify, and hold harmless SUPERINTENDENT and its agents, representatives, officers, consultants, employees, and the Tulare County Board of Education (individually and collectively, the "SUPERINTENDENT Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs, including fees of consultants) of any kind, nature and description (collectively, the "Claims"), directly or indirectly arising out of or connected with, the performance by CONTRACTOR, the CONTRACTOR Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform CONTRACTOR's obligations under this Agreement, including, but not limited to CONTRACTOR's or the CONTRACTOR Parties' performance of the Services, CONTRACTOR's or the CONTRACTOR Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to persons or damage to property or delay or damage to the SUPERINTENDENT or the SUPERINTENDENT Parties. 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 entity described in this paragraph. CONTRACTOR's defense and indemnity obligations under this section shall arise immediately upon the filing and/or service of any claim or action against SUPERINTENDENT arising under this Agreement, and shall extend to all such claims or actions except those based on the sole negligence or willful misconduct of SUPERINTENDENT. The indemnification provided for in this section also includes any claims that may be made against the SUPERINTENDENT by any taxing authority asserting that an employer-employee relationship exists by reason of this agreement, and any claims made against SUPERINTENDENT alleging civil rights violations by CONTRACTOR under the California Fair Employment and Housing Act or similar administrative body. This indemnification obligation shall continue beyond the Term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

9. **Construction.** This Agreement reflects the contributions of both parties and accordingly, the provisions of California Civil Code § 1654 will not apply to address and interpret any uncertainty.

10. **Insurance.** Prior to approval of this Agreement by SUPERINTENDENT, CONTRACTOR shall file with the SUPERINTENDENT evidence of the required insurance as set forth in Exhibit C, entitled "Insurance Requirements," which exhibit is made part of this Agreement by reference.

11. **Independent Contractor Status.** CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and the CONTRACTOR Parties shall not be considered officers, employees, agents, partners, or joint venturers of SUPERINTENDENT, and are not entitled to benefits of any kind or nature provided to employees of SUPERINTENDENT, and/or to which SUPERINTENDENT's employees are entitled. CONTRACTOR

agrees to advise everyone it designates or hires to perform any duty under this Agreement, that they are not employees of SUPERINTENDENT.

12. **Taxes.** All payments made by SUPERINTENDENT to CONTRACTOR pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. SUPERINTENDENT will not withhold any money from fees payable to CONTRACTOR, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR and the CONTRACTOR Parties and otherwise in connection with this Agreement.

13. **Fingerprinting/Criminal Background Investigation Certification.** CONTRACTOR and the CONTRACTOR Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, CONTRACTOR hereby represents and warrants to SUPERINTENDENT the following:

A. CONTRACTOR and the CONTRACTOR Parties shall **have no contact** (as determined by SUPERINTENDENT) with SUPERINTENDENT students at all times during the Term of this Agreement.

B. CONTRACTOR and the CONTRACTOR Parties shall **only have limited contact** (as determined by SUPERINTENDENT) with SUPERINTENDENT students at all times during the Term of this Agreement. [Attach and sign additional pages, as needed.]

C. The following CONTRACTOR and CONTRACTOR Parties have **more than limited contact** (as determined by SUPERINTENDENT), with SUPERINTENDENT students during the Term of this Agreement. [Attach and sign additional pages, as needed.]

D. (Required only if Box 13.C is checked.) All of the CONTRACTOR and CONTRACTOR Parties noted above, at no cost to SUPERINTENDENT, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints reveal that none of these CONTRACTOR and CONTRACTOR Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

CONTRACTOR further agrees and acknowledges that if at any time during the Term of this Agreement, CONTRACTOR learns or becomes aware of additional information which differs in any way from the representations set forth above, or CONTRACTOR or CONTRACTOR Parties add personnel, CONTRACTOR shall immediately notify SUPERINTENDENT and prohibit any new personnel from having any contact with SUPERINTENDENT students until the fingerprinting and background check requirements have been satisfied, and SUPERINTENDENT determines whether any contact is permissible.

14. **Tuberculosis Certification.** CONTRACTOR and the CONTRACTOR Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, CONTRACTOR hereby represents and warrants to SUPERINTENDENT the following:

A. CONTRACTOR and CONTRACTOR Parties shall **have no contact** (as determined by SUPERINTENDENT), with SUPERINTENDENT students at all times during the Term of this Agreement.

