REQUEST FOR PROPOSALS

#03-24

Expanded Learning Opportunities Programs (ELOP) Tutoring Outcomes Based Contracting

PROPOSAL DEADLINE DATE

Date: August 9, 2023

By: 2:00 p.m.

SUBMIT PROPOSALS TO

Michael Esparza

Director of Purchasing

SANTA ANA UNIFIED SCHOOL DISTRICT

1601 E. Chestnut Avenue, Purchasing Dept., Rm A150

Santa Ana, California 92701

Phone: 714.558.5611

Fax: 714.558.5880

SANTA ANA UNIFIED SCHOOL DISTRICT

NOTICE TO SUBMITTERS

RFP NO. 03-24

Expanded Learning Opportunities Programs (ELOP) Tutoring - Outcomes Based Contracting

In accordance with Public Contract Code 20111, notice is hereby given that the Santa Ana Unified School District, will receive up to, but no later than 2:00 p.m., on AUGUST 9, 2023, at the Purchasing Department, Room 150, 1601 East Chestnut Avenue, Santa Ana, CA 92701, Requests for Proposal (RFPs) for the award of a contract Expanded Learning Opportunities (ELOP) Tutoring – Outcomes Based Contracting.

There will be a non-mandatory submitters meeting at 10:00 a.m. PST on July 25, 2023 via Zoom at https://sausd.zoom.us/j/3317583499?pwd=a2Q5RS9GVTFHMlU1UER2VGdxTTlndz09

Each RFP must conform and be responsive to the RFP documents, copies of which may be obtained on the Purchasing Department website at www.sausd.us or by calling the Purchasing Department at (714) 558-5614.

No submitter may withdraw his RFP for a period of sixty (60) days after the date set for submission.

All RFPs shall be made and presented in the form requested by the District. One original copy and one digital copy must be submitted. All contracts entered into as a result of this RFP will be contingent upon funding and may be canceled by the District by providing notice to the vendor no less than 30 days prior to the renewal date of the contract.

The District reserves the right to waive any irregularities, accept or reject any or all RFPs and to accept or reject any items thereon.

SANTA ANA UNIFIED SCHOOL DISTRICT
Michael Esparza
Director of Purchasing and Stores

Published: Orange County Register
July 14, 2023
July 21, 2023

Tentative Timeline

Milestone	Date
Voluntary Pre-Proposal Virtual Conference	**July 25, 2023, 10:00 a.m.**
Request for Information Due	**July 28, 2023, 4:30 p.m.**
Addendum	**August 2, 2023**
Proposals Due Date	**August 9, 2023**
Interviews (if necessary)	**Week of August 14, 2023**
Award of Contract(s) by Authorization of the Board of Education	**TBD**
Execution of Contract	**TBD**

INSTRUCTIONS AND CONDITIONS

1. DEFINITIONS:

a. As used herein, "RFP" means this Request for Proposal, RFP 03-24.

b. As used herein, "District" or "SAUSD" means the Santa Ana Unified School District.

c. As used herein, "Offeror" means the Firm or Contractor submitting a Proposal.

d. As used herein, "Offer" means the Proposal.

e. As used herein, "Contract" means an associated Agreement with the District.

f. As used herein, "Contractor" means the firm or Contractor that is awarded the contract with the District

2. PREPARATION OF PROPOSALS:

a. One (1) signed original copy of the proposal and a complete copy on a flash drive shall be sealed together and submitted by no later than the closing date and time. Proposals shall be delivered to the attention of: Michael Esparza, Director of Purchasing and Stores, Purchasing Department, Santa Ana Unified School District, 1601 E. Chestnut Ave., Santa Ana, CA 92701. It is the sole responsibility of the firm submitting the proposal to ensure that it is actually received by the District prior to the deadline time and due date and at the proper location. Unless this RFP is extended by a written amendment, proposals received after the due date and time will not be considered.

b. Proposals shall be completed in all respects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. A proposal will be rejected if, in the opinion of the DISTRICT, the information contained therein was intended to mislead the DISTRICT in the evaluation of the proposal.

c. The proposal submitted must not contain erasure, interlineations, or other corrections unless each correction is clearly and conspicuously authenticated by signing in the margin immediately opposite the correction the name of the person signing the proposal. An Offeror will be bound by the terms and conditions of the proposal, notwithstanding the fact that errors may be or are contained therein. However, if material errors are actually discovered in a proposal, the DISTRICT will notify the Offeror that the proposal, as submitted, appears to contain errors and require the Offeror to correct the errors.

d. The DISTRICT requests that Offerors provide a best and final offer.

e. The DISTRICT may request a meeting with the Offerors representative to request answers and clarifications or it may request that the Offeror answer specific questions in writing, or to make a presentation to the District or to its Governing Board prior to any Agreement award.

f. The DISTRICT may reject any or all proposals and may waive informalities and minor irregularities in proposals received.

g. All current and past providers must submit new proposals.

h. All proposals and materials submitted in response to this RFP shall become the property of the District and shall be considered a part of the Public Record.

i. After acceptance of the proposal by the District, a contract between the successful firm and the District will be executed and will consist of the terms and conditions of this RFP and the Scope of Work and Requirements.

3. EXPLANATIONS TO OFFERORS:

a. If an Offeror desires an explanation or clarification of any kind regarding this RFP, the Offeror must make a written request for such an explanation. Requests should be made by email to michael.esparza@sausd.us by July 28, 2023. Please indicate RFP #03-24 in the subject line of email.

b. The District will advise all Offerors known to have received a copy of the RFP of the explanation

or clarification in the space provided on the abovementioned web site.

c. If an Offeror discovers any error such as an ambiguity, conflict, discrepancy, omission, or other error in the RFP, then the Offeror shall immediately notify the District in writing.

4. AMENDMENTS:

Offerors are advised that the District reserves the right to amend this RFP at any time, prior to the RFP closing date. Amendments will be made formally by providing written amendments to all potential Offerors known to have received a copy of the RFP. If in the sole and absolute discretion of the District, the change is of such a nature that additional time is required for Offeror to prepare proposals, the District will change the due date deadline and notify all known Offerors in writing of the revised deadline due date. All addendums will be posted on the District web site.

a. Offerors must acknowledge receipt of any and all RFP amendments. This shall be done by the following means:

Include Signed Addenda with Firm Proposal/Offer Form

b. Failure to acknowledge in writing the receipt of any amendments may result in proposal rejection.

5. VALIDITY OF FIRM PROPOSAL/OFFER:

Each proposal/offer must be a firm irrevocable offer and remain open and valid for sixty (60) days after RFP closing date.

6. SUBMITTING PROPOSALS:

E-mail, telegraphic or facsimile offers or electronic offers and modifications will NOT be considered.

7. MODIFICATION OR WITHDRAWL OF PROPOSAL:

An Offeror may modify or withdraw a proposal after submission by written notice of withdrawal and re-submission provided that the proposal withdrawal is prior to the due date specified for submission of proposals.

8. LATE PROPOSALS:

No proposal or proposal modification received after the due date deadline will be considered.

9. PROPOSAL EVAULATION:

a. It is anticipated that a contract will be made with the Offeror whose proposal is determined to be in the overall best interest of the District by applying the evaluation criteria established in this RFP.

b. A District Proposal Evaluation Committee will determine which, if any, proposal is in the District's overall best interest to accept. The committee members will utilize the data provided by the Offeror in the chart below to rank Offerors submissions. A rating score of 80% or higher is required for an Offeror to be invited to participate in Round 2 evaluations. It is the Offerors responsibility to answer all items in the chart and include this chart with their RFP submission. During the evaluation, the District may request proposal clarifications, explanations and answers from an Offeror. The District may request an Offeror presentation and interview.

10 AGREEMENT REQUIREMENTS:

The firm selected will also be required to promptly enter into a Consultant Agreement with the District, that agreement along with the required scope of work for the RFP offering will serve as the terms and conditions of this RFP and is attached here to.

(END OF SECTION**)**

SECTION I: SCOPE OF WORK AND PROJECT REQUIREMENTS

The District is excited to extend this Request for Proposals to seek a new partnership with providers (the "Providers") to provide the services outlined here (the "Program").

The aim of the Program is to remedy learning loss that has occurred due to the pandemic, with a priority on serving students of *color, English language learners, students with disabilities, and students experiencing poverty.* The District is open to virtual, in-person, or hybrid tutoring models and is seeking Providers with experience adapting to changing conditions (e.g., flexibility in response to potential disruptions to in-person learning).

