

# Standard City of San José Vendor Agreement

This Agreement is between the City of San José, a municipal corporation (“City”), and Virginia Becker, an individual doing business as File-It (“Vendor”).

This Agreement is made and entered into on Aug 18, 2021 (“Contract Date”).

THE CITY AND VENDOR AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

- 1.1 General:** This Agreement sets forth the terms and conditions under which the Vendor will provide law library updating services to the City.
- 1.2 Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
  - Exhibit B:** Compensation
  - Exhibit C:** Insurance Requirements
- 1.3 City Attorney:** “City Attorney” means the City Attorney for the City of San José or the City Attorney’s designee.
- 1.4 Business Days:** “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.
- 1.5 Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

- 2.1 Term:** The Agreement term is from July 1, 2021 to June 30 2022, inclusive, unless terminated earlier pursuant to Section 19 below.
- 2.2 Retroactive Services:** The Vendor provided services before the Contract Date in anticipation of the Agreement’s execution. The City Attorney accepts and approves the services provided before the Contract Date; the City will compensate the Vendor for those services in accordance with the terms of this Agreement. However, in no event will the City compensate the Vendor for services performed before July 1, 2021.

## 3. SCOPE OF SERVICES

- 3.1 Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The Vendor must perform the Basic Services to the City Attorney’s satisfaction.

**3.2 Additional Services:** “Additional Services” means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.

**3.2.1 Authorization:** The City will not compensate Vendor for any Additional Services without the City Attorney’s prior written authorization.

**3.2.2 City Attorney’s Authorization:** The City Attorney may authorize the Vendor to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The City Attorney must authorize the Vendor to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Vendor for such services. The City Attorney is authorized to execute the amendment for Additional Services for the City.

**4. INTENTIONALLY OMITTED**

**5. CITY’S CONTRACT MANAGER**

The City’s contract manager for this Agreement is:

Name: Kim Jackson, Legal Services Administrator	Phone No.: (408) 535-1900
Department: City Attorney’s Office	E-mail: kim.jackson@sanjoseca.gov
Address: City of San José 200 E. Santa Clara Street, 16th Floor San José, CA 95113	

The City Attorney can change the above contract manager by giving the Vendor written notice.

**6. VENDOR’S STAFFING**

**6.1 Vendor’s Contract Manager and Other Staffing:** Identified below are the following: (a) the Vendor’s contract manager, and (b) the Vendor(s) and/or employee(s) of the Vendor who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 (“Form 700”), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Vendor must comply with the requirements of Subsection 17.2 below.

<u>Vendor’s Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Virginia Becker	Phone No.: 408-226-2987			X
Address: 18608 Favre Ridge Road Los Gatos, CA 95033	E-mail: File_lt@hotmail.com			

<b>Other Staffing</b>				
<u>Name:</u>	<u>Assignment:</u>			
1. Dennis Teixeira	Library Assistant			X
2.				
3.				

**6.2 Contract Manager’s Authority:** The Vendor’s contract manager is authorized to act on behalf of the Vendor.

**6.3 Staffing Changes:** The City Attorney’s prior written approval is required for the Vendor to remove, replace or add to any of its staffing identified in this provision.

## 7. USE OF SUBCONSULTANTS

**7.1 Authority to Use:** Whichever of the following is marked applies to this Agreement:

The Vendor can **not** use any subconsultants without the City Attorney’s prior written approval.

The Vendor will use the following subconsultants for the specified areas of work. The Vendor can not remove, replace or add to any of the subconsultants identified in this provision without the City Attorney’s prior written approval.

<b>Subconsultant’s Name</b>	<b>Area of Work</b>
1.	
2.	
3.	

**7.2 Subconsultant Work:** The Vendor warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

## 8. INDEPENDENT CONTRACTOR

**8.1 General:** The Vendor has complete control over its operations and employees, and is an independent contractor. The Vendor is not an agent or employee of the City, and shall not represent or act as the City’s agent or employee. The Vendor does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

**8.2 Subcontractors:** As an independent contractor, the Vendor has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Vendor contracts in furtherance of this Agreement (collectively “Subcontractors”). Subject to the requirements of Section 7 of this Agreement, the Vendor is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

- 8.3 **Indemnity**: The Vendor shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

## 9. STANDARD OF PERFORMANCE

The Vendor represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Vendor represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

## 10. COMPENSATION

- 10.1 **Maximum Total Compensation**: The maximum amount the City will pay the Vendor for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is \$10,000 ("Maximum Total Compensation").

