

City of San José
SCCOE Agreement

This Agreement is between the City of San José, a municipal corporation (“City”), and Santa Clara County Office of Education, a government entity (“SCCOE”).

This Agreement is made and entered into this 16th day of February, 2022 (“Contract Date”).

THE CITY AND SCCOE AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 **General:** This Agreement sets forth the terms and conditions under which the SCCOE will provide professional consulting 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
 - Exhibit D:** Federal Funding Provisions
- 1.3 **Director:** “Director” means the Director of Library or the Director’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

The Agreement term is from the Contract Date to June 30, 2022, inclusive, unless terminated earlier pursuant to Section 19 below.

3. SCOPE OF SERVICES

- 3.1 **Basic Services:** “Basic Services” means the services set forth in **Exhibit A**. The SCCOE must perform the Basic Services to the Director’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 SCCOE for any Additional Services without the Director’s prior written authorization.
 - 3.2.2 **Director’s Authorization:** The Director may authorize the SCCOE to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the SCCOE 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 SCCOE for such services. The Director 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: Araceli Delgado-Ortiz	Phone No.: (408) 808-2617
Department: Library	E-mail: araceli.delgado@sjlibrary.org
Address: 150 E. San Fernando Street, San Jose, CA 95112	

The Director can change the above contract manager by giving the SCCOE written notice.

6. SCCOE’S STAFFING

6.1 SCCOE’s Contract Manager and Other Staffing: Identified below are the following: (a) the SCCOE’s contract manager, and (b) the SCCOE(s) and/or employee(s) of the SCCOE 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 SCCOE must comply with the requirements of Subsection 17.2 below.

<u>SCCOE’s Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Michael Garcia	Phone No.: 408-453-6649			<u>X</u>
Address: 1290 Ridder Park Drive, San Jose, CA 95131	E-mail:migarcia@sccoe.org			

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

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

7. USE OF SUB-CONSULTANTS

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

- The SCCOE can **not** use any sub-consultants without the Director's prior written approval.
- The SCCOE will use the following sub-consultants for the specified areas of work. The SCCOE can not remove, replace or add to any of the sub-consultants identified in this provision without the Director's prior written approval.

Sub-Consultant Name	Area of Work
1.TBD	Any or all elements of the scope of work
2.	
3.	

7.2 **Sub-Consultant Work:** The SCCOE warrants all services and deliverables provided by any sub-consultant it uses, and represents that each such sub-consultant is specially trained, experienced, and competent to perform its portion of the work.

8. INDEPENDENT CONTRACTOR

- 8.1 **General:** The SCCOE has complete control over its operations and employees, and is an independent contractor. The SCCOE is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The SCCOE 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 SCCOE has complete control over its sub-consultants, subcontractors, suppliers, agents and any other person or entity with whom the SCCOE contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the SCCOE is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3 **Indemnity:** The SCCOE 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 SCCOE represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The SCCOE 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 SCCOE for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **\$150,000.00** (“Maximum Total Compensation”).
- 10.2 Intentionally Omitted.**
- 10.3 Exhibit B - Compensation:** The City will pay the SCCOE 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 SCCOE (“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 SCCOE for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the SCCOE’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 SCCOE 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 SCCOE. 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 SCCOE separately for that task, and payment for such task is deemed included in the other task(s) for which the SCCOE is receiving compensation.
- 10.4.2 Basis of Compensation (Column 2):** Column 2 identifies whether the City will pay the SCCOE 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 SCCOE must submit its invoice for payment. If invoicing is monthly, the SCCOE must submit its invoice to the City by the 10th 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 SCCOE must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director’s satisfaction. If invoicing is upon the completion of all work, the SCCOE must submit its invoice to the Director within 20 Business Days following completion of all work to the Director’s satisfaction.
- 10.4.3.1 Invoice:** Each invoice must include sufficient information and supporting documents to establish to the Director’s satisfaction that the SCCOE is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director’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 SCCOE will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the SCCOE is entitled to reimbursable expenses and/or separate payment for subSCCOE costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the SCCOE 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 SCCOE invoices monthly for a “fixed fee,” then the SCCOE will base its monthly invoice on the percentage of work completed during the previous month. If the SCCOE is entitled to reimbursable expenses and/or separate payment for subSCCOE 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 SCCOE 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 SCCOE completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director’s sole discretion) *may* use the cost savings to increase the budget of another task. The Director 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 SCCOE 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 SCCOE separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the SCCOE separately for expenses.

10.5.1 Sub-Consultants: The cost of sub-consultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of sub-consultants.

10.5.2 Maximum Amount of Reimbursable Expenses: The City will reimburse the SCCOE for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the SCCOE 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 SCCOE 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 SCCOE 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 Exhibit 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 SCCOE separately for sub-consultant costs incurred in providing any part of the services. If the City will compensate the SCCOE for sub-consultant costs, the City will do so in accordance with the following terms and conditions.

10.6.1 Actual Costs: The SCCOE can invoice the City for no more than the actual cost of each sub-consultant plus a specified markup not to exceed 5 percent.

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

10.6.3 Maximum Amount: The City will compensate the SCCOE for all sub-consultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional sub-consultant costs that the SCCOE 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 Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the SCCOE 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 SCCOE is a U.S. based person or entity, the SCCOE acknowledges and agrees that the SCCOE is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the SCCOE 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 SCCOE acknowledges and agrees that the SCCOE 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 SCCOE is not a U.S. based person or entity, the SCCOE acknowledges and agrees that the SCCOE 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 SCCOE 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 SCCOE’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 SCCOE, any of its Subcontractors, anyone directly or indirectly employed by either the SCCOE 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 SCCOE 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 SCCOE’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 SCCOE, 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 SCCOE from its obligations under this Section 11. The SCCOE’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 SCCOE’s obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

- 12.1 **General**: The SCCOE shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 **Documentation**: Before performing any services, the SCCOE 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 SCCOE or any other person engaged directly or indirectly by the SCCOE to perform the SCCOE’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 SCCOE hereby assigns to the City all copyrights to such works when and as created.

13.3 Intentionally Omitted.

13.4 SCCOE's Reuse: With the Director's prior written consent, the SCCOE 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 Director or as otherwise required by law, the SCCOE shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and SCCOE, or (c) information prepared, developed or received by the SCCOE or any of its Subcontractors in the course of performing services pursuant to this Agreement.

14.2 Notification: The SCCOE will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the SCCOE is otherwise prohibited from disclosing.

14.3 Limit on Prohibition: The prohibition in Subsection 14.1 above does not apply to disclosures between the SCCOE 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 SCCOE shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the SCCOE 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 SCCOE's charges for performing services, or to the SCCOE's expenditures and disbursements charged to the City; and

□ All Work Product and other records evidencing SCCOE's performance.

15.2 Producing Records: At any time during the Agreement term or during the period of time that the SCCOE is required to retain the Records, the City Manager, the Director, 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 SCCOE 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 SCCOE shall produce the requested Records at no cost to the City.

15.3 State Auditor: In accordance with Government Code Section 8546.7, the SCCOE may be subject to audit by the California State Auditor with regard to the SCCOE's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

16.1 Prohibition: The SCCOE 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 SCCOE 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 SCCOE 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 SCCOE 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 SCCOE shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The SCCOE 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 SCCOE 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 Director;
- 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 Director.

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

- The SCCOE's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the SCCOE 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 SCCOE from performing or participating in the performance of such future services; and
- The SCCOE 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 SCCOE 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 Director.

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: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. Environmental procurement policies and activities related to the completion of SCCOE'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 Director may terminate this Agreement at any time and for any reason by giving the SCCOE 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 Director may terminate this Agreement immediately upon written notice for any material breach by the SCCOE. If the Director terminates the Agreement for cause and obtains the same services from another SCCOE at a greater cost, the SCCOE is responsible for such excess cost in addition to any other remedies available to the City.

19.3 Delivery of Work: If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the SCCOE to provide to the City any finished or unfinished Work Product prepared by the SCCOE up to the date of SCCOE's receipt of the written notice of termination.

19.4 Compensation: The City will pay the SCCOE the reasonable value of services satisfactorily rendered by the SCCOE to the City up to the date of SCCOE's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the SCCOE provided them in accordance with the terms and conditions of this Agreement. The Director 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 SCCOE'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
Library Department
Attn: Araceli Delgado-Ortiz
150 E. San Fernando Street,
San Jose, CA 95112
araceli.delgado@slibrary.org
(408)808-2617

To the SCCOE: Santa Clara County Office of Education Childcare Planning and
Support Department
Attn: Michael Garcia
1290 Ridder Park Drive, San
Jose, CA, 95131
408-453-6649
migarcia@sccoe.org

- 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 SCCOE 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 SCCOE shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The SCCOE's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The SCCOE 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 SCCOE 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 SCCOE'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 SCCOE is not a waiver of any other violation by the SCCOE.
- 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 SCCOE 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 SCCOE's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The SCCOE 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 SCCOE to use subSCCOEs, the SCCOE shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director'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.

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

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

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

Or

_____ If the SCCOE is unable to make the above certification, the SCCOE 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.

Cit: _____
By *Sarah Zarate*
Email: sarah.zarate@sanjoseca.gov
Name: Sarah Zarate
Title: Director
Date

SC _____
By *Mary Ann Dewan*
Email: mdewan@sccoe.org
Name: Dr. Mary Ann Dewan
Title: County Superintendent of Schools
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.)

Email: aaron.yu@sanjoseca.gov
[Sr.] Deputy City Attorney
Date

EXHIBIT A: SCOPE OF BASIC SERVICES

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

General Description of Project: SCCOE will be responsible for the development of vision, goals, and action for improving early care and education (ECE) workforce recruitment, professional learning, and retention to support equitable and increased access to high quality ECE programs in the City of San Jose and County of Santa Clara. This shall include providing dedicated staffing with the requisite knowledge, skills, and attributes, and supporting the development and implementation of ECE workforce development activities. This may include performing existing landscape analysis; developing and implementing an ECE workforce development strategic plan; and, serving a central, coordinating function for new and existing initiatives, as needed, to meet the stated goal/s.

Task No. 1:

- A. **Services:** Provide leadership of the ECE workforce initiatives development and coordination activities; serve as a single point of contact for partner organizations, and represent these efforts to the broader stakeholder community
- B. **Deliverable:** Hire (1) one full time employee or contract with a professional expert to support the services
- C. **Completion Time:** The SCCOE 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: June 30, 2022.
 - On or before ____ Business Days from _____.

Task No. 2: Develop a workplan to address the current and anticipated workforce development needs of the ECE sector in the City of San Jose and County of Santa Clara

- A. **Services:** Engage a variety of stakeholders including licensed center-based and family care home providers, license-exempt providers, unlicensed family, friend and neighbor providers, school districts, post-secondary training providers, and families in the development of the plan.
- B. **Deliverable:** Create a workplan that includes landscape analysis, strategic planning, policy analysis and recommendations and/or resource development as required.
- C. **Completion Time:** The SCCOE 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: June 30, 2022.
 - On or before ____ Business Days from _____.

Task No. 3: Support for development, submission and subsequent management of grant-funded ECE workforce development activities

- A. **Services:** Provide ongoing assistance and communication with key stakeholders at the City of San Jose and County of Santa Clara
- B. **Deliverable:** Provide quarterly update meetings to describe activities, quarterly expenditure reports and presentation of draft and final workplan
- C. **Completion Time:** The SCCOE 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: June 30, 2022.
- On or before ____ Business Days from _____.

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
1	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$ 50,000
2	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$ 50,000
3	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$ 50,000
	<input type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses			
<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:	
		\$	
Part 3 – Sub-consultant Costs			
<input checked="" type="checkbox"/> Sub-Consultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subSCCOEs.		<input type="checkbox"/> SubSCCOEant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subSCCOE costs is:	
		\$	
Part 4 – Additional Services			
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.		<input type="checkbox"/> The Director may authorize the SCCOE to perform Additional Services up to the following maximum amount:	
		\$	
Maximum Total Compensation (sum of Parts 1 through 4):			\$150,000,000

Section 2 – Schedule of Rates and Charges

Form Name: Standard SCCOE Agreement (Non-Capital Projects)
 Exhibit B – Compensation
 Form/File No.: 1348123/T-32026
 City Attorney Approval Date: September 2016

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the SCCOE for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

EXHIBIT C: INSURANCE REQUIREMENTS

SCCOE, at SCCOE's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by SCCOE, its agents, representatives, employees or subcontractors. City acknowledges that SCCOE may self-insure all or parts of its obligations in Exhibit C.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services rendered.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

SCCOE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions: \$1,000,000 per claim and \$1,000,000 aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, SCCOE; products and completed operations of SCCOE; premises owned, leased or used by SCCOE; and automobiles owned, leased, hired or borrowed by SCCOE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
 - b. SCCOE's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of SCCOE's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by SCCOE shall not affect coverage provided CITY, its officers, employees, or agents.
 - d. Coverage shall state that SCCOE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, and agents.

3. Claims Made Coverages

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written

notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

SCCOE shall furnish CITY with certificates of insurance and endorsements or self-insurance letter affecting coverage required by this AGREEMENT. The certificates and endorsements or self-insurance letter for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

SCCOE shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

Exhibit D

Federal Funding Provisions

GRANTEE is referred to under this provision as “Contractor”. In addition to all the other terms and conditions of this Agreement, Contractor agrees to comply with the following federal funding provisions in performing the Agreement. If any of these federal funding provisions conflict with any other provisions of this Agreement, the federal funding provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control.

A. Federal Equal Employment Opportunity (41 C.F.R. Section 60-1.4(b))

In addition to the other nondiscrimination provisions in this Agreement, Contractor will comply with the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor’s noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Copeland “Anti-Kickback”

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. **Breach.** A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

C. Contractor Work Hours and Safety Standards Act.

If the amount of this Agreement exceeds \$100,000, Contractor will comply with the following in addition to any other labor requirements in the Agreement:

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Federal Clean Air Act Requirements

If the amount of this Agreement exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

E. Federal Water Pollution Act Requirements

If the amount of this Agreement exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*).
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

F. Energy Efficiency/Conservation (44 C.F.R. § 13.36(i)(13))

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

G. Suspension and Debarment

Contractor will comply with the following provision:

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor certifies that it is not listed as debarred, suspended, or otherwise excluded by agencies on the () or Award Management (www.sam.gov).



Email: mdewan@sccoe.org

Signature of Contractor's Authorized Official

Dr. Mary Ann Dewan, County Superintendent of Schools

Name and Title of Contractor's Authorized Official

Date

H. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))

A Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the City.

I. Use of Recovered/Recycled Materials

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. Meeting Agreement performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

J. Subcontracting

In addition to all other subcontracting provisions, Contractor shall comply with the following:

1. **Subcontractor Compliance:** The Contractor shall place in any subcontractor agreement the requirement that the subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Agreement, including the Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) requirements.
2. **Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms:** If the Contractor is authorized by this Agreement to use subcontractors, the Contractor warrants that it took the following affirmative steps, and that it has retained documentation of these steps:
 - Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this Agreement;
 - Made reasonable efforts to solicit the businesses on the list as subcontractors for this Agreement;
 - Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
 - Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

If at any time during the term of the Agreement the Contractor seeks and obtains authorization to use subcontractors to complete any of the scope of work, the Contractor shall take the affirmative steps listed above when selecting the subcontractor and will maintain documentation of all such efforts.

K. Notice of FEMA Reporting Requirements and Regulations (applicable to FEMA)

In addition to all other reporting requirements in the Agreement, Contractor agrees to comply with the following:

1. **General.** The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration, FEMA requires the State of California to provide various financial and performance reporting.
 - a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
 - b. Failure of State of California to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Agreement.
2. **Applicable Regulations and Policy.** The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
 - a. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
 - b. 44 C.F.R. § 13.41 (Financial Reporting)
 - c. 44 C.F.R § 13.50(b) (Reports)
 - d. 44 C.F.R. § 206.204(f) (Progress Reports)
 - e. FEMA Standard Operating Procedure No. 9570.14, *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (Dec. 2013, as may be amended)
 - f. FEMA-State Agreement
3. **Financial Reporting.** The State of California is required to submit the following financial reports to FEMA:
 - a. **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
 - b. **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
 - c. **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.
4. **Performance Reporting.** The State of California is required to submit the following financial reports to FEMA:
 - a. **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project.

- b. **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

L. Access to Records (44 C.F.R. § 13.36(i)(10))

In addition to all other provisions regarding records in this Agreement, Contractor agrees to comply with the following:

1. The Contractor agrees to provide the City, the State of California, the US Treasury Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the US Treasury Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
4. In compliance with the Disaster Recovery Act of 2018, the Contractor acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the US Treasury Administrator or the Comptroller General of the United States.

M. Retention of Records (44 C.F.R. § 13.36(i)(11))

In addition to all other records retention requirements in this Agreement, Contractor agrees to comply with the following:

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than 5 years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, State of California, the US Treasury Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

N. US Treasury Seal, Logo, and Flags

The Contractor shall not use the Department of Treasury (Treasury) seal(s), logos, crests, or reproductions of flags or likeness of Treasury agency officials without specific Treasury pre-approval.

O. No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Agreement.

P. Compliance with Law

This is an acknowledgement that Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) financial assistance will be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable local, state, and federal law, regulations, executive orders, Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) policies, procedures, and directives.

Q. Termination and Remedies

1. **For Convenience:** The City may terminate this Agreement at any time and for any reason by giving the Contractor 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.
2. **For Cause:** The City may terminate this Agreement immediately upon written notice for any material breach by the Contractor. If the City terminates the Agreement for cause and obtains the same services from another contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.
3. **Delivery of Work:** If the City terminates the Agreement – whether for convenience or for cause – the City has the option of requiring the Contractor to provide to the City any finished or unfinished work product prepared by the Contractor up to the date of Contractor's receipt of the written notice of termination.
4. **Compensation:** The City will pay the Contractor the reasonable value of services satisfactorily rendered by the Contractor to the City up to the date of Contractor's receipt of the written notice of termination. For services to be "satisfactorily rendered," the City must determine that the Contractor provided them in accordance with the terms and conditions of this Agreement. The City will determine the reasonable value of satisfactorily rendered services based on the compensation agreed to by the Parties attached to this Agreement.
5. **Receipt of Notice:** For purposes of this provision, the Contractor's receipt of the written notice of termination will be determined based on the method of providing notice. The notice is effective: if e-mailed when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement); when personally delivered if personal service; and 3 calendar days after deposit in the United States mail, whichever occurs first.

R. Fraud and False or Fraudulent or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