The District's primary focus is on its goals and outcomes. As long as the Program meets the District's minimum service level requirements for sessions and Program length, the District is open to any innovations, methodologies, or value-add components the Provider can offer.

The Provider will be paid (1) a base rate for every participating student for its tutoring services plus (2) additional contingent payments for every student based on the outcomes students achieve, both as specified in the Rate Cards in this RFP. Ultimately, the District seeks to partner with a Provider that shares the District's goals for improving student outcomes and will reward that Provider for its success.

1. **OUTCOMES-BASED CONTRACTING DEFINITIONS**

   The Outcomes-Based Contracting terms below will be referenced throughout this RFP and in the attached contract.

   Payment Outcomes: Indicators of student success that are *tied to payment.*

   Process Outcomes: Indicators of student success that are used to inform ongoing learning and continuous improvement but are *not tied to payment.*

   Base Payment: The maximum contract amount available for minimum service delivery.

   Contingent Outcomes Payment: The maximum contract amount that will be available, contingent upon payment outcomes achievement.

   Price per Outcome: The amount that will be paid *per student* for each payment outcome achieved.

   Outcome Payment Cap: The maximum possible amount paid for each achieved payment outcome in aggregate.

2. **DISTRICT GOAL.** The District's overarching goal for the Program is to rapidly improve literacy skills for students in grades 3-5. The District seeks a Provider to help support this goal by providing high-impact and quality tutoring services.

3. **PROGRAM SIZE AND STUDENT POPULATION.** The District seeks to serve 3,000 students through the Program. Information about the likely student population is included below. The District shall determine which students are eligible for the Program but note that the makeup of the participating student population may not match the table below precisely.

Student population data	
3rd-5th Grade McKinney Vento, Foster students, ELs at/below the 40th percentile on NWEA Reading Growth	
Benchmarks	Current Performance Data
● Estimated students attend tutoring services	80%
● Students achieving 51-65 Conditional Growth Percentile using the NWEA MAP Growth assessment ● Students achieving 66 Conditional Growth Percentile or above using NWEA MAP Growth assessment	10.2% 33.1%
Students scoring proficient on the Basic Phonics Skills Test (BPST)	80%
● Students (Fall) who read the following number of words per minutes with a 95-100% accuracy on an oral reading fluency measure ○ 3rd grade - 97 ○ 4th grade - 120 ○ 5th grade -133 ● Students (Winter/Spring) who read the following number of words per minutes with a 95-100% accuracy on an oral reading fluency measure ○ 3rd grade - 112 ○ 4th grade - 133 ○ 5th grade - 146	50%

4. **PROGRAM LENGTH AND REQUIREMENTS.** The District will arrange for participating students to be available for tutoring sessions after the school day. The Program will identify two (2) cohorts of students to receive services, with the first cohort implemented in the Fall and the second in the Winter/Spring. Each cohort will run for 12 weeks.

5. **MINIMUM SERVICE LEVEL FOR SESSIONS.** To meet the minimum service level and to receive the Base Payment, the Provider must provide every participating student with a qualified ELA tutor for the duration of each session throughout the Program length above. If a student is absent for greater than 10% of scheduled sessions, the District can replace that student with another at the District's discretion with the first four (4) weeks of services. Both the old and the new student's outcomes will count for the purposes of calculating Contingent Payments but only one Base Payment applies.

6. **PAYMENT OUTCOMES.** The expected outcomes tied to payment are detailed in the Outcomes Rate Cards in this RFP. The District shall administer the Fall NWEA MAP assessment to determine baseline data and eligibility for cohort 1. The Winter NWEA MAP assessment will be administered to determine baseline data and eligibility for cohort 2 and outcome payments based on student growth for cohort 1. The Spring NWEA MAP assessment will be used to determine outcome payments based on student growth for cohort 2. Additionally, the BPST and DIBELS assessments will be administered at the end of each cohort to determine payment outcomes for proficiency in reading fluency and phonics. Provider(s) will be entitled to send a representative to observe the assessment administration, as applicable and appropriate.

   In order for the Provider to obtain an outcome payment for a student at the end of the program term, Provider must meet the following minimum service requirements for that student:
   - The student has the same tutor for a minimum of 80% of tutoring sessions (unless mutually agreed upon by the district and the Provider to change tutors)
   - The student's tutor is prepared and on time for at least 95% sessions

7. **PROCESS OUTCOMES**. Along with using Payment Outcomes to evaluate program success and impact, the District recognizes that there are multiple ways in which programs can demonstrate progress and various types of data that can be collected to inform program improvements. Through additional data collection and analysis, with the assistance of the school and District, programs can learn and continuously improve tutoring services. In addition to the Payment Outcomes that are required in the contract, Districts may partner with providers to collect additional "Process Outcomes." These metrics will be used to inform continuous improvement and will support ongoing learning and improvement. Process Outcomes may include additional data that the provider will collect, or may be measured by existing data and assessments that the school and District can access and share. In the contract, the District and Provider will agree to the complete list of Process Outcomes and identify which party is responsible for tracking and sharing the data and on what timeline. The following are examples of Process Outcomes:
   a. Weekly student attendance

b. The Provider's timely reporting, communication, responsiveness, and collaboration with the District's requests
c. Social-Emotional Learning (SEL) outcomes
d. District surveys of students about their satisfaction with the services, as and when the District chooses to make such surveys
e. Feedback from teachers and principals about their satisfaction with the services.

8. **PARTNERSHIP.** The District seeks to establish a collaborative partnership with the Provider(s) chosen for this Program. The District will provide student-level data to guide Program services as necessary and as permitted by state and federal law. The District and the Provider(s) will also convene no more frequently than every two weeks in evidence-based continuous improvement meetings to discuss Program implementation, progress on Payment and Process Outcomes, and any challenges to student participation with the goal of mutual problem-solving to achieve District goals.

9. **STUDENT ATTENDANCE.** For sessions immediately after the school day, the District shall be responsible for ensuring student attendance at the Program sessions. The Provider shall report weekly to the District the student's attendance at tutoring sessions and the results of any interim assessments administered by the Provider.

10. **PARTICIPATING STUDENTS.** The District may add eligible students up to the established total number of students, or by mutual agreement of District and Provider, above that number. Students may only be removed from the Program by mutual agreement. Students may be removed because they succeed at the outcomes quickly; they may be removed for other reasons as well (absence, lack of engagement, etc.). Any student who receives tutoring who meets the contingent outcomes will count for the purposes of calculating Contingent Payments.

11. **DISTRICT RESPONSIBILITIES.** The District is responsible for providing the conditions to enable the tutoring to occur. This includes District responsibilities as agreed to by the District and Provider.

12. **CONTRACT EXTENSION.** The District may extend the contract for the Program with the Provider if the District is satisfied with the Outcomes achieved, and in the District's sole judgment, the Provider provides valuable support to the District's Goal.

13. **EARLY TERMINATION.** If the Payment or Process Outcomes show the Program is unsuccessful through no fault of the District, and the Provider is unable to remedy the issues within thirty (30) days of notice, the District may terminate the Contract early.

SECTION II: PROPOSAL REQUIREMENTS.

The following sections are required.

1. **PROVIDER INFORMATION:** In this section, provide information on your organization, its history, and stability. Two pages maximum.
    a. **Basic Information:** Include corporate name and address of corporate headquarters, total staff in your organization. Provide the name, telephone number, email address, and title of the individual who will be District's primary contact for the proposal.
    b. **History:** Give a brief history of your organization, including years it has been in business and experience providing tutoring or related services.
    c. **References:** Provide three K-12 client references who you have provided relevant services within the last five years, including email address, telephone numbers, and contact names.
    d. **Subcontractors:** List the names of any subcontractors or partners you may employ to provide the services, including what that subcontractor/partner may provide.
    e. **Previous Default or Litigation:** List any current litigation, previous defaults, outstanding judgments, and/or liens with which you are presently involved.
    f. **District Affiliations:** Provide information on affiliations you have with the District or District staff.
    g. **Inclusive Practices:** Describe your inclusive practices.

2. **PROVIDER QUALIFICATIONS AND METHODOLOGIES:** In this section, describe your ability to meet the needs of the District as described in this RFP, including information on the methodology and procedures you will use to achieve the target outcomes and anything else that will aid us in understanding how you will accomplish them. Eight pages maximum.
    a. **Service Model and Population**
        i. Services: Describe your proposed tutoring services. How will the services you propose be delivered? What technology platform do you use and how is it integrated into sessions? How do you schedule sessions?
        ii. Methodologies: Describe the methodologies you use to instruct students and improve mastery in English language arts. What curriculum do you use? What is your philosophy regarding tutoring and to what extent do you align with work that is happening in the classroom? How do you group students? If you change groups over time, tell us how. Is there a computer-based instruction element?
        iii. How do these services and methodologies successfully support the student population the District is serving with this Program? Describe how you will

meet our requirements for non-English instruction. Share evidence and/or experience in successfully serving similar student populations.

b. **Dosage.** State the frequency and length of tutoring sessions you will deliver. Note that the District is committed to a model of high-dosage tutoring because the research about the efficacy of this approach is clear. High-dosage tutoring is currently defined as at least three tutoring sessions per week, each of which is at least 30 minutes. If you offer a model that falls below that level, provide a robust rationale and evidence.
c. **Capacity.** Describe the size and make-up of your tutors, their typical experience and credentials. Please break out full-time and part-time staff. Provide information on how staff are recruited, selected, and trained, including any requirements they must meet. Explain how you monitor performance of tutors over time and what you do about poor performance.
d. **Outcomes & Evaluation.** Provide the evidence base for the effectiveness of your model and/or your experience of working with the student population the District is serving with this Program. How do you monitor progress and growth?
    i. Relevant Experience. Describe any and all experience that explains why you are best suited to achieve the desired outcomes. Include your history working with historically underserved student populations, including students of color, English language learners, etc., including the size and demographics of student populations you have served.
    ii. Tell us anything else that might give us confidence in your ability to deliver the outcomes.
e. **Continuous Improvement and Collaboration.** Tell us how you use data to continuously improve the service you provide, including how you help tutors get better. Describe how you will engage district and school leaders in ensuring success. Share any experience you have in collaborating with other institutions or being part of larger workgroups to deliver services and improve outcomes.
f. **Key Staff.** Please give brief details of the key staff who would work with the District and their experience.

3. **DISTRICT REQUIREMENTS:** In this section, please describe any and all elements you require from the District to achieve the outcomes.

    a. **Technology Requirements.** Describe the technology requirements for you to provide your services, inclusive of hardware, software, and bandwidth necessary. State clearly what you will provide and what you require the District to provide.
    b. **Other Requirements.** Describe any other requirements necessary for you to provide your services or assumptions you are making (for example, visibility to student schedules, classroom space, technology support).

c. **Data Access.** Describe all forms of District Student Data that you will require the District to provide access to, collect, maintain, or analyze.

4. **PRICING:** This section details 1) The total contract Base Payment and Contingent Outcomes Payment, the sum of which is the total potential Program Fee available to the Provider, and 1) the rate cards for cohort 1 & cohort 2, which outline the price and payment cap for each payment outcome.

   a. The full Base Payment available will be calculated based on the number of active participants as agreed upon by the provider, school, and District within the first two weeks of tutoring sessions. The full Base Payment will be $675,000 per cohort and $1,350,000 in total. Base Payments will be paid monthly and within 30 days upon receipt of an invoice and District approval that the minimum payment terms have been met during the billing period, one-third of tutoring services were delivered.

   b. Payments other than the Base Payment are collectively the "Contingent Outcomes Payments." The full Contingent Outcomes Payments and associated outcomes caps available will be calculated based on the number of active participants as agreed upon by the provider, school, and District within the first two weeks of tutoring sessions. The total Contingent Outcomes Payment shall not exceed $825,000 per cohort and $1,650,000 in total.

   c. The total Program fee paid shall not exceed $1,380 per student or the District Maximum of $3,000,000. Because it is unlikely that all students will succeed fully in the outcomes below, the total eligible amount per student multiplied by the number of students will exceed the District Maximum.

Cohort 1 Outcomes Rate Card			
Outcome	**Metric**	**Price Per Student**	**Outcome Payment Cap**
Outcome 1: Mid-level Growth	51-65 conditional growth percentile (CGP) on winter NWEA	$ 300	$ 225,000
Outcome 2: High-level Growth	66 conditional growth percentile (CGP)+ on winter NWEA	$ 250	$ 225,000
Outcome 3: Phonics Proficiency	Proficiency on the Basic Phonics Skills Test (BPST) (to be administered end of Fall)	$ 130	$ 150,000
Outcome 4: Reading	Students (Fall) will read the following	$ 250	$ 225,000

Fluency	number of words per minutes with a 95-100% accuracy on DIBELS oral reading fluency measure ● 3rd grade - 97 ● 4th grade - 120 ● 5th grade -133		
Base Payment			
Base Payment	Paid on services rendered	$450	$ 675,000
Total Potential		$ 1,380	$1,500,000

Cohort 2 Outcomes Rate Card			
Outcome	**Metric**	**Price Per Student**	**Outcome Payment Cap**
Outcome 1: Mid-level Growth	51-65 conditional growth percentile (CGP) on spring NWEA	$ 300	$ 225,000
Outcome 2: High-level Growth	66 conditional growth percentile (CGP)+ on spring NWEA	$ 250	$ 225,000
Outcome 3: Phonics Proficiency	Proficiency on the Basic Phonics Skills Test (BPST) (to be administered end of spring)	$ 130	$150,000
Outcome 4: Reading Fluency	Students (Winter/Spring) will read the following number of words per minutes with a 95-100% accuracy on DIBELS oral reading fluency measure ● 3rd grade - 112 ● 4th grade - 133 ● 5th grade - 146	$ 250	$ 225,000
Base Payment			
Base Payment	Paid on services rendered	$450	$ 675,000
Total Potential		$ 1,380	$1,500,000

SECTION III: SPECIAL TERMS AND CONDITIONS

1. **METHOD OF AWARD.** The District will make its award based on evaluation of the written proposals to determine the most qualified Provider or Providers that provide the best value to the District and that are most likely to improve student outcomes. A maximum of 100 points will be awarded. The point totals are as follows:

Criteria Category	Description	Points
Service Model & Population	Applicant has experience and/or an evidence-informed approach to providing tutoring services to historically underrepresented student populations.	25
Capacity	Applicant has capacity to serve student population, in terms of numbers of staff with the ability to serve the identified student population	25
Outcomes & Evaluation	Applicant provides services that have a demonstrated track record of achieving the payment outcomes in this RFP and a theory of change that supports outcomes achievement.	25
Continuous Improvement and Collaboration	Applicant has experience collecting and analyzing performance data to continuously improve service delivery Applicant has experience collaborating with institutions, students, and as part of larger workgroups in delivering and improving services to achieve outcomes.	25

2. DATA PRIVACY AND SECURITY COMPLIANCE.

Section 2.1 Data Sharing. The Parties acknowledge that it may become necessary for the District to share data regarding or relating to one or more District students with the Provider or Provider Staff, for purposes of determining program impact or for other purposes relating to the Services. In such event, and prior to the District sharing any Student Data, the Parties shall enter into a separate "Standard Student Data Privacy Agreement" that shall be applicable to: (i) all student data shared pursuant to this Agreement; and (ii) the Consultant and the Consultant Staff. Notwithstanding the foregoing: (i) the District in its discretion may decline to comply, in whole or in part, with

any request for student data, if the District determines that providing the requested student data would not be in the best interests of current or former District students; and (ii) each request for student data must be approved by the Executive Director of the District's Research and Evaluation Department.

Subsection 2.2.1 Family Educational Rights and Privacy Act. The Family Educational Rights and Privacy Act set forth in 20 U.S.C. Section 1232g ("FERPA") and 34 CFR Part 99, the federal regulations that implement FERPA, set forth requirements for protecting the privacy of parent and student information, including, among others, requirements for maintaining the confidentiality of personally identifiable information (e.g., names, addresses, telephone numbers, dates of birth, test scores, et cetera). To the extent, in connection with the Services, the Consultant or any of the Consultant Staff accesses, obtains, stores, uses, or discloses any information within the scope of FERPA (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Consultant shall comply with any and all applicable requirements of FERPA and its implementing regulations.

Subsection 2.2.2 Health Insurance Portability and Accountability Act. The Health Insurance Portability and Accountability Act, Public Law 104-191 ("HIPAA") and the federal regulations that implement HIPAA, set forth requirements for, among other things, use and disclosure of individuals' health information, including, among others, requirements for individuals to control use of their health information and for entities possessing such health information to properly protect it from unauthorized disclosure. In addition, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-0005 ("HITECH") and the federal regulations that implement HITECH, address concerns associated with electronic transmission of health information and establish penalties for violations. To the extent, in connection with the Services, the Consultant or any of the Consultant Staff accesses, obtains, stores, uses, or discloses any information within the scope of HIPAA and/or HITECH (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Consultant shall comply with any and all applicable requirements of HIPAA and/or HITECH, and their respective implementing regulations.

3. **SCHOOL OFFICIAL.** To the extent Provider has a legitimate educational interest in student educational records and information and must access such records and information in order to provide services to District and its employees, agents, teachers, and students, District designates Provider a "school official" within the meaning of FERPA. Provider will be under the direct control of District with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by

FERPA, and Provider may use personally identifiable information and education records only for the purpose of performing its obligations under the Agreement and as authorized by the state and federal laws referred to under Data Privacy and Security Compliance above.

4. **DATA SECURITY.** Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect District Data from unauthorized disclosure, use, acquisition, destruction, and modification.

5. **INSURANCE REQUIREMENTS.**

Section 6.1 Required Policies. Prior to commencing any of the Services, the Provider must procure (if applicable) and, during all periods required by this Agreement, must maintain in effect, the insurance policies required pursuant to this Part 6 ("Required Policies"). The Required Policies include the following:

(i) General Liability Insurance. A policy of commercial general liability insurance that is written on an "occurrence" basis and that provides coverage with a combined single limit of not less than $1,000,000 for all activities conducted by the Provider pursuant to this Agreement ("General Liability Policy"). The General Liability Policy must include, without limitation, coverage for the contractual liability assumed by the Provider pursuant to this Agreement.

(ii) Business Auto Liability Insurance. A policy of business auto liability insurance (however denominated) that is written on an "occurrence" basis, and has coverage limits of not less than $1,000,000 per occurrence and $1,000,000 aggregate ("Vehicle Liability Policy"). The Vehicle Liability Policy must include, without limitation, coverage for liability, property damage, bodily injury, and uninsured-underinsured motorists.

(iii) Abuse-Molestation Insurance. A policy of abuse-molestation insurance ("Abuse Policy") that: (1) is separate from the General Liability Policy and any professional liability and other insurance Page 11 policies that the Provider may have in effect; (2) is written on an "occurrence" basis; (3) has coverage limits of not less than $3,000,000 per occurrence and $6,000,000 aggregate; (4) provides coverage for direct and vicarious liability associated with sexual misconduct and other physical abuse, and for verbal, emotional, mental, and other non-physical abuse; (5) covers acts and omissions by, among others, the Provider's staff; (6) provides coverage for the District prior to any determination that an accused abuser is guilty; and (7) provides for payment of defense costs outside the Abuse Policy's coverage limits. The Provider shall comply with any and all risk management controls reasonably required by the insurer that issues the Abuse Policy.

(iv) Professional Liability Insurance. (If Applicable) A policy of professional liability insurance, with coverage in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate ("Professional Liability Policy"). The District acknowledges that the Professional Liability Policy shall be written on a "claims made" basis. The Professional Liability Policy shall be subject to all of the following: (1) the effective date of the coverage must be shown and must be prior to the date the Consultant commences performance of the Services; (2) the coverage must be maintained, and evidence of coverage must be provided, for at least two years following final payment to the Provider pursuant to this Agreement; (3) if coverage is canceled or renewed, and not replaced with another claims-made policy having a retroactive coverage date that is prior to or the same as the date the original policy took effect, the Provider must purchase extended-period coverage (i.e., tail) that provides coverage until the end of the two-year period described in the preceding clause; and (4) upon request, a copy of any and all claims reporting requirements, for original and replacement policies, must be submitted to the District for review.

(v) Cyber Liability. (If Applicable) Cyber Liability Insurance with limits of no less than $1,000,000 for each occurrence or event with an annual aggregate of $2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security. The policy shall protect the District and cover breach response costs and regulatory fines and penalties.

(vi) Workers' Compensation Insurance. A policy of workers' compensation insurance as required by California law ("Worker Compensation Policy"). Notwithstanding the insurer standards set forth in Section 6.2 herein, coverage provided by the California State Compensation Insurance Fund shall be deemed, with respect to the Worker Compensation Policy, to satisfy such insurer rating standards.

Section 6.2 Insurer Standards. The insurance policies required pursuant to this Part 6 must be issued by one or more insurers authorized to do business in the State of California and having an A.M. Best Company rating (i.e., "Best's Rating") of not less than an "A-" (i.e., "A Minus") and Financial Size Category of not less than "VII."

Section 6.3 Situs. Notwithstanding any choice-of-law, conflict-of-laws, or other provision of any federal, state or other law, each of the Consultant's insurance policies must be "situs" California, so that all interpretations and disputes, if any, shall be subject to and governed by California law, any and Page 12 all actions and other proceedings to interpret or enforce rights or obligations under the Required Policies shall be initiated and commenced in the County of Orange, California.

Section 6.4 Additional Insureds. Each of the General Liability Policy, the Vehicle Liability Policy, and the Abuse Policy shall name (or be endorsed to name) as additional insureds

in connection with this Agreement and the Services: (i) the District, the District Board and each individual member thereof, and the District's other officers, employees, and agents (collectively, but not including the District, the "District Agents"). The additional insured endorsements must be ISO form CG 2010 11/85 or alternative approved in advance by the District, in its reasonable discretion. For purposes of this Section, and without otherwise limiting the District's discretion to determine an alternative to form CG 2010 11/85, a combination of ISO forms CG 2010 10/01 and CG 2037 10/01 shall be deemed an acceptable alternative to ISO form CG 2010 11/85. Section 6.5 Waiver of Subrogation. With respect to the District and the District Agents, the Consultant, on behalf of itself and its insurers, hereby waives any and all rights to subrogation that any such insurer may acquire by virtue of the payment of any loss in connection with the Required Policies. Each of the General Liability Policy, the Vehicle Liability Policy, the Abuse Policy, and the Professional Liability Policy must be endorsed with a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District and the District Agents. The Worker Compensation Policy must be endorsed with a waiver of the insurer's rights of subrogation against the District and the District Agents. Section 6.6 Consultant Insurance is Primary. To the extent permitted by law, the Required Policies shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the District and/or any of the District Agents. Each of the General Liability Policy, the Vehicle Liability Policy, the Abuse Policy, Cyber Liability, and the Professional Liability Policy must be endorsed to provide that it is so primary and noncontributory.

Section 6.7 Deductibles and Self-Insured Retentions. The Consultant must disclose in writing to the District any and all deductibles and self-insured retentions applicable to any of the insurance policies the Consultant is to have in effect pursuant to this Agreement. Each deductible or self-insured retention requirement in excess of $10,000 is subject to discretionary approval by the District and, at the option of the District, the Consultant either: (i) must cause the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to claims arising in connection with this Agreement; or (ii) must provide a financial guarantee satisfactory to the District that guarantees payment of losses and related investigations, claim administration, and defense expenses. Each insurance policy that is subject to any deductible or self-insured retention must be endorsed to permit the District to pay the deductible or retention in the event the Consultant is the subject of any bankruptcy proceeding (whether voluntary or involuntary) or otherwise is unable to, or does not, pay such amount.

Section 6.8 Evidence of Coverage. Prior to, and as a condition precedent to, commencing the Services, the Consultant must provide to the District: (i) such duly-authorized and executed certificates of insurance as reasonably evidence that Required Policies are in full force and effect (each a "Certificate of Insurance"); (ii) a copy of each and all endorsements required pursuant to this Part 6; and (iii) if applicable, the written disclosure of deductibles and self-insured retentions required pursuant to this Part 6. The

Certificates of Insurance shall identify those who are to be named as additional insureds in accordance with this Agreement. The Consultant must, as applicable: (i) provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or Page 13 expiration without renewal of any such insurance policy; and (ii) provide updated Certificates of Insurance to the District promptly upon renewal of any of the Required Policies.

6. HEALTH AND SAFETY REQUIREMENTS.

Section 7.1 Background Checks. The Parties acknowledge and agree that, for purposes of Education Code Section 45125.1, the Consultant Staff who may at any time be present in or at any District school ("On-Site Personnel") will not at all times be directly supervised by a student's parent or guardian or by District staff. Therefore, the Consultant shall, with respect to all On-Site Personnel, comply with the requirements of Section 45125.1 relating to background checks and criminal history summaries. Prior to allowing any of the On-Site Personnel to be present in or at any District school or other property, and using a form reasonably acceptable to the District, the Consultant must list the OnSite Personnel and certify to the District that none of the listed On-Site Personnel have been convicted of any serious or violent felony described in Education Code Section 44237. The Consultant shall, with respect to the On-Site Personnel, provide, directly to the District's Department of School Police, any and all subsequent arrest activity reported by the California Department of Justice.

Section 7.2 Tuberculosis Assessment and Examinations. The Consultant shall ensure that the On-Site Personnel in each case have complied with the Tuberculosis assessment and examination procedures specified in Education Code Section 49406, regardless of whether that Section expressly makes those requirements applicable to the Services. Prior to allowing any of the On-Site Personnel to be present in or at any District school, the Consultant shall provide to the District a copy of each certificate, as described in subdivisions (c) and (d) of Education Code Section 49406, indicating that the On-Site Personnel are free from infectious Tuberculosis.

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services ("Agreement") is made effective as of _____, 2023 ("Effective Date") by and between the Santa Ana Unified School District ("District") and [enter full, legal name of Consultant] ("Consultant"). The District and the Consultant may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, this contract is structured as an outcomes based contract that includes upfront funding and contingent outcomes payments tied to success. Outcomes based contracting (also known as performance-based contracting) seeks to drive public resources toward high-performing programs and services that achieve measurable, long-term student outcomes. Payment terms include a base payment (for providing services) and contingent payments, tied to achieving stipulated outcomes.

WHEREAS, the District is in need of literacy tutoring services on an urgent basis due to learning loss from the pandemic. This is evident through the district-wide NWEA MAP assessment, and can be addressed through this intervention based on national and vendor specific data demonstrating the effectiveness of addressing student learning loss through these services.

WHEREAS, the District is committed to the success of all students and is implementing high dosage tutoring in literacy to ensure literacy gains for McKinney Vento, Foster, and English Learner students in grades 3-5 scoring at/below the 40th percentile on NWEA Reading Growth. This service will support improving student performance.

WHEREAS, the Consultant is determined based on market research and reference checks to be the best company to provide this service to the District and agrees to perform and carry out the services in a good and professional manner as outlined in this agreement.

SAMPLE

RECITALS

A. The District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters, if such persons are specially trained and experienced and competent to perform the special services required.

B. The District has a need for the following services ("Services"): [enter brief, general description of services — detailed description to be set forth in Exhibit A].

C. The District has determined that the Services are not available within the District, cannot be performed satisfactorily by District employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the District.

D. The District has determined that the Consultant is specially trained, experienced, and competent to perform services of the same type and nature as the Services described herein.

E. The Parties have entered into this Agreement for purposes of setting forth the terms and conditions for the Consultant to provide the Services for the District.

Now, therefore, in consideration of the foregoing and of their respective rights and obligations pursuant to this Agreement, consideration that each Party hereby acknowledges is adequate, the Parties agree as follows:

AGREEMENT

PART 1. PERFORMANCE OF SERVICES

Section 1.1 Scope of Services. A detailed description of the Services to be performed by the Consultant pursuant to this Agreement ("Scope of Services") is set forth in Exhibit "A" attached to this Agreement. The Consultant shall perform the Services in strict accordance with the Scope of Services and other provisions of this Agreement.

Section 1.2 Agreement Term. The term of this Agreement ("Term") shall commence on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, the Term shall expire on _____, 202__.

Section 1.3 District and Consultant Administrators. The representatives of the District identified in Exhibit "B" attached to this Agreement (each a "District Administrator") shall, on behalf of the District, be responsible for administering this Agreement and for monitoring, overseeing, evaluating, approving, and accepting the Services provided pursuant to this Agreement. The representatives of the Consultant for all purposes of this Agreement and the Services (each a "Consultant Administrator") are also identified in Exhibit B hereto. The Consultant Administrators shall coordinate the performance of the Services with the District Administrators and shall direct any and all questions, submittals, and receivables to the District Administrators. For avoidance of doubt, no supplement, amendment, or other modification to this Agreement shall be valid or binding absent approval (whether directly or through delegation and ratification) by the Board of Education of the Santa Ana Unified School District ("District Board").

Section 1.4 Continuous Improvement and Metrics. The Parties shall reasonably cooperate in scheduling and conducting bi-weekly meetings, at mutually acceptable times and dates, to include: (i) one or more of the District Administrators; (ii) other District representatives as the District deems appropriate and/or necessary; (iii) one or more of the Consultant Administrators; and (iv) other Consultant representatives as the Consultant deems appropriate and/or necessary. The purpose of such bi-weekly meetings shall be to coordinate and discuss the progress of the Services, as well as any potential or existing concerns or issues relating to the Services.

OUTCOMES-BASED TERMS & DEFINITIONS

The Outcomes-Based Contracting terms below will be referenced throughout:

Outcomes-Based Contracting: An agreement that requires that a significant portion of contractor payment be contingent upon [student] outcomes achieved.
Payment Outcomes: Indicators of student success that are *tied to payment.*

SAMPLE

Process Outcomes: Indicators of student success that are used to inform ongoing learning and continuous improvement but are *not tied to payment.*

Base Payment: The maximum contract amount available for minimum service delivery.

Contingent Outcomes Payment: The maximum contract amount that will be available, contingent upon payment outcomes achievement.

Price per Outcome: The amount that will be paid *per student* for each payment outcome achieved.

High-Impact Tutoring (HIT): One-on-one or small group instructional programming that involves substantial time each week of required tutoring, sustained and strong relationships between students and their tutors, close monitoring of student knowledge and skills, alignment with school curriculum, and oversight of tutors to assure quality interactions.

STUDENT ELIGIBILITY AND ENROLLMENT

I. Targeted Student Population: The District seeks to serve up to 3,000 3rd-5th Grade McKinney Vento, Foster students, ELs at/below the 40th percentile on NWEA Reading Growth.

II. Student Performance Data:

Student population data	
3rd-5th Grade McKinney Vento, Foster students, ELs at/below the 40th percentile on NWEA Reading Growth	
Contingent Outcomes Payment Metrics	Performance Data - Estimated Baselines that Must be Met to Receive Contingent Outcomes Payment
• Students attend tutoring services	80%
Students achieving 51-65 Conditional Growth Percentile using the NWEA MAP Growth assessment Students achieving 66 Conditional Growth Percentile or above using NWEA MAP Growth assessment	10.2% 33.1%
• Students scoring proficient on the Basic Phonics Skills Test (BPST)	80%
• Students (Fall) who read the following number of words per minutes with a 95-100% accuracy on an oral language fluency measure ○ 3rd grade - 97 ○ 4th grade - 120 ○ 5th grade -133 • Students (Winter/Spring) who read the following number of words per minutes with a 95-100% accuracy on an oral language fluency measure	50%

SAMPLE

○ 3rd grade - 112 ○ 4th grade - 133 ○ 5th grade - 146	

PAYMENT OUTCOMES AND METRICS:
The Parties agree on the following payment outcomes and metrics:

Cohort 1

1. Milestone 1: Mid-Level Growth: 51-65 Conditional Growth Percentile (CGP)
    a. Goal: Improvement in student reading outcomes
    b. Measurement: NWEA MAP assessment
        i. Administered in Fall and Winter
2. Milestone 2: High-Level Growth: 66+ Conditional Growth Percentile (CGP)
    a. Goal: Improvement in student reading outcomes
    b. Measurement: NWEA MAP assessment
        i. Administered in Fall and Winter
3. Milestone 3: Proficiency: Phonics Proficiency
    a. Goal: Improvement in phonics proficiency
    b. Measurement: Basic Phonics Skills Test (BPST)
        i. Administered at the end Fall
4. Milestone 4: Fluency: Students will read "X" number of words (determined by grade level) per minutes with a 95-100% accuracy
    a. Goal: Improvement in oral reading fluency
    b. Measurement: DIBELS
        i. Administered at the end Fall

Cohort 2

1. Milestone 1: Mid-Level Growth: 51-65 Conditional Growth Percentile (CGP)
    a. Goal: Improvement in student reading outcomes
    b. Measurement: NWEA MAP assessment
        i. Administered in Winter and Spring
2. Milestone 2: High-Level Growth: 66+ Conditional Growth Percentile (CGP)
    a. Goal: Improvement in student ELA outcomes
    b. Measurement: NWEA MAP assessment
        i. Administered in Winter and Spring
3. Milestone 3: Proficiency: Phonics Proficiency
    a. Goal: Improvement in phonics proficiency
    b. Measurement: Basic Phonics Skills Test (BPST)
        i. Administered at the end of Spring
4. Milestone 4: Fluency: Students will read "X" number of words (determined by grade level) per minutes with a 95-100% accuracy
    a. Goal: Improvement in reading fluency
    b. Measurement: DIBELS
        i. Administered at the end of Spring

PROCESS OUTCOMES
Along with using Payment Outcomes to evaluate program success and impact, the District recognizes that there are multiple ways in which programs can demonstrate progress and

SAMPLE

various types of data that can be collected to inform program improvements. Through additional data collection and analysis, with the assistance of the school and District, programs can learn and continuously improve tutoring services. In addition to the Payment Outcomes that are required in the contract, Process Outcomes will include the following:

1. Weekly student attendance
2. The Contractor's timely reporting, communication, responsiveness, and collaboration with the District's requests.
3. Social-Emotional Learning (SEL) outcomes
4. District student surveys about their satisfaction with tutoring services, as and when the district chooses to make such surveys.
5. Feedback from teachers and principals about their satisfaction with tutoring services.
6. Weekly tutor attendance.
7. Monthly Student/Tutor Match-Up Rate

Section 1.5 Time is of the Essence. Time is of the essence with respect to the performance by the Consultant of each and all of the Services and of the Consultant's other obligations pursuant to this Agreement.

Section 1.6 Labor, Materials, and Supplies. The Consultant shall furnish, at its own expense, any and all labor, materials, equipment, supplies, and other things needed by the Consultant to satisfactorily perform the Services in accordance with this Agreement.

Section 1.7 Permits/Licenses. The Consultant and, as applicable, its officers, employees, volunteers, agents, and other representatives (collectively, "Consultant Staff") shall secure and at all times during performance of the Services shall maintain in effect any and all such certifications, permits, licenses, and other authorizations as are required by law in connection with the performance of the Services.

Section 1.8 Independent Contractor. For all purposes of this Agreement, the Consultant shall be deemed and construed to be an independent contractor to the District. Neither the Consultant nor any of the Consultant Staff shall, as a result of this Agreement, be considered to be, or shall be authorized to act as, an officer or employee of the District. Except to the extent the Consultant or any of the Consultant Staff are, by virtue of this Agreement, considered to be an agent of the District, neither the Consultant nor any of the Consultant Staff shall be authorized to act on behalf of the District, and none of them shall suffer or permit any person or entity to persist in the apparent belief that any of them is an officer, employee, or agent of the District. In connection with the Services and this Agreement, the Consultant shall be fully responsible for the acts and/or omissions of the Consultant Staff. Neither the Consultant nor any of the Consultant Staff shall, as a result of this Agreement, be entitled to benefits of any type or nature normally provided to employees of the District and/or to which the District's employees are normally entitled, including, without limitation, State Unemployment Compensation or Workers' Compensation. The Consultant shall be responsible for payment of any and all federal, state, and local taxes or contributions, including, without limitation, unemployment insurance, social security, and income taxes attributable to its employees and/or other Consultant Staff. No compensation shall be payable to the Consultant pursuant to this Agreement on account of any costs incurred by Consultant to comply with any of the foregoing requirements.

Section 1.9 Compliance with Applicable Laws. The Consultant shall comply with any and all federal, state and local laws, rules, regulations, ordinances, and other governmental requirements that

SAMPLE

are or in the future may become applicable to the Consultant's activities in connection with this Agreement and/or the Services.

Section 1.10 Nondiscrimination and Other Policies. In connection with this Agreement and the Services, and without limiting anything else in this Agreement, the Consultant shall not discriminate against any person in violation of applicable federal, state, or local laws, including, without limitation, on the basis of the person's race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity, sexual orientation, genetic information, age, or military veteran status. Without limiting the foregoing, the Consultant shall comply with and shall enforce all District policies and administrative regulations applicable to the presence and/or activities in, on, or at any District school or other property, including, without limitation, prohibitions against weapons, alcohol, and tobacco.

Section 1.11 Conflicts of Interests. The Consultant hereby represents and warrants that neither it nor any of its officers has any financial, business, professional, personal, or other interests, including, but not limited to, the representation of other parties, that would conflict in any manner or degree with the performance of the Consultant's obligations pursuant to this Agreement. Such conflicts could include, but are not limited to, those contemplated by Government Code Section 1090, the California Political Reform Act (Government Code Section 87100 *et seq.*), and other California law. If any such conflict of interests (whether actual or potential) arises in connection with this Agreement, the Consultant shall immediately inform the District, in writing, regarding such conflict. If the District reasonably determines that any actual or potential conflict of interests exists with respect to the performance of the Services, then the District, without liability to or recourse by the Consultant, may terminate the Agreement by giving written notice to the Consultant, and the termination shall be effective upon receipt of the notice by the Consultant.

Section 1.12 Consultant Compensation.

Subsection 1.12.1 Consultant Fee. The District shall pay to the Consultant, in exchange for satisfactory performance by the Consultant of the Services required pursuant to this Agreement, such compensation as is specified below.

A. This total agreement is funded for a not to exceed (NTE) amount of $_____ for up to _____ students, which includes the Base Payment and the Contingent Outcomes Payments.

B. The full **Base Payment** available will be calculated based on the number of active participants as agreed upon by the District and Consultant within the first two weeks of tutoring sessions. The full Base Payment will be $_____ per cohort and $_____ in total. This amount will be paid a per student rate of $450 for every student who attends tutoring according to the provisions in the Rate Card. Base Payments will be made within 30 days upon receipt of an invoice and District approval that the minimum payment terms have been met during the billing period, e.g. tutoring services were delivered.

C. Invoicing for base payment will be recorded and submitted monthly at a rate of $150 per student for four weeks of tutoring instruction by the Consultant based on the agreed upon base payment of up to $450 per student.

D. The full **Contingent Outcomes Payments** and associated outcomes caps available will be calculated based on the number of active participants as agreed upon by District and

SAMPLE

Consultant within the first two weeks of tutoring sessions. This amount will not exceed $_____ per cohort and $_____ in total. These payments will be based on the achievement of student outcomes (see rate card for more details). The District will leverage MAP Assessment reading data, BPST, and DIBELS to validate outcomes achievement, and provide reporting data to the Consultant by March 2024 for Cohort 1 and [Month/Year] for Cohort 2. The Consultant will invoice the District for the contingent payments according to the reports provided by the District Research and Evaluation department. The District Finance Office will administer payment based on the rate card and validated data and per the invoice provided by the Consultant within 30 days of receipt. In order for the Consultant to obtain an outcome payment for a student at the end of the program term, Consultant must meet the following minimum service requirements for that student:

i. The student has the same tutor for a minimum of 80% of tutoring sessions, unless mutually agreed by Consultant and District to change tutors
ii. The student's tutor is prepared and on time for at least 95% of the sessions

If the Consultant does not meet these minimum service requirements, then the District will not be required to pay outcomes payments for affected students unless mutually agreed upon by the District and Consultant otherwise.

E. The total Program fee paid shall not exceed the District Maximum $3,000,000. Because it is unlikely that all students will succeed fully in the outcomes below, the total eligible amount per student multiplied by the number of students will exceed the District Maximum. The total payment that the District will make for each outcome will be limited by its respective outcome payment cap.

The District has developed the following rate card based on total budget, willingness to pay for specific outcomes, expected student achievement and research on provider cost structure.

Outcome	**Metric**	**Price Per Student**	**Outcome Payment Cap**
Outcome 1: Mid-level Growth	51-65 conditional growth percentile (CGP) on winter NWEA	$ 300	$ 225,000
Outcome 2: High-level Growth*	66 conditional growth percentile (CGP)+ on winter NWEA	$ 250	$ 225,000
Outcome 3: Phonics Proficiency	Proficiency on the Basic Phonics Skills Test (BPST) (to be administered end of Fall)	$ 130	$ 150,000

SAMPLE

Outcome 4: Reading Fluency	Students (Fall) will read the following number of words per minutes with a 95-100% accuracy on DIBELS oral reading fluency measure ● 3rd grade - 97 ● 4th grade - 120 ● 5th grade -133	$ 250	$ 225,000
Base Payment	Paid on services rendered	$450	$ 675,000
Total Potential		$ 1,380	$1,500,000

Outcome	**Metric**	**Price Per Student**	**Outcome Payment Cap**
Outcome 1: Mid-level Growth	51-65 conditional growth percentile (CGP) on spring NWEA	$ 300	$ 225,000
Outcome 2: High-level Growth*	66 conditional growth percentile (CGP)+ on spring NWEA	$ 250	$ 225,000
Outcome 3: Phonics Proficiency	Proficiency on the Basic Phonics Skills Test (BPST) (to be administered end of spring)	$ 130	$150,000
Outcome 4: Reading Fluency	Students (Winter/Spring) will read the following number of words per minutes with a 95-100% accuracy on DIBELS oral reading fluency measure ● 3rd grade - 112 ● 4th grade - 133 ● 5th grade - 146	$ 250	$ 225,000

SAMPLE

Base Payment	Paid on services rendered	$450	$ 675,000
Total Potential		$ 1,380	$1,500,000

* A student may trigger an outcome payment for more than one outcome. For example, if a student achieves high-level growth on NWEA, the Consultant is eligible to receive up to $550 for that student: $300 for mid-level growth and $250 for high level growth.

Subsection 1.12.2 Reimbursement of Expenses. The Consultant shall in no event be entitled to reimbursement of any expenses that it incurs in connection with performance of the Services other than as provided in this Subsection. Any reimbursement pursuant to this Subsection shall be in addition to the Consultant Fee and shall be for the reasonable, actual costs incurred by the Consultant, without any markup. A condition precedent to reimbursement of each expense is that the Consultant must obtain the District's written approval of that expense prior to the expense being incurred by the Consultant, and the District shall not unreasonably deny, delay, or condition any such approval. Without limiting the foregoing, in no event shall the District be required to reimburse the Consultant for any of the following: (i) home-office overhead or personnel costs; (ii) supplies, materials, equipment, tools, and other items required for performance of the Services; (iii) postage or cost of private delivery services less than $25 for any one delivery; (iv) salary, benefits, travel, lodging, and/or meal expenses of any person; (v) expenses of overtime work requiring higher than regular rates; or (vi) costs of any additional insurance coverages or limits in excess of those normally carried by the Consultant or any of its contractors or consultants that may be authorized to perform portions of the Services.

Subsection 1.12.3 Consultant Invoices. On or about the fifth day of each month following a month in which the Consultant performed any Services, the Consultant shall provide an invoice to the District seeking payment for the monthly portion of the base payment to the preceding month and, subject to Subsection 1.12.2 herein, for reimbursement of expenses incurred during the preceding month. Contingent Payments shall be paid at the end of the Program term upon completion of the final assessment for all participating students, according to the Timeline for MAP/BPST/DIBELS Assessment Administration and Data Validation for Contingent Outcome Payment. Any and all invoiced amounts are subject to verification and validation by the District. The Consultant must in each base payment invoice provide a report of student and tutor attendance. The documentation to be submitted by the Consultant in support of the invoice must also include an itemization of the amount of time spent by each person performing the tutoring Services and the work accomplished by such person during such time. The District shall pay the undisputed portion of each such invoice within thirty days after receipt of the invoice. However, within ten days after receipt of any invoice from the Consultant, the District may request in writing that the Consultant provide additional information relating to some or all of the amounts specified in the invoice, and, in such event: (i) the Consultant shall provide such information to the District within five days following receipt of the District's request; and (ii) if the Consultant does not provide the requested information within such five-day period, the date by which the District must pay such amounts to the Consultant shall be extended for each day or portion of day in excess of the applicable five-day period, until such time as the Consultant provides that information to the District.

Subsection 1.12.4 District Accountability Mechanisms. The District shall ensure that it complies with all reasonable requests and timelines in the provision of data or other materials required

SAMPLE

by the Consultant to perform its obligations. Should the Consultant be unable to serve students effectively due to a lack of district compliance with reasonable requests, the District will be responsible for making the outcome-based payments for all students affected up to the outcomes caps articulated in the rate card. Should the District be unable to continue to ensure the attendance of specific active students despite rigorous attempts, the District and Consultant may mutually agree to substitute alternative students in place of non-attending students.

Subsection 1.12.5 Consultant Accountability Mechanisms. The District seeks to establish a collaborative partnership with the Consultant for this Program. The District will provide student-level data and other necessary supports to guide Program services as necessary and as permitted by state and federal law. The District and the Consultant will work collaboratively throughout the Program implementation to review and respond to progress on Payment and Process Outcomes, and any challenges to student participation with the goal of mutual accountability. In order for the Consultant Provider to obtain an outcome payment for a student at the end of the program term, Consultant Provider must meet the following minimum service requirements for that student:

i. The student has the same tutor for a minimum of 80% of tutoring sessions, unless mutually agreed upon by the District and the Consultant
ii. The student's tutor is prepared and on time for at least 95% of the sessions

If they do not meet these minimum service requirements, then the District will not be required to pay outcome payment for all affected students unless mutually agreed upon by the district and Consultant otherwise.

SAMPLE

PART 2. CONFIDENTIAL AND OTHER INFORMATION

Section 2.1 Data Sharing. The Parties acknowledge that it is necessary for the District to share data regarding or relating to one or more District students with the Consultant or Consultant Staff, for purposes of determining program impact or for other purposes relating to the Services. In such event, and prior to the District sharing any Student Data, the Parties shall enter into a separate "Standard Student Data Privacy Agreement" that shall be applicable to: (i) all student data shared pursuant to this Agreement; and (ii) the Consultant and the Consultant Staff. Notwithstanding the foregoing: (i) the District in its discretion may decline to comply, in whole or in part, with any request for student data, if the District determines that providing the requested student data would not be in the best interests of current or former District students; and (ii) each request for student data must be approved by the Executive Director of the District's Research and Evaluation Department.

Timeline for MAP/BPST/DIBELS Assessment Administration and Data Validation for Outcomes Based Payment - Cohort 1

Milestone	Persons/Party Responsible	Timeline
Sites administer NWEA MAP Assessment	District School Sites	September 2023 & January 2024
Extended Learning administer BPST	Extended Learning staff	January 2024

SAUSD Teachers administer DIBELS oral reading fluency to 3rd students Extended Learning administer DIBELS oral reading fluency to 4th and 5th grade students	SAUSD Teachers & Extended Learning staff	January 2024
Data validation of NWEA MAP Assessment, BPST, and DIBELS	District's Research and Evaluation Department	February 2024
Outcomes from rate and NWEA MAP Reading, BPST, and DIBELS data reviewed and validated by both parties to determine outcomes based payment	District and Consultant	March 2024
Consultant will invoice for contingent final outcome payment	District Finance Office	April 2024

Timeline for MAP/BPST/DIBELS Assessment Administration and Data Validation for Outcomes Based Payment - Cohort 2

Milestone	Persons/Party Responsible	Timeline
Sites administer NWEA MAP Assessment	District School Sites	January 2024 & May 2024
Extended Learning administer BPST and DIBELS oral reading fluency measures	Extended Learning staff	May 2024
SAUSD Teachers administer DIBELS oral reading fluency to 3rd students Extended Learning administer DIBELS oral reading fluency to 4th and 5th grade students	SAUSD Teachers & Extended Learning staff	May 2024
Data validation of NWEA MAP Assessment, BPST, and DIBELS oral reading fluency	District's Research and Evaluation Department	June 2024
Outcomes from rate and NWEA MAP Reading, BPST, and DIBELS data reviewed and validated by both parties to determine outcomes based payment	District and Consultant	June 2024

SAMPLE

Consultant will invoice for contingent final outcome payment	District Finance Office	July 2024

Section 2.2 Applicable Privacy Requirements.

Subsection 2.2.1 Family Educational Rights and Privacy Act. The Family Educational Rights and Privacy Act set forth in 20 U.S.C. Section 1232g ("FERPA") and 34 CFR Part 99, the federal regulations that implement FERPA, set forth requirements for protecting the privacy of parent and student information, including, among others, requirements for maintaining the confidentiality of personally identifiable information (e.g., names, addresses, telephone numbers, dates of birth, test scores, et cetera). To the extent, in connection with the Services, the Consultant or any of the Consultant Staff accesses, obtains, stores, uses, or discloses any information within the scope of FERPA (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Consultant shall comply with any and all applicable requirements of FERPA and its implementing regulations.

