

**AGREEMENT BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND
DKG CONSULTANTS**

This Agreement is entered this 31st of January, 2024, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and DKG Consultants, hereinafter called “Consultant.”

WHEREAS, C/CAG has determined that engaging a financial consultant is essential to support various financial activities and identifying C/CAG’s specific finance needs; and

WHEREAS, C/CAG solicited qualifications and rates from potential service providers; and

WHEREAS, C/CAG has determined that the Consultant has the requisite qualifications to perform this work; and

WHEREAS, the total amount available to Consultant under this Agreement is not to exceed \$45,000; and

WHEREAS, the C/CAG Executive Director is authorized to execute the agreement with the Consultant to provide services indicated in Exhibit A, *Scope of Work*.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **Services to be provided by Consultant.** In consideration of the payments hereinafter set forth, Consultant shall provide services consistent with Exhibit A, *Scope of Work* attached hereto (the “Services”).

In the performance of its services, Consultant represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and Consultant represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

2. **Payments.** In consideration of the services rendered in compliance with all terms, conditions, and specifications set forth herein, in Exhibit A, *Scope of Work* and Exhibit C, *Key Personnel Assignments*, and in any subsequent task orders executed under the governance of this agreement, C/CAG shall reimburse Consultant on a time and materials basis. The aggregate total amount of payment by C/CAG to Consultant for services shall not exceed forty-five thousand dollars (\$45,000), as shown in Exhibit B, *Project Budget and Schedule*, for services provided during the Contract Term set forth below, including

(as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subconsultants' costs (including mark-up), travel, equipment, materials, and supplies, expenses, and any fixed fee. Payments shall be made to the Consultant monthly based on an invoice submitted by the Consultant that has been reviewed and approved by C/CAG, identifies expenditures and describes services performed and percentage of deliverables completed. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

- 2.1 **Progress Reports.** Consultant shall provide C/CAG with progress reports according to the schedule and form approved by the C/CAG Project Manager.
3. **Key Personnel.** The key personnel to be assigned to this work by the Consultant and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Exhibit C, *Key Personnel Assignments*, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Exhibit C or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the C/CAG Project Manager or a designee. Consultant shall maintain records documenting compliance with this Article, and such records shall be subject to the audit requirements of Section 15. Consultant agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. C/CAG reserves the right to direct removal of any individual, including key personnel, assigned to this work.
4. **Contract Materials.** At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Consultant under this Agreement shall become the property of C/CAG and shall be promptly delivered to C/CAG. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law.
5. **Relationship of the Parties.** It is understood that Consultant is an Independent Consultant and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Consultant.
6. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party, without the prior written consent of the C/CAG Executive Director. Any such assignment or subcontract without the C/CAG Executive Director's prior written consent shall give C/CAG the right to automatically and immediately terminate this Agreement without penalty or advance notice.
7. **Contract Term/Termination.** This Agreement shall be in effect as of 31st of January, 2024 and shall terminate on December 31st, 2024; provided, however, the C/CAG Executive Director may terminate this Agreement at any time for any reason by providing 30 days' notice to Consultant. Termination will be effective on the date specified in the notice. In the event of termination under this Section, Consultant shall be

paid for all services provided to the date of termination, subject to availability of funding. Such payment shall be that prorated portion of the full payment determined by comparing the work completed to the work required by the Agreement.

8. **Hold Harmless/Indemnity.**

General. Consultant shall indemnify and save harmless C/CAG and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Consultant or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of C/CAG and/or its officers, agents, employees, or servants. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of the Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

This indemnification provision will survive termination or expiration of this Agreement.

9. **Intellectual Property.** Consultant hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless C/CAG from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Consultant's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) C/CAG notifies Consultant promptly in writing of any notice of any such third-party claim; (b) C/CAG cooperates with Consultant, at Consultant's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c)

Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without C/CAG's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes C/CAG's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant's option and expense, either: (i) procure for C/CAG the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to C/CAG under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for C/CAG (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by C/CAG in a manner prohibited by this Agreement.

The duty of the Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

10. **Insurance.**

General Requirements. Prior to commencement of any work, Consultant shall deliver to C/CAG all insurance documentation, annual certificates and/or other evidence of the insurance coverage required below, verifying coverages. Consultant shall obtain and maintain in full force and effect insurance as set forth below. All insurance specified below shall remain in force until all work or services to be performed are satisfactorily completed, and the work or services have been formally accepted. Consultant must notify C/CAG if any of the required coverages listed below are non-renewed or cancelled. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement.

The insurance requirements specified in this section shall cover Consultant's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Consultant authorizes to work under this Agreement (hereinafter referred to as "Agents.") Consultant shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance indicated below against claims, damages and losses

due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

Consultant is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, Consultant shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Consultant's indemnity obligation as to itself or any of its Agents in the absence of coverage.

Workers' Compensation and Employer Liability Insurance. Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

Liability Insurance. Consultant shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Consultant, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by any sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.

Insurance Limits; Insured Entities; Breach. Required insurance shall include:

| | Required Amount | Approval by C/CAG Staff if under \$ 1,000,000 |
|------------------------------------|--------------------|--|
| 1. Comprehensive General Liability | \$ 1,000,000 | _____ |
| 2. Workers' Compensation | \$ Statutory | _____ |
| 3. Professional Liability | \$1,000,000 | _____ |
| 4. Motor Vehicle Liability | \$1,000,000 | _____ |

C/CAG and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the

insurance afforded thereby to C/CAG, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers, agents, employees, and servants have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the C/CAG Chairperson, at his/her option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. **Compliance with All Laws.** Consultant shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Consultant will timely and accurately complete, sign, and submit all necessary documentation of compliance.
12. **Non-discrimination.** Consultant and any subconsultants performing the services on behalf of Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
13. **Substitutions.** If particular persons or classifications are identified in Exhibit C as working on this Agreement, Consultant will not assign others to work in their place without the prior written consent of the C/CAG Executive Director. Any substitution shall be with a person or classification of commensurate experience and knowledge unless otherwise authorized by the C/CAG Executive Director.
14. **Sole Property of C/CAG.** Work products of the Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of C/CAG. Consultant shall not be liable for C/CAG's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
15. **Record Retention; Right to Monitor and Audit.**

Consultant shall maintain all required records relating to services provided under this Agreement for three (3) years after C/CAG makes final payment and all other pending matters are closed, and Consultant shall be subject to the examination and/or audit by C/CAG, a Federal grantor agency, and the State of California.

Consultant shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by C/CAG.

Consultant agrees upon reasonable notice to provide to C/CAG, to any Federal or State department having monitoring or review authority, to C/CAG's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. **Permits/Licenses.** If any license, permit, or approval is required to perform the work or services required by this Agreement, Consultant bears the responsibility to obtain said license, permit, or approval from the relevant agency at Consultant's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.
17. **Remedies for Breach.** C/CAG may terminate this Agreement for cause. In order to terminate for cause, C/CAG must first give Consultant notice of the alleged breach. Consultant shall have five (5) calendar days after receipt of such notice to respond, and a total of fifteen (15) calendar days after receipt of such notice to cure the alleged breach. If Consultant fails to cure the breach within this period, C/CAG may immediately terminate this Agreement without further action.

In the event Consultant fails to comply with the requirements of the Agreement in any way, C/CAG reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by C/CAG or Consultant shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

18. **Merger Clause; Amendments.** This Agreement, including Exhibit A, *Scope of Work*, Exhibit B, *Project Budget and Schedule*, and Exhibit C, *Key Personnel Assignment*, attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto regarding the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Chair or Executive Director. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A, *Scope of*

Work, Exhibit B, Project Budget and Schedule, Exhibit C, Key Personnel Assignment, attached hereto, the terms, conditions or specifications set forth herein shall prevail.

19. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
20. **Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed or by email, with confirmation of receipt by the recipient party required for notice by email to be effective, as follows:

City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Sean Charpentier
scharpentier@smcgov.org

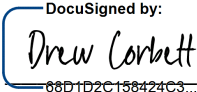
Notices required to be given to Consultant shall be addressed as follows:

DKG Consultants
4536 Winding Way
San Jose, CA 95129
Attention: Drew Corbett
drew@dkgconsultants.com

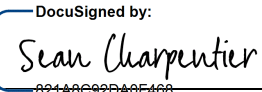
[Signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

DKG Consultants (Consultant)

By  _____ 1/30/2024 _____
Drew Corbett, Principal Date

City/County Association of Governments of San Mateo County (C/CAG)

By  _____ 1/31/2024 _____
Sean Charpentier Date
C/CAG Executive Director

By  _____ 1/30/2024 _____
Melissa Andrikopoulos Date
C/CAG Legal Counsel

Exhibit A

SCOPE OF WORK

Consultant shall lead all the tasks listed below, as well as provide all project management activities to support each of the tasks listed below. Regular progress updates will be provided to the Executive Director and Deputy Executive Director.

- Task #1: Establish a cost allocation plan (or review and modify existing plan) that allocates administrative overhead costs to operations/programs.
- Task #2: Assist in the preparation of the operating budget for 2024-25; provide recommendations on changes to the presentation of the budget and implement changes as requested.
- Task #3: Develop a five-year financial plan for C/CAG for select funds.
 - Including a strategic review of pension and OPEB liabilities and recommendations on options for addressing liabilities.
- Task #4: Develop a staffing model and job description for roles and responsibilities (or scope of services) for a permanent full-time position, a part-time position (potentially a retired annuitant), or through a contract for services.
- Task #5: Assist C/CAG in hiring for the position or soliciting, evaluating, and selecting a contractor.
- Task #6: As needed tasks: Provide additional as-needed services to support C/CAG and its specific finance needs. Task scope and fee will be determined as they are identified. Prior written approval of C/CAG Executive Director approving scope and fee is required before engaging in any as needed tasks.

Exhibit C

KEY PERSONNEL ASSIGNMENT

Hourly billing rates and staff for CONSULTANT and SUBCONSULTANT(S) are included below.

| Name | Title | Hourly Rates |
|--------------|--------------|---------------------|
| Drew Corbett | Principal | \$200 |