- 10.2 **Intentionally Omitted**.

- 10.3 **Exhibit B - Compensation**: The City will pay the Vendor up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.3.1 **Compensation Table**: **Exhibit B** sets forth a compensation table establishing the manner in which the City will pay the Maximum Compensation to the Vendor ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.3.2 **Schedule of Rates and Charges**: If the City will compensate the Vendor for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Vendor's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

10.3.2.1 **Premium Pay**: "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay Vendor Premium Pay.

10.3.2.2 **No Increases**: The City will **not** increase the Schedule of Rates and Charges during the Agreement term.

10.3.2.3 **Conflict**: In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

- 10.4 **Compensation Table – Part 1**: Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.

10.4.1 **Task Numbers (Column 1)**: Column 1 sets forth the task number(s) for which the City will compensate the Vendor. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Vendor separately for that task, and payment for such task is deemed included in the other task(s) for which the Vendor is receiving compensation.

10.4.2 **Basis of Compensation (Column 2)**: Column 2 identifies whether the City will pay the Vendor for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.

**10.4.3 Invoice Period (Column 3):** Column 3 identifies when the Vendor must submit its invoice for payment. If invoicing is monthly, the Vendor must submit its invoice to the City by the 10<sup>th</sup> Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Vendor must submit its invoice to the City Attorney within 20 Business Days following completion of the task(s) to the City Attorney's satisfaction. If invoicing is upon the completion of all work, the Vendor must submit its invoice to the City Attorney within 20 Business Days following completion of all work to the City Attorney's satisfaction.

**10.4.3.1 Invoice:** Each invoice must include sufficient information and supporting documents to establish to the City Attorney's satisfaction that the Vendor is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the City Attorney's approval of such undisputed amount.

**10.4.3.2 Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Vendor will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Vendor is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Vendor in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

**10.4.3.3 Monthly Invoices Based on Fixed Fee:** If the Vendor invoices monthly for a "fixed fee," then the Vendor will base its monthly invoice on the percentage of work completed during the previous month. If the Vendor is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

**10.4.4 Compensation (Column 4):** Column 4 sets forth the total compensation the City will pay the Vendor for completing the task(s).

**10.4.4.1 Time & Materials:** If time and materials is the basis of compensation, then the amount in Column 4 is a "not-to-exceed" or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Vendor completes the task(s) for less than the amount set forth in Column 4, the City Attorney (in the City Attorney's sole discretion) *may* use the cost savings to increase the budget of another task. The City Attorney must authorize such reallocation of cost savings in writing.

**10.4.4.2 Fixed Fee:** If "fixed fee" is the basis of compensation, then the Vendor must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

**10.5 Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Vendor separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Vendor separately for expenses.

**10.5.1 Subconsultants:** The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

**10.5.2 Maximum Amount of Reimbursable Expenses:** The City will reimburse the Vendor for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Vendor incurs in excess of the stated maximum are at no cost to the City.

**10.5.3 Expenses That Are Reimbursable:** Any reimbursement to the Vendor is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City's contract manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%
5.	With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Vendor acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 10%

**10.6 Compensation Table – Part 3:** Part 3 indicates whether the City will compensate the Vendor separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Vendor for subconsultant costs, the City will do so in accordance with the following terms and conditions.

**10.6.1 Actual Costs:** The Vendor can invoice the City for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

**10.6.2 Schedule of Rates and Charges:** Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Vendor in accordance with those rates and charges.

**10.6.3 Maximum Amount:** The City will compensate the Vendor for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Vendor incurs in excess of the specified maximum amount are at no cost to the City.

**10.7 Compensation Table – Part 4:** Part 4 sets forth the maximum compensation that the City Attorney can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Vendor that would result in compensation exceeding this maximum amount is at no cost to the City.

**10.8 Tax Forms Required:** The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

**10.8.1 U.S. Based Person or Entity:** If the Vendor is a U.S. based person or entity, the Vendor acknowledges and agrees that the Vendor is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Vendor is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Vendor acknowledges and agrees that the Vendor is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

**10.8.2 Non-U.S. Based Person or Entity:** If the Vendor is not a U.S. based person or entity, the Vendor acknowledges and agrees that the Vendor is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

## 11. INDEMNIFICATION

**11.1 Obligation:** The Vendor shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Vendor's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Vendor, any of its Subcontractors, anyone directly or indirectly employed by either the Vendor or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Vendor pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

**11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.

**11.3 Duty to Defend:** The Vendor's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Vendor, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

**11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Vendor from its obligations under this Section 11. The Vendor's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

- 11.5 **Survival:** The Vendor's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

## 12. INSURANCE REQUIREMENTS

- 12.1 **General:** The Vendor shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 **Documentation:** Before performing any services, the Vendor must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 **Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

## 13. OWNERSHIP OF WORK PRODUCT

- 13.1 **Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Vendor or any other person engaged directly or indirectly by the Vendor to perform the Vendor's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").
- 13.2 **Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Vendor hereby assigns to the City all copyrights to such works when and as created.
- 13.3 **Intentionally Omitted.**
- 13.4 **Vendor's Reuse:** With the City Attorney's prior written consent, the Vendor may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

## 14. DISCLOSURE OF WORK PRODUCT

- 14.1 **Prohibition:** Except as authorized by the City Attorney or as otherwise required by law, the Vendor shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Vendor, or (c) information prepared, developed or received by the Vendor or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2 **Notification:** The Vendor will immediately notify the City Attorney if it is requested by a third party to disclose any Work Product, discussions or information that the Vendor is otherwise prohibited from disclosing.
- 14.3 **Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Vendor and its Subcontractors that are needed to perform the Basic Services.
- 14.4 **Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.



## 15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Vendor shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Vendor under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Vendor's charges for performing services, or to the Vendor's expenditures and disbursements charged to the City; and
  - All Work Product and other records evidencing Vendor's performance.
- 15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Vendor is required to retain the Records, the City Manager, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Vendor shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Vendor shall produce the requested Records at no cost to the City.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Vendor may be subject to audit by the California State Auditor with regard to the Vendor's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## 16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Vendor shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Intentionally Omitted.**
- 16.3 Subcontracts:** The Vendor shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

## 17. CONFLICT OF INTEREST

- 17.1 General:** The Vendor represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Vendor certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Vendor shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Vendor has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.
- 17.2 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Vendor shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:
- Disclose the categories of economic interests in Form 700 as required by the City Attorney;

- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the City Attorney.

**17.3 Future Services:** The Vendor acknowledges each of the following with regard to performing future services for the City:

- The Vendor's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Vendor performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;
- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Vendor from performing or participating in the performance of such future services; and
- The Vendor is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## **18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

**18.1 General:** The Vendor shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

**18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the City Attorney.

**18.3 Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>. Environmental procurement policies and activities related to the completion of Vendor's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);

- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

## 19. TERMINATION

- 19.1 For Convenience:** The City Attorney may terminate this Agreement at any time and for any reason by giving the Vendor written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 For Cause:** The City Attorney may terminate this Agreement immediately upon written notice for any material breach by the Vendor. If the City Attorney terminates the Agreement for cause and obtains the same services from another vendor at a greater cost, the Vendor is responsible for such excess cost in addition to any other remedies available to the City.
- 19.3 Delivery of Work:** If the City Attorney terminates the Agreement – whether for convenience or for cause – the City Attorney has the option of requiring the Vendor to provide to the City any finished or unfinished Work Product prepared by the Vendor up to the date of Vendor's receipt of the written notice of termination.
- 19.4 Compensation:** The City will pay the Vendor the reasonable value of services satisfactorily rendered by the Vendor to the City up to the date of Vendor's receipt of the written notice of termination. For services to be "satisfactorily rendered," the City Attorney must determine that the Vendor provided them in accordance with the terms and conditions of this Agreement. The City Attorney will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the Vendor's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