B. CONTRACTOR and CONTRACTOR Parties shall **only have limited contact** (as determined by SUPERINTENDENT), with SUPERINTENDENT students at all times during the Term of this Agreement.

C. The following CONTRACTOR and CONTRACTOR Parties shall have **more than limited contact** (as determined by SUPERINTENDENT), with SUPERINTENDENT students during the Term of this Agreement and, at no cost to SUPERINTENDENT, have received a TB test in full compliance with the requirements of Education Code section 49406. [Attach and sign additional pages, as needed.]

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

CONTRACTOR further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by CONTRACTOR and CONTRACTOR Parties, are subject to the TB certification requirements and shall be prohibited from having any contact with SUPERINTENDENT students until the TB certification requirements have been satisfied and SUPERINTENDENT determines whether any contact is permissible.

15. **Confidential Information.** CONTRACTOR shall maintain the confidentiality of, and protection from unauthorized disclosure, any and all individual student information received from the SUPERINTENDENT, including but not limited to student names and other identifying information. CONTRACTOR shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, CONTRACTOR shall turn over to SUPERINTENDENT all educational records related to the services provided to any SUPERINTENDENT student pursuant to this Agreement.

16. **Assignment/Successors and Assigns.** SUPERINTENDENT is relying on the skill, training, and experience of CONTRACTOR and its employees, and as such CONTRACTOR shall not assign or transfer, by operation of law or otherwise, any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of SUPERINTENDENT. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of CONTRACTOR.

17. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, or the parties agree that any such provision is in conflict with any applicable code or regulation governing the subject, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

18. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written agreement signed by both parties.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Tulare, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the SUPERINTENDENT.

20. **Written Notice.** Except as otherwise required by law, including, but not limited to, the claim presentation provisions contained in California Government Code § 900, et seq., written notice under this Agreement shall be deemed to have been duly served if delivered in person to CONTRACTOR at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

21. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to, fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. CONTRACTOR agrees that it shall comply with all legal requirements for the performance of duties under this Agreement, and that failure to do so shall constitute material breach.

22. **Non-Discrimination.** CONTRACTOR shall not discriminate in employment, or in the provision of services under this Agreement, on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation, and as prescribed in California Government Code § 12900, et seq., and California Labor Code § 1735, including, but not limited to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, genetic information, gender, gender identity, gender expression, sexual orientation, or military and veteran status.

23. **Liability of SUPERINTENDENT.** Notwithstanding anything stated herein to the contrary, SUPERINTENDENT shall not be liable for any special, consequential, indirect, or incidental damages, including, but not limited to, any lost, past, and/or anticipated profits or other economic loss that may be claimed by CONTRACTOR in connection with this Agreement.

24. **Time.** Time is of the essence to this Agreement.

25. **Waiver.** No delay or omission by SUPERINTENDENT in exercising any right under this Agreement shall operate as a waiver of that or any other right, and no single or partial exercise of any right shall preclude the SUPERINTENDENT from any or further exercise of any right or remedy. Furthermore, the failure of SUPERINTENDENT to insist on strict compliance with any provision of this Agreement will not

be considered a waiver of any right to do so

26. **Records and Audit.** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement, including records with respect to any payments to employees and subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures. Upon request, CONTRACTOR shall make such records available to SUPERINTENDENT for the purpose of auditing and copying such records for a period of five years from the date of final payment under this Agreement.

27. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein, and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

28. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

29. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

30. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

31. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

SUPERINTENDENT:

Tulare County Superintendent of Schools

By: _____

Name: John Rodriguez

Title: Director of Human Resources

Address for SUPERINTENDENT Notices:

6200 S. Mooney Blvd., P.O. Box 5091

Visalia, Ca 93278-5091

Phone No.: (559) 733-6306

Fax No.: (559) 627-4670

CONTRACTOR:

Hatching Results, LLC

By: _____

Name: _____

Title: _____

Address for CONTRACTOR Notices:

2907 Shelter Island Drive

San Diego CA 92106

Phone No.: 707-497-4395

Fax No.: