




Santa Clara County Office of Education

Jon R. Gundry
County Superintendent of Schools

May 20, 2015

TO: Santa Clara County Board of Education
FROM:  Jon R. Gundry, County Superintendent of Schools
SUBJECT: Request to extend contract for School Business Service Consultants

Associated Goal

Goal 4: Improve organizational effectiveness and efficiency

Background

The SCCOE has engaged the firm of School Business Service Consultants to provide research and analysis on issues related to audits, such as the payroll audit where the vendor is supporting the Superintendent in leading the development of management responses and actions. This request is to extend the contract to continue these services through the end of the calendar year and to cover other operational issues in SCCOE operations, such as district requests for fiscal support.

Fiscal Implications

Original Contract	\$50,000
Amendment #1	\$49,999
Amendment #2 (this request)	<u>\$150,000</u>
New Total Contract Amount	<u>\$249,999</u>

Requested Action

Approve the contract amendment to increase the contract amount and extend services through the end of the calendar year.



AMENDMENT TO CONSULTANT AGREEMENT

This amendment between the **Santa Clara County Office of Education** (hereinafter referred to as SCCOE), and _____ School Business Service Consultants (hereinafter referred to as Consultant), changes

SCCOE RM# 15-0386 as follows:

Scope of Work/Duties: Are hereby AMENDED as follows:

The consultant will provide research and analyze issues presented in recent audit reports, including but not limited to payroll audits. Additionally, the consultant may be required to provide research and analysis related to other operations and issues in business services or other SCCOE operations.

Original Contract Start Date:

Original Contract Completion Date:

Original Contract Amount:

\$ 50,000.00

AMENDED/Revised Start Date:

AMENDED/Revised Completion Date:

12/31/2015

AMENDED Contract Increase/Decrease Amount:

\$ 150,000.00

Revised Contract Not-to-Exceed:

\$ 249,999.00

All other items, terms and conditions remain unchanged.

AUTHORIZED SCCOE PARTY:

Signature: _____

Name (print): Jon Gundry

Title: Superintendent

Date Signed: 5/21/2015

Branch / Dept.: Office of the Superintendent

Address: 1290 Ridder Park Drive, MC 201

San Jose, CA 95131

Phone/Fax Number: (408) 453-6511

E-mail Address: Jon_Gundry@sccoe.org

CONSULTANT:

Signature: _____

Name (print): Frank S. Butler

Title: President

Date Signed: 5/21/2015

Company Name: School Business Service Consultants

Address: 23020 Atlantic Circle, Moreno Valley, CA 92553

Phone/ Fax Number: (951) 203-1557

E-Mail Address: fsbutler@gmail.com

SCCOE USE ONLY:

Initiator: _____

Manager: _____

Director: _____

Chief: _____

SANTA CLARA COUNTY OFFICE OF EDUCATION

AMENDMENT TO CONTRACT WITH

School Business Services Consultants

THIS AMENDEMENT ("Amendment") is made as of January 5, 2015 by and between the Santa Clara County Office of Education ("SCCOE") and School Business Services Consultants ("Consultant"), jointly ("Parties").

WHEREAS, Consultant was selected as the Best Source to provide research and analysis on issues related to recent audits of the SCCOE.

WHEREAS, the SCCOE and Consultant entered into a Professional Services Agreement executed November 12, 2014 ("Original Services Agreement").

WHEREAS, the Appendix A, Scope of Services requires extension of services beyond payroll audit issues

WHEREAS, the Appendix B, Calculation of Charges, modifies the not-to-exceed total fee due to extension of services.


NOW, THEREFORE, be it agreed between the Parties that the following Appendices of the Original Services Agreement are hereby replaced in their entirety as follows:

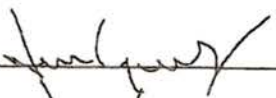
1. Modifications:
 - (a) Appendix A of the Original Service Agreement is hereby replaced in its entirety with the attached "Appendix A, Amendment #1."
 - (b) Appendix B of the Original Service Agreement is hereby replaced in its entirety with the attached "Appendix B, Amendment #1"
2. Effective Date. The modifications set forth in Section 1 shall be effective January 5, 2015.
3. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Original Service Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF the parties signing below are duly authorized to sign on behalf of SCCOE and Consultant.

School Business Service Consultants

Santa Clara County Office of Education

By: 
Name: FRANCES BUTLER
Date: 2/10/2015

By: 
Name: JAN E. [unclear]
Date: 01/06/2015

Risk Management 1/21/15
Reviewer: 
Rm# 15-0386A

APPENDIX A

The Consultant shall provide the following services:

The consultant will provide research & analyze issues presented in recent audit reports, including but not limited to payroll audits. Additionally, the consultant may be requested to provide research & analysis related to other operations and issues in business services or other SCCOE operations.

Appendix B

Calculation of Charges

Total Cost of the Agreement (Not to Exceed Amount) shall be: \$99,999.00

**COMPENSATION TO CONTRACTOR
SHALL NOT EXCEED THE AMOUNT AUTHORIZED BY THIS AGREEMENT.**

The rate* breakdown is as follows:

(Please specify if rate is hourly, daily or flat rate)

*Rate increases or changes must have prior written approval from the SCCOE's Branch Chief.

Consultant Hourly Rate is \$225.00 and total billings are not to exceed \$99,999.00

No other expenses will be provided.

**NOTE: All contractual agreements to exceed \$100,000 shall require prior approval of County Board
(BP 3312, AR 3310)**

PROFESSIONAL SERVICES AGREEMENT

RM# _____

This Professional Services Agreement ("Agreement") is dated for convenience November 12, 2014 and is entered into between School Business Service Consultants (hereinafter "Contractor" or "Consultant") and the Santa Clara County Office of Education (hereinafter "SCCOE").

RECITALS

Whereas, the SCCOE desires Contractor to provide professional services as detailed in Appendix A ("Description of Services") herein, and

Whereas, Contractor represents itself as able and, for a consideration, willing to perform the services outlined in Appendix A ("Description of Services") herein,

Now, therefore, the parties enter into this Agreement for Contractor to provide professional services to the SCCOE as detailed herein. This Agreement attaches and incorporates by reference as though fully set forth herein the following documents: W-9 Form, Criminal Background/Tuberculosis Clearance Written Certification Form, Contractor's Disclosure Form Regarding SCCOE Officials, Appendix A – Description of Services, Appendix B – Calculation of Charges, and General Conditions to Professional Services Agreement, (collectively constituting the "Agreement"). The following documents shall also be attached to this Agreement: **(1) Insurance certificates and (2) Endorsement (See Section 9 for Insurance and Endorsement requirements).**

A. TERM; EFFECTIVE DATE

This Agreement shall become effective only upon proper execution by the parties and terminate on June 30, 2015.

B. SERVICES CONTRACTOR AGREES TO PERFORM

Contractor agrees to perform the services provided for in Appendix A ("Description of Services") of this Agreement.

C. COMPENSATION

The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached **Appendix B ("Calculation of Charges")**. Contractor shall submit invoices for services rendered to the SCCOE within thirty (30) days of service rendered. Contractor shall furnish invoices in a form acceptable to the SCCOE. All rendering amounts paid by the SCCOE to the Contractor shall be subject to audit by the SCCOE. Upon receipt of an acceptable invoice, payment shall be made in a reasonable time upon approval by SCCOE Branch Chief or designee, in his or her sole discretion that the services, set forth in **Section B ("Services Contractor Agrees to Perform")** of this Agreement, have been rendered satisfactorily, and in a professional and timely manner in accordance with this Agreement. Such payment shall be made to the address specified in Section 33 ("Notice to the Parties"). If the SCCOE and Contractor mutually agree that the scope of work described herein is increased, the Agreement may also be increased provided that there is a prior written modification to the Agreement in accordance with **Section 24 ("Modification of Agreement")** of the General Terms and Conditions. It shall be the responsibility of the Contractor to ensure that the total approved amount of the Agreement is not exceeded. Any work performed in excess of said amount may not be compensated. **In no event shall the SCCOE be liable for interest or late charges for late payments.**

GENERAL CONDITIONS TO PROFESSIONAL SERVICES AGREEMENT

1. AVAILABILITY OF FUNDS AND BUDGET AND FISCAL PROVISION AND TERMINATION IN THE EVENT OF NON-APPROPRIATION

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the SCCOE, and approval and appropriation of funds for this Agreement. Charges will accrue only after prior written authorization is provided by the authorized representative of SCCOE and proper execution of this Agreement by the parties.
- b. The amount of the SCCOE's obligation hereunder shall not at any time exceed the amount herein stated.
- c. The SCCOE has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.
- d. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.
- e. This section controls against any and all other provisions of this Agreement.

2. DISALLOWANCE

- a. If Contractor claims or receives payment from the SCCOE for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to the SCCOE upon the SCCOE's request. At its option, the SCCOE may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.
- b. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal or state programs. Contractor acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

3. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a consultant, who submits a false claim, shall be liable to the SCCOE for three times the amount of damages which the SCCOE sustains because of the false claim. A person who commits a false claim act shall also be liable to the SCCOE for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the SCCOE for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the SCCOE if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the SCCOE, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the SCCOE;
- c. conspires to defraud the SCCOE by getting a false claim allowed or paid by the SCCOE;
- d. has possession, custody, or control of public property or money used or to be used by the SCCOE and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- e. is authorized to make or deliver a document certifying receipt of property used or to be used by the SCCOE and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the SCCOE; or
- h. is a beneficiary of an inadvertent submission of a false claim to the SCCOE, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the SCCOE within a reasonable time after discovery of the false claim.

4. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the SCCOE and in such case must be remedied or replaced by Contractor without delay at no additional cost to the SCCOE.

5. **QUALIFIED PERSONNEL**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with the SCCOE's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the SCCOE's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project schedule specified in this Agreement.

6. **RESPONSIBILITY FOR EQUIPMENT**

The SCCOE shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by the SCCOE.

7. **TAXES**

Contractor shall pay all taxes levied in connection with this Agreement, or the services delivered pursuant hereto.

8. **INDEPENDENT CONTRACTOR**

- a. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the SCCOE. Contractor shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the SCCOE and Contractor or its agents and employees.
- b. Any terms in this Agreement referring to direction from the SCCOE shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as the means by which such a result is obtained. The SCCOE does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the SCCOE and Contractor or its agents and employees.
- c. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the SCCOE's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement under Section C., "Compensation". Contractor shall refund any amounts necessary to effect such reduction.
- d. Contractor shall also complete and file with the SCCOE the attached W-9 form.

9. **INSURANCE**

- a. Without in anyway limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant shall procure and maintain during the full term of this Agreement the following insurance amounts and coverage:
 - 1) Commercial General Liability Insurance with limits not less than \$1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage (including coverage for claims of sexual abuse and molestation).
 - 2) Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 (one million dollars) each accident.
 - 3) Professional Liability (E & O) Insurance with limits not less than \$1,000,000.00 (one million dollars) each occurrence and in the aggregate. Coverage must at a minimum apply to negligent Errors and Omissions arising out of professional services, performed under the contract, with any deductible not to exceed \$100,000 each claim.
- b. Commercial General Liability policy must provide the following:
 - 1) **Name as Additional Insured the Santa Clara County Office of Education, its Board, officers and employees.**
 - 2) That such policy is primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.
- c. If any policies are written on a claims-made form, Consultant agrees to maintain such insurance continuously in effect for three years following completion of this Agreement or extend the period for reporting claims for three years following the completion of this Agreement, such that occurrences which take place during the Agreement period shall be insured for three years following completion of the Agreement.
- d. The Consultant shall provide the SCCOE with the appropriate certificate(s) of insurance prior to commencing performance. The Consultant shall also be obligated to notify the SCCOE in writing at

least 30 (thirty) days in advance of any cancellation, non-renewal or reduction of any of its insurance policies required under this Agreement. Consultant also understands and agrees that the SCCOE may withhold payment for services performed for any violations of the insurance provisions of this Agreement.

10. INDEMNIFICATION

- a. With respect to professional services to be provided under this Agreement, the Consultant shall indemnify and hold harmless the SCCOE, its Board, agents, and employees from and against any and all actions, claims, damages and losses, including attorney's fees that may arise out of or in any way result from the negligent or intentional acts, errors, or omissions of Consultant.
- b. With respect to claims arising under Consultant's general liability coverage, the Consultant shall indemnify and hold harmless the SCCOE, its agents, and employees from and against any actions, claims, damages or loss, including attorney's fees that may arise out of or in any way result from Consultant's activities in the performance of its services under this Agreement.
- c. The Consultant will not, and will not permit its officers, employees and/or agents, to infringe on any patent right, copyright, trade secret or any other proprietary right or trademark of the SCCOE in the performance of services under this Agreement. The Consultant shall not disclose to third parties any details of its services for the SCCOE or the actions, inactions or decisions of the Agency, other than disclosure to third parties of the fact that the Consultant represented the SCCOE in the particular publicly known transactions on which the Consultant works on the SCCOE's, and to describe in general terms only, the Consultant's role, the services Consultant performed, and the nature of such transactions. Such disclosures may be made to current or prospective clients of the Consultant or to others, and may consist of announcements and advertisements placed at the Consultant's own expense in legal, business, financial and other periodicals and publications.

11. LIABILITY OF SCCOE

SCCOE'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED FOR IN SECTION C ("COMPENSATION") OF THIS AGREEMENT. SCCOE SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS IN CONNECTION WITH THIS AGREEMENT.

12. DEFAULT; REMEDIES

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
 - 1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement.
 - 2) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement of any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property, (E) takes action for the purpose of any of the foregoing, or (F) is the subject of any order of a court or government authority related to the Federal Bankruptcy Act.
- b. On and after any Event of Default, the SCCOE shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement for cause or to seek specific performance of all or any part of this Agreement. In addition, SCCOE shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to the SCCOE on demand all costs and expenses incurred by the SCCOE in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The SCCOE shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between SCCOE and Contractor all damages, losses, costs, or expenses incurred by the SCCOE as a result of such Event of Default due from Contractor pursuant to the terms of this Agreement.
- c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

13. TERMINATION

- a. It is expressly understood and agreed that in the event the Consultant fails to perform its obligations under this Agreement, this Agreement may be terminated for cause by the SCCOE and all the Consultant's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice to Consultant, and no work will be undertaken by Consultant after receipt of the notice. In the event this Agreement is terminated by the SCCOE pursuant to this paragraph; the Consultant shall be paid for services performed up to the date of termination.
- b. It is further understood and agreed that the SCCOE may terminate this Agreement for the SCCOE's convenience and without cause at any time by giving the Consultant thirty (30) days written notice of such termination. In such an instance, the Consultant shall be entitled to compensation for services performed up to the effective date of termination.
- c. Upon receipt of written notice that this Agreement is terminated, the Consultant will submit an invoice to the SCCOE for an amount that represents the value of services actually performed up to the date of termination for which the Consultant has not previously been compensated as provided for herein. Upon approval and payment of this invoice by the SCCOE, the SCCOE shall be under no further obligation to the Consultant, monetarily or otherwise.

14. CONFLICT OF INTEREST

- a. Conflict of Interest Standards. The following is a brief overview of conflict of interest laws and policies. Contractor is responsible to know, and comply with, the full requirements of the law.
 - 1) Under the California Political Reform Act (CPRA), codified in part as Government Code section 1090 and sequential, and section 87100 and sequential: No public official shall make, participate in making, or in any way attempt to use his or her official position, to influence a contract on behalf of the public agency when he or she knows, or has reason to know, that he or she has a personal financial interest in that contract.
 - 2) Government Code section 1090 defines "making" a contract broadly to include actions that are preliminary or preparatory to the selection of a contractor such as but not limited to: involvement in the reasoning, planning, and/or drafting of scopes of work, making recommendations, soliciting bids and requests for proposals, and/or participating in preliminary discussions or negotiations. (Cal. Govt. Code § 1090)
 - 3) State law limits the amount of gifts that may be received by public officials from a single source during a calendar year. In 2013, the gift limit is \$440 per source per calendar year. (See e.g. Cal. Govt. Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)
 - 4) State law prohibits, with limited exceptions, certain former local public officials from appearing before their former public agency for the purpose of influencing a governmental decision for 12 months from the date the former employee left that public agency. (Cal. Govt. Code § 87406.3)
 - 5) State law bars a public agency employee from making governmental decisions regarding an organization which is engaged in employment negotiations with that public agency employee. (Cal. Govt. Code § 87407)
 - 6) Contractors and their representatives may be required to disclose economic interests that they hold that could foreseeably be affected by the exercise of their public duties. If applicable, Contractors/representatives must submit a disclosure filing called a Statement of Economic Interests or "Form 700." (Cal. Govt. Code §§ 81000-91015; SCCOE Board Rules and Procedures 9270, "Conflict of Interest Code")
- b. Obligations of Contractor. It is the obligation of the Contractor, as well as any subcontractors, to determine whether or not participation in a contract may constitute a conflict of interest. While the SCCOE staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the SCCOE. The determination of the potential for a conflict must be made by the Contractor. Contractor is responsible to notify the SCCOE immediately if it finds that a potential conflict may exist.
- c. Consultation with Counsel. The SCCOE strongly advises any Contractor, and any proposing/bidding firm, to consult with its legal counsel to determine whether a conflict of interest may exist. It is the responsibility of a Contractor, or a proposing/bidding firm, to make that determination.
- d. Consequences of a Violation. Any contract made in violation of Section 1090 is void and cannot be enforced. When Section 1090 is violated, a government agency is not obligated to pay the Contractor for any goods or services received under the void contract. The government agency can seek repayment from the Contractor of any amounts already paid, and refer the matter to appropriate authorities for prosecution. Additional consequences may also apply.

- e. **Disclosure Requirement.** Contractor will submit to the SCCOE a list of all of Contractor's employees (including owners) who are also current SCCOE Board members or employees, or former SCCOE Board members or employees in the last year. Contractor will submit the attached "Contractor's Disclosure Form Regarding SCCOE Officials." Contractor will update this form with SCCOE, as needed, during the term of this Agreement. Exception: Public agencies that provide contract services to the SCCOE are not subject to this disclosure requirement.
- f. **Compliance with Gift Limits.** Contractor will abide by legal gift limits and use good judgment, discretion and moderation when offering gifts, meals or entertainment or other business courtesies to SCCOE officials, and in order not to place SCCOE officials in conflict with any specific gift restrictions: (1) No Contractor or representative thereof shall offer, give, or promise to offer or give, directly or indirectly, any money, gift or gratuity to any SCCOE contracting or procurement official at any time. (2) No Contractor or representative thereof shall offer or give, directly or indirectly, any gifts in a calendar year to a SCCOE official which exceed the allowable gift limit. (See e.g. Cal. Govt. Code 89503; 2 CCR 18940.2. See also www.fppc.ca.gov)

15. PROPRIETARY INFORMATION OF SCCOE

- a. Contractor understands and agrees that, in connection with this Agreement, the Contractor may have access to proprietary or confidential information which may be owned or controlled by the SCCOE and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the SCCOE, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the SCCOE to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary or confidential information.
- b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code sections 49073 and sequential. Contractor shall only access confidential student information pursuant to prior written parental consent, legitimate educational interest in performing duties on behalf of SCCOE under this Agreement, or other provisions of federal and state law permitting access to confidential student information. **Contractor shall not use confidential student data for any purposes other than providing services to the SCCOE pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of the SCCOE and any such re-disclosure shall be consistent with state and federal law.**
- c. The confidentiality provisions of this Section shall survive the termination or expiration of this Agreement.

16. OWNERSHIP OF THE RESULTS

Any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer data files and media or other documents prepared by Contractor in connection with services to be performed under this Agreement, shall be the property of and be promptly transmitted to the SCCOE. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities, but only to the extent that such retention and use complies with Section 15 of this Agreement ("Proprietary Information of SCCOE").

17. AUDIT AND INSPECTION OF RECORDS

The Consultant agrees to maintain and make available to the SCCOE accurate accounting and other records relative to its obligations under this Agreement. The Consultant will participate promptly and cooperatively in any audits conducted by the SCCOE or its nominee, and permit the SCCOE or a representative to audit, examine and make copies from such books and records, and to perform audits related to all matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Consultant shall maintain such data and records in an accessible location and condition for a period of not less than three years after a final payment under this Agreement or until after final audit has been completed, whichever is later.

18. SUBCONTRACTING

The Consultant is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement unless such subcontracting is agreed to in writing and executed in the same manner as

this Agreement. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any party and shall be void.

19. ASSIGNMENT

It is understood and agreed that the services to be performed by the Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of the SCCOE.

20. NON DISCRIMINATION

Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender, AIDS/ARC/HIV status, or disability, in its performance under this Agreement.

21. CRIMINAL BACKGROUND CHECKS

a. Criminal Background Check

- 1) Contractor is required to comply with the criminal background check provisions of Education Code Section 45125.1. Contractor will conduct criminal background checks with the California Department of Justice (CDOJ) for all Contractor employees, agents, and volunteers assigned to the SCCOE, and will certify that no employees, agents, or volunteers who have been convicted of serious or violent felonies as specified, will have contact with SCCOE pupils pursuant to this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.
- 2) Contractor will provide the SCCOE with a list of all employees, agents and volunteers who have cleared the criminal background check, as detailed above, and who will have contact with SCCOE pupils pursuant to this Agreement, and specify to which sites they will be assigned.
- 3) Contractor will be responsible for the costs of the criminal background checks.
- 4) As written certification of its compliance with this Section, Contractor will complete and submit the Criminal Background Check/Tuberculosis Clearance Certification Form ("CBC/TB form") (ATTACHED).
- 5) For any Contractor employees, agents or volunteers that Contractor hires subsequent to Contractor's initial submission of the CBC/TB form to SCCOE, Contractor will conduct background checks and submit additional CBC/TB forms to SCCOE, as required.
- 6) The criminal background check requirement applies only to Contractor's employees, agents or volunteers who will have more than limited contact with students. Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with SCCOE students, the SCCOE's Cabinet-level Administrator supervising this Agreement has the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students.

b. Subsequent Arrest Notification

- 1) In addition to the initial criminal background check, Contractor will obtain subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have contact with SCCOE students, and is responsible for all costs associated with these subsequent notifications.
 - 2) Upon receipt of notice that any of its employees, agents, or volunteers has been arrested or convicted of a serious or violent felony as described in EC 45125 .1 (citing 45122.1), a sexual offense as defined by EC 44010, or a controlled substance offense as described in EC 44011, Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with pupils, and will immediately notify SCCOE.
- c. Failure by Contractor to comply with this Section may result in termination of this Agreement at the SCCOE's sole discretion.

22. TUBERCULOSIS TESTING

- a. Contractor agrees that all of its employees, agents or volunteers whose functions require frequent or prolonged contact with students will complete tuberculosis testing the same as the testing that is described in California Education Code section 49406. The examination shall consist of an approved intradermal tuberculin test, which, if positive, shall be followed by an x-ray of the lungs. Thereafter, the Contractor shall ensure that its employees, agents or volunteers who are skin test negative have undergone the foregoing examination at least once every four years if the Contractor is still rendering services to the SCCOE.
- b. The Contractor shall be responsible for the costs of the examination.
- c. Contractor shall submit written certification to the SCCOE, using the attached Criminal Background Check/Tuberculosis Clearance Written Certification Form, that its employees, agents or volunteers who will have frequent or prolonged contact with students have passed the tuberculosis test requirements. Contractor shall list such employees, agents or volunteers by name and date of test on the Criminal Background Check/Tuberculosis Clearance Written Certification Form.
- d. The tuberculosis testing requirement applies only to Contractor's employees, agents or volunteers who will have frequent or prolonged contact with students. Contractor's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet tuberculosis testing requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact or only limited contact with SCCOE students, the SCCOE's Cabinet-level Administrator supervising this Agreement has the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have no contact or only limited contact with students.
- e. Contractor shall ensure that only its employees, agents or volunteers who have submitted to and passed a TB test will have frequent or prolonged contact with students. Contractor will maintain on file in Contractor's offices current documentation that each of its employees, agents or volunteers who will have frequent or prolonged contact with students meets tuberculosis testing requirements.

23. WAIVER

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

24. MODIFICATION OF AGREEMENT

This Agreement may only be modified or amended by written instrument executed and approved in the same manner as this Agreement.

25. DISPUTE RESOLUTION

- a. Prior to any action or resort to any legal remedy, SCCOE and Contractor agree to exercise reasonable efforts, and to negotiate in good faith, to amicably resolve any dispute that may arise concerning the performance by either party of their obligations under this Agreement. If SCCOE's and Contractor's project managers cannot resolve disputes through such negotiations, then the Parties' project managers will escalate the dispute to their respective executives who shall have authority to resolve the controversy and who are at a higher level of management than the project managers.
- b. In such event, either SCCOE or Contractor shall give the other party written notice of any dispute not resolved by good faith negotiations between the Parties' respective project managers. Within fifteen (15) days after delivery of such initial notice, the receiving party shall submit to the other a written response. Both the initial notice, and the response, shall include (i) a statement of that party's position, (ii) a summary of arguments supporting that position, and (iii) the name and title of the executive who will represent that party and of any other person who will accompany the executive.
- c. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other shall be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- d. If the executives cannot resolve the dispute to the satisfaction of both Parties, then SCCOE and Contractor may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation or non-binding arbitration. If the parties do not mutually agree to

mediation or non-binding arbitration, or mutually select a mediator or arbitrator for the dispute, or such efforts do not resolve the dispute, then either party may pursue any remedy available under California law.

26. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

27. COMPLIANCE WITH LAWS

Contractor shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time.

28. GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of California. The venue for all litigation relative to this Agreement shall be Santa Clara County.

29. SECTION HEADINGS

The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

30. ENTIRE AGREEMENT

The entire Agreement between the parties is included herein and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed herein in writing, and no change or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as this Agreement.

31. EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS

- a. Original copies of this Agreement shall be executed by the respective party's authorized signatory(ies).
- b. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

32. SEVERABILITY

If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

(Continued on the next page.)

33. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered, as follows:

NOTICE TO THE SCCOE OFFICE:

Santa Clara County Office of Education

Branch: Office of the Superintendent

1290 Ridder Park Drive, MC 201

San Jose, CA 95131

Ph: (408) 453-6511 Fax: (408) 453-6601

Email: priscila_caballero@sccoe.org

NOTICE TO THE CONTRACTOR:

CONTRACTOR	School Business Service Consultants
CONTACT PERSON NAME	Frank S. Butler
STREET ADDRESS	23020 Atlantic Circle
CITY	Moreno Valley
STATE	CA
ZIP	92553
TELEPHONE	(951) 203-1557
FAX	866-462-8286
EMAIL ADDRESS	fsbutler@gmail.com

34. SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF the parties hereto have executed this Agreement on November 12, 2014.

For School Business Service Consultants


For SANTA CLARA COUNTY OFFICE OF EDUCATION

APPROVED BY:

APPROVED BY:

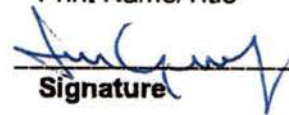
Frank S. Butler, President

Print Name/Title

 11/14/14
Signature Date

Jon Gundry, Superintendent

Print Name/Title

 11/19/2014
Signature Date

All contractual agreements to exceed \$100,000 shall require prior approval of the Santa Clara County Board of Education (BP 3312, AR 3310).

Board Approval Date: _____
**If amount exceeds \$100,000*

SCCOE USE ONLY:

Initiator: _____
Manager: _____
Director: _____
Chief: _____

Risk Management
Reviewer: 
Rm#

15-0384

APPENDIX A

The Consultant shall provide the following services:

The consultant will provide research & analyze issues related to audits, including but not limited to payroll audit.

Appendix B

Calculation of Charges

Total Cost of the Agreement (Not to Exceed Amount) shall be: \$ 50,000.00

**COMPENSATION TO CONTRACTOR
SHALL NOT EXCEED THE AMOUNT AUTHORIZED BY THIS AGREEMENT.**

The rate* breakdown is as follows:

(Please specify if rate is hourly, daily or flat rate)

***Rate increases or changes must have prior written approval from the SCCOE's Branch Chief.**

Consultant hourly rate of \$225.00

*No additional expenses shall be reimbursed.

**NOTE: All contractual agreements to exceed \$100,000 shall require prior approval of County Board
(BP 3312, AR 3310)**

Santa Clara County Office of Education Criminal Background Check/Tuberculosis Clearance Written Certification Form

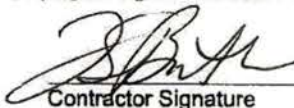
Name of Independent Contractor/Service Provider:	School Business Consulting Services
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**Provided as a summary only; the provisions in the Agreement regarding this subject matter shall control. Direct services to students must be performed on school grounds.*

Contractor shall check the applicable boxes and fill in any applicable blanks.

CRIMINAL BACKGROUND CHECK		
1.	<input checked="" type="checkbox"/>	Contractor/Contractor's employees, agents or volunteers will ONLY HAVE LIMITED OR NO CONTACT with SCCOE students (as defined by SCCOE) in the performance of this Agreement. By checking this box, Contractor certifies that its employees, agents, volunteers will have no contact, or only limited contact, with SCCOE students in the performance of this Agreement.
2.	<input type="checkbox"/>	Contractor/Contractor's employees, agents or volunteers, <u>listed here/attached</u> , will have MORE THAN LIMITED CONTACT with SCCOE students (as defined by SCCOE) in the performance of this Agreement. INSERT NAMES OF EMPLOYEES (Attach and sign additional pages, as needed.) By checking this box, Contractor certifies that the employee(s), agent(s), volunteer(s) noted above/attached fingerprinted under procedures established by the California Department of Justice and the FBI, and the results of those fingerprints reveal that none of these individuals have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code, and Contractor certifies that it has requested subsequent arrest notification for these individuals.
TUBERCULOSIS CLEARANCE		
3.	<input checked="" type="checkbox"/>	Contractor/Contractor's employees, agents or volunteers will ONLY HAVE LIMITED OR NO CONTACT with SCCOE students (as defined by SCCOE).
4.	<input type="checkbox"/>	Contractor/Contractor's employees, agents or volunteers, <u>listed here/attached</u> , will have MORE THAN LIMITED OR PROLONGED CONTACT with SCCOE students (as defined by SCCOE) in the performance of this Agreement, and have cleared a TB Test (within the past year, four years if a chest x-ray). INSERT NAMES OF INDIVIDUALS AND DATES OF T.B. CLEARANCE (Attach and sign additional pages, as needed.)

Further Certification by Contractor: *"I hereby certify on behalf of Contractor that the information provided herein is true and accurate. I further agree that during the term of this Agreement, if Contractor learns of additional information that differs from the responses provided above, including but not limited to hiring new personnel and/or notice of a subsequent arrest, Contractor will immediately forward this information to SCCOE. If Contractor receives any subsequent arrest notification, I certify that Contractor will immediately notify SCCOE and bar such employee/ agent/ volunteer from performing any services under this Agreement that involve any contact with students."*


 Contractor Signature

11/14/14
 Date

FRANK S. BUTLER
 Print name of Signatory

Santa Clara County Office of Education Contractor's Disclosure Form Regarding SCCOE Officials

To be completed by Contractor:

Name of Contractor:	School Business Consulting Services
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Are any of Contractor's employees (or owners) ALSO current SCCOE employees/Board members, or former SCCOE employees/Board members within the last year? (Check "Yes" or "No" as applicable.)

☒ **NO.** None of Contractor's employees (or owners) are ALSO current SCCOE employees/Board members, or former SCCOE employees/Board members within the last year.

☐ **YES.** Contractor's employees (or owners) listed in the table below are ALSO current SCCOE employees/Board members, or former SCCOE employees/Board members within the last year.
(Complete the table below. The list may be continued on an additional page as needed.)

NAME of current SCCOE employee/Board member, or former SCCOE employee/Board member within the last year, who is <u>ALSO</u> Contractor's employee (or owner):	JOB TITLE(S) AT SCCOE of current SCCOE employee/Board member, or former SCCOE employee/Board member within the last year, who is <u>ALSO</u> Contractor's employee (or owner):	DATE on which individual left SCCOE employment/Board. Or, if the individual is currently an SCCOE employee/Board member, write "current."	If individual is a current SCCOE employee/Board member, <u>how is he/she to be paid?</u> (i.e., through SCCOE Human Resources or Contractor plans to pay directly, etc.)

Certification by Contractor:

On behalf of Contractor, I hereby certify that, to Contractor's knowledge, the information provided in this form is true, accurate, and complete. I agree that during the term of this Agreement, if Contractor learns of information that differs from that provided above, including but not limited to the hiring of new personnel who are current SCCOE employees or Board members, or former SCCOE employees or Board members within the last year. Contractor will promptly update this form with the SCCOE.


 Contractor's Signature

11/14/14
 Date

FRANK S. BUTLER
 Print Name of Signatory

**Request for Taxpayer
Identification Number and Certification**

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) FRANK S. BURKE	
Business name/disregarded entity name, if different from above School Business Service Consultants	
Check appropriate box for federal tax classification: <input checked="" type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <input type="checkbox"/> Other (see instructions) ▶	
Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____	
Address (number, street, and apt. or suite no.) 23020 ATLANTIC Circle	Requester's name and address (optional)
City, state, and ZIP code Moreno Valley, CA 92553	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number	
563	- 60 - 6399
Employer identification number	

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶ [Signature]	Date ▶ 11/13/14
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.