## 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José  
City Attorney's Office  
Attn: Kim Jackson, Legal Services Administrator  
200 East Santa Clara Street, 16th Floor  
San José, CA 95113-1905  
(408) 535-1900  
Kim.Jackson@sanjoseca.gov

To the Vendor: Virginia Becker dba File-It  
18608 Favre Ridge Road  
Los Gatos, CA 95033  
(408) 226-2987  
File\_It@hotmail.com

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

## 21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Vendor represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Vendor shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Vendor's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Vendor represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Vendor shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Vendor's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Vendor is not a waiver of any other violation by the Vendor.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Vendor shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Vendor's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Vendor represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Vendor to use subconsultants, the Vendor shall not assign any part of this Agreement without the City Attorney's prior written consent. The City Attorney, at the City Attorney's discretion, may void this Agreement if a violation of this provision occurs.

- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.
- 21.12 Use of electronic signatures:** Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

**IN WITNESS WHEREOF,** the City and Vendor have caused this Agreement to be executed by their respective duly authorized representatives as follows.

**NOTE:** The Vendor must make one of the following representations by placing its initials in the space provided. **The City will not process this Agreement unless the Vendor has initialed one of the provisions.**

The Vendor certifies that the Vendor has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Vendor will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Vendor ceases to have a permanent place of business in California or ceases to do any of the above, the Vendor will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

\_\_\_\_\_ If the Vendor is unable to make the above certification, the Vendor acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

**City of San José**

By Nora Frimann Aug 18, 2021  
Nora Frimann (Aug 18, 2021 15:10 PDT)  
\_\_\_\_\_  
Nora Frimann Date  
City Attorney

**Vendor**

By Virginia Becker Aug 11, 2021  
Virginia Becker (Aug 11, 2021 11:25 PDT)  
\_\_\_\_\_  
Virginia Becker Date

**Approval as to Form (City Attorney):**

**Form Approved by the Office of the City Attorney**  
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the form are not altered.)

**Approved as to Form:**

\_\_\_\_\_  
Date

## EXHIBIT A: SCOPE OF BASIC SERVICES

The Vendor shall provide services and deliverables as set forth in this **Exhibit A**. The Vendor shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the City Attorney.

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**General Description of Project:** Vendor shall perform law library updating services for the Office of the City Attorney.

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### Task No. 1: Bi-weekly law library updating services

- A. Services:** Vendor shall provide law library updating services at the Office of the City Attorney for all volumes specified in the attached Approved Publication List, on a bi-weekly basis or at a date and time as otherwise agreed upon with the Office of the City Attorney, as follows:
1. Vendor will be responsible for the filing and maintenance of designated materials.
  2. Vendor will check designated area to determined material to be filed at each biweekly visit.
  3. Vendor will check volumes previously missing from library shelves and needing filing.
  4. Vendor will locate and assemble all volumes needed for filing/maintenance, and note any volumes missing from the shelves.
  5. Before filing, Vendor will check previous instructions to make sure that preceding supplements have been filed.
  6. Vendor will file all material that has arrived since the previous service call.
  7. Vendor will save all report instructions.
  8. Vendor will return all volumes to the correct shelves.
  9. Vendor will inform the library contact about missing or damaged supplements, volumes or binders.
  10. Vendor will claim missing pages, reports and supplements from the appropriate publishers.
  11. Vendor will maintain the library collection making certain that all library material is shelved by call order.
  12. Vendor will identify pre-existing filing and shelving errors, and notify the library contact when these findings occur and take corrective steps.
  13. Vendor will provide a library assistant that has a minimum of eight (8) years previous experience in filing and shelving legal materials to perform the above services. Vendor will send the same library assistant on biweekly visits, who will stay as long as necessary to complete the above services.

The parties agree that the Approved Publication List set forth herein may be changed without formal amendment to this Agreement. Vendor and City, through the Legal Services Administrator or the Administrator's designee, shall coordinate any proposed additions or deletions to the Approved Publication List. City and Vendor must affirmatively accept said modifications to the Approved Publication List in writing before such modifications become binding under the terms of this Agreement.

**B. Deliverable:** Law library updating on a bi-weekly basis, or at a date and time as otherwise agreed upon between the parties.

**C. Completion Time:** The Vendor must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

On or before the following date: Expiration date of Agreement.

On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 2:** San José Municipal Code updates

**A. Services:** Vendor shall update the San José Municipal Codes in the Office of the City Attorney at the request of the City Attorney, at a date and time mutually agreed upon between the parties.

**B. Deliverable:** Periodic updates to the San José Municipal Codes in the Office of the City Attorney.

**C. Completion Time:** The Vendor must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

On or before the following date: Expiration date of Agreement.

On or before \_\_\_\_ Business Days from \_\_\_\_\_.

*City of San José – Office of the City Attorney  
Approved Publication List*

<b>TITLE</b>	<b># VOLS.</b>
1 Aspen - Drafting License Agreements	2
2 Aspen - Section 1983 Litigation (annual)	7
3 CEB - Advising CA Nonprofit Corporations (annual)	2
4 CEB - CA Administrative Hearing Practice (annual)	1
5 CEB - CA Administrative Mandamus (annual)	2
6 CEB - CA Attorney Fee Awards (annual)	2
7 CEB - CA Attorney's Guide to Damages (annual)	1
8 CEB - CA Civil Appellate Practice (annual)	2
9 CEB - CA Civil Discovery Practice (annual)	2
10 CEB - CA Civil Litigation Forms Manual	2
11 CEB - CA Civil Writ Practice	2
12 CEB - CA Construction Contracts, Defects and Litigation (annual)	2
13 CEB - CA Expert Witness Guide (annual)	1
14 CEB - CA Government Tort Liability Practice - (2 copies) (annual)	4
15 CEB - CA Land Use Practice (annual)	2
16 CEB - CA Landlord Tenant Practice (annual)	2
17 CEB - CA Law of Contracts	1
18 CEB - CA Liability Insurance Practice	2
19 CEB - CA Mechanics' Liens and Related Construction Remedies (annual)	2
20 CEB - CA Mortgages, Deeds of Trust, & Foreclosure Litigation (annual)	2
21 CEB - CA Real Estate Finance Practice: Strategies and Forms	2
22 CEB - CA Real Property Remedies & Damages (annual)	2
23 CEB - CA Real Property Sales Transactions	2
24 CEB - CA Subdivision Map Act (annual)	1
25 CEB - CA Title Insurance Practice (annual)	1
26 CEB - CA Tort Damages (2 copies) (annual)	2
27 CEB - CA Tort Guide	1
28 CEB - CA Trial Practice (annual)	3
29 CEB - CA UCC Sales & Leases (annual)	2
30 CEB - CA Civil Procedure Before Trial (annual)	3
31 CEB - Condemnation Practice in CA (annual)	2
32 CEB - Drafting Business Contracts	1
33 CEB - Forming CA Common Interest Developments (annual)	2
34 CEB - Ground Lease Practice	1
35 CEB - Jefferson's CA Evidence Benchbook	2
36 CEB - Office Leasing (annual)	2
37 CEB - Practice Under CEQA (annual)	2
38 Lexis - CA Public Sector Employment Law	1
39 Lexis - CA Trial Handbook (annual)	2
40 Lexis - Complex Civil Litigation	1
41 Matthew Bender - ADA Employee Rights and Employer Obligations	2
42 Matthew Bender - Colliers Bankruptcy Manual	4



43	Matthew Bender - Labor & Employment Arbitration	2
44	Matthew Bender - Weinstein's Evidence Manual	1
45	Rutter Group - CA Practice Guide, Civil Appeals & Writs (annual)	2
46	Rutter Group - CA Practice Guide, Civil Procedure Before Trial (2 copies)	6
47	Rutter Group - CA Practice Guide, Civil Procedure Before Trial Forms	1
48	Rutter Group - CA Practice Guide, Civil Trials & Evidence (annual)	3
49	Rutter Group - CA Practice Guide, Federal Civil Procedure Before Trial (annual)	3
50	Rutter Group - CA Practice Guide, Federal Civil Trials & Evidence	3
51	West - State & Local Government Civil Rights Liability (annual)	5
52	West - State & Local Government Environmental Liability	1
53	Wolters - Construction Delay Claims	1

***VOLS. located outside the library***

**WC resource area**

54	CEB - CA Workers' Compensation Practice	2
55	CEB - CA Workers' Damages Practice (annual)	2

**Senior Legal Analyst's Office (1641)**

56	Rutter Group - Legal Professional's Handbook (annual)	2
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***Miscellaneous***

Shelving books, replacement volumes, pocket parts, misc. library filings

## EXHIBIT B: COMPENSATION

### Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	Column 2	Column 3	Column 4
<b>Task Nos.</b>	<b>Basis of Compensation</b>	<b>Invoice Period</b>	<b>Compensation</b>
1-2	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$10,000
<b>Part 2 – Reimbursable Expenses</b>			
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.	<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:		\$
<b>Part 3 – Subconsultant Costs</b>			
<input checked="" type="checkbox"/> Subconsultant costs are <b>not</b> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.	<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:		\$
<b>Part 4 – Additional Services</b>			
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the City Attorney can not authorize any Additional Services.	<input type="checkbox"/> The City Attorney may authorize the Vendor to perform Additional Services up to the following maximum amount:		\$
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):			\$10,000

**Section 2 – Schedule of Rates and Charges**

**Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Vendor for any Basic Services on a “time & materials” basis.

The following is the Schedule of Rates and Charges applicable to this Agreement:

**Task No. 1:** Bi-weekly law library updating services – One Hundred Twenty-Five Dollars (\$125.00) per bi-weekly visit

**Task No. 2:** San José Municipal Code updates – Thirty-Five Dollars (\$35.00) per hour per filer

## EXHIBIT C: INSURANCE REQUIREMENTS

Vendor, at Vendor's sole cost and expense for the full term of this Agreement or any renewal thereof, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any work or receiving payments therefore under this Agreement:

**A. Workers' Compensation and Employers' Liability Policy.**

1. This policy shall be written in accordance with the laws of the State of California and providing coverage for any and all employees of Vendor.
2. This policy shall provide coverage for Workers' Compensation (Coverage A).
3. This policy shall also provide coverage for \$1,000,000 Employers' Liability (Coverage B).

**B. Exception.**

If, however, the Vendor does not have any employees and does not wish to cover himself/herself for Workers' Compensation, the Vendor shall sign the following statement as well as the Agreement itself to effect a fully initiated contract:

I, as the herein designated Vendor, do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above required Workers' Compensation Coverage.

*Virginia Becker*  
Virginia Becker (Aug 11, 2021 11:25 PDT)

Signature of Vendor

Aug 11, 2021

Date

Virginia Becker

(Please print or type name of company/consultant)

**C. Proof of Coverage.**

A Certificate of Insurance shall be provided by the Vendor's insurance company as evidence of the stipulated coverage. Proof of the required insurance coverage shall be either emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San José, CA 95113-1905

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed: Yes  
 Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Professional Services

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667066-000

Contractor: Virginia Becker dba File-It

Address: 18608 Favre Ridge Road, Los Gatos, CA 95033

Phone: (408) 226-2987

Email: File\_It@hotmail.com

Contract Description: Vendor Agreement for law library updating services for the Office of the City Attorney

Term Start Date: 7/1/2021 Term End Date: 6/30/2022 Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: \_\_\_\_\_ Date Conducted: \_\_\_\_\_

Agenda Date (if applicable): \_\_\_\_\_ Agenda Item No.: \_\_\_\_\_

Resolution No.: \_\_\_\_\_ Ordinance No.: \_\_\_\_\_

Original Contract Amount: \$10,000 Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: \_\_\_\_\_

Fund/Appropriation: 001-44000050-4052


Form 700 Required (Selection mandatory for processing): No Revenue Agreement: No

Tax Certificate No.: 8138101210 Expiration Date: 3/15/22

Department: Attorney (44)

Department Contact: Kara Lamm Customer (Finance Only): \_\_\_\_\_

Notes:

Department Director Signature:  Aug 18, 2021  
Date

Office of the City Manager Signature: \_\_\_\_\_  
Date