Subsection 2.2.2 Health Insurance Portability and Accountability Act. The Health Insurance Portability and Accountability Act, Public Law 104-191 ("HIPAA") and the federal regulations that implement HIPAA, set forth requirements for, among other things, use and disclosure of individuals' health information, including, among others, requirements for individuals to control use of their health information and for entities possessing such health information to properly protect it from unauthorized disclosure. In addition, the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-0005 ("HITECH") and the federal regulations that implement HITECH, address concerns associated with electronic transmission of health information and establishes penalties for violations. To the extent, in connection with the Services, the Consultant or any of the Consultant Staff accesses, obtains, stores, uses, or discloses any information within the scope of HIPAA and/or HITECH (regardless of whether inadvertently, accidentally, purposefully, or otherwise), then, without limiting anything else in this Agreement, the Consultant shall comply with any and all applicable requirements of HIPAA and/or HITECH, and their respective implementing regulations.

Section 2.3 Consultant Confidentiality Obligation. Except as provided in Section 2.4 herein, the Consultant and Consultant Staff shall keep confidential and not disclose to any other person or entity any of the Confidential Student Information that: (i) the Consultant or any of the Consultant Staff obtain or discover during or as a consequence of performing the Services; or (ii) is provided to the Consultant or any of the Consultant Staff by the District or any parent, guardian, student, or other person. For purposes of this Agreement, but without limiting anything else in this Agreement:

(i) "Confidential Student Information" means any and all information regarding the identity, condition, family members, home address, participation in programs, or other "personally identifiable information" of or relating to District students enrolled in or receiving Services that is provided to, learned by, or inferred by the Consultant or any of the Consultant Staff, including, without limitation, any information volunteered by a District student; and

(ii) "Personally identifiable information" means any information (in whatever form or format) that: (1) can be used to distinguish or trace an individual's identity, such as name, social security number, personal identification number, student identification number, date and place of birth, mother's maiden name, street address, email address, internet protocol address, telephone

SAMPLE

number, photograph, and fingerprints or other biometric information; or (2) is linked or linkable to an individual, such as medical, educational, financial and employment information, race, religion, and activities.

Section 2.4 Required Disclosure. The Consultant shall give written notice to the District immediately upon becoming aware that any subpoena, order, demand, or other process seeking or requiring disclosure or other release of any Confidential Student Information is being sought or has been issued. In each such event, the District shall be permitted to intervene for purposes of attempting to stop or limit the disclosure of Confidential Student Information. The Consultant may, notwithstanding Section 2.3 herein, disclose Confidential Student Information if, but only if, a court or other governmental entity with competent jurisdiction has ordered that the information be disclosed or has authorized a subpoena seeking disclosure of the information. In such event, disclosure shall be limited solely to the scope of disclosure ordered by the court or other governmental entity.

Section 2.5 Disclosure to District. Notwithstanding anything else in this Agreement, and upon request of the District from time to time, the Consultant shall provide to the District full and unaltered copies of any or all of the Confidential Student Information possessed by the Consultant or any of the Consultant Staff.

PART 3. HEALTH AND SAFETY OF STUDENTS AND OTHERS

Section 3.1 Background Checks.

Subsection 3.1.1 Purpose and Intent. The Parties acknowledge and agree that, for purposes of Education Code Section 45125.1, the Consultant Staff who may at any time be present in or at any District school ("On-Site Personnel") will not at all times be directly supervised by a student's parent or guardian or by District staff. Therefore, the Consultant shall, with respect to all On-Site Personnel, comply with the requirements of Section 45125.1 relating to background checks and criminal history summaries.

Subsection 3.1.2 Procedural Requirements. With respect to the On-Site Personnel, the Consultant shall comply with all applicable California Department of Justice ("DOJ") requirements for background checks. For purposes of such background checks, and without limiting the Consultant's obligation to comply with DOJ requirements, the Consultant shall cause all On-Site Personnel to be fingerprinted either: (i) by the Santa Ana Unified School Police Department ("Department"), in its offices located at 1601 E. Chestnut Avenue, in the City of Santa Ana; or (ii) at any location where Live Scan services are available, using the agency identifier number assigned to the District by the DOJ (the "Originating Requesting Identifier" or "ORI"). The Consultant may obtain the District's ORI by contacting the Department at (714) 558-5535.

Subsection 3.1.3 Certification and Subsequent Reporting. Prior to allowing any of the On-Site Personnel to be present in or at any District school or other property, and using the form attached as Exhibit "D" to this Agreement, the Consultant must list the On-Site Personnel and certify to the District that none of the listed On-Site Personnel have been convicted of any serious or violent felony described in Education Code Section 44237. The Consultant shall, with respect to the On-Site Personnel, provide, directly to the District's Department of School Police, any and all subsequent arrest activity reported by the California Department of Justice.

SAMPLE

Subsection 3.1.4 Personnel Identification. Each of the On-Site Personnel who will be performing or otherwise present at any District school must, on each visit, without exception, check in at the administrative offices of the school before entering further into the school or onto the school grounds. On-Site Personnel must show valid, government-issued identification, so the administrative staff may confirm that each such person is on the list of persons cleared in accordance with Education Code Section 45125.1. No person may enter further into the school or onto school grounds if the person is not on the list of cleared personnel. In each case, upon confirming that the On-Site Personnel have been cleared, the administrative staff will issue a temporary identification using the Raptor system, which indemnification must be worn in a conspicuous location on the person's front, upper body at times during that visit at the school.

Section 3.2 Tuberculosis Assessment and Examinations. The Consultant shall ensure that the On-Site Personnel in each case have complied with the Tuberculosis assessment and examination procedures specified in Education Code Section 49406, regardless of whether that Section expressly makes those requirements applicable to the Services. Prior to allowing any of the On-Site Personnel to be present in or at any District school, the Consultant shall provide to the District a copy of each certificate, as described in subdivisions (c) and (d) of Education Code Section 49406, indicating that the On-Site Personnel are free from infectious Tuberculosis.

PART 4. INTELLECTUAL PROPERTY RIGHTS

Section 4.1 District Ownership. The Consultant hereby acknowledges that, because of the nature of the services to be performed by the Consultant pursuant to this Agreement, the performance of those services may result in technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and/or video productions ("Works") being specifically created, prepared, written, or otherwise developed for the District in connection with this Agreement. All such Works, and any and all derivatives thereof, shall be deemed and construed to constitute works for hire, such that the District is the owner of the Works. In addition, the Consultant hereby separately assigns to the District, without limitation, any and all copyright, trademark, patent, use, and other rights the Consultant may have or obtain in the Works and any derivatives of the Works. The Consultant consents to use of the Consultant's name in connection with the use, performance, sale, and/or distribution of some or all of the Works, for any purpose and in any medium.

Section 4.2 Third Party Ownership. Section 4.1, above, shall not be deemed or construed to apply to any third-party proprietary and/or copyrighted designs or information not created specifically for purposes of this Agreement and that the Consultant intends to incorporate into the services performed pursuant to this Agreement (each a "Third-Party Work"). The Consultant shall provide written notice to the District if the Consultant intends to use any Third-Party Work in connection with, or incorporate any Third-Party Work into, the Consultant's services or the products thereof, if any permission, license, or other specific authorization is required for such use and/or any licensing fee or other charge is payable in connection with such use or incorporation. Unless the District has already obtained (or has agreed in writing to obtain) any and all necessary rights to use or incorporate any Third-Party Work without any ongoing or additional licensing fees or other charges, and without need for renewing any registration or similar obligation, the Consultant shall be responsible at its sole cost for obtaining any and all rights for the use or incorporation of the Third-Party Work. Notwithstanding anything to the contrary, the District shall have no obligation to obtain rights to use or incorporate any Third-Party Work unless the District specifically requests that the Consultant use or incorporate that specific Third-Party Work. Subject to the foregoing, the Consultant represents and warrants that it has or will have the legal right to use and/or incorporate any and all Third-Party Work in connection with the

SAMPLE

services to be performed pursuant to this Agreement and/or the products thereof. The Consultant shall indemnify, hold-harmless and defend the District, in accordance with this Agreement, with respect to claims arising out of any failure or alleged failure of the Consultant to comply with its obligations pursuant to this Section.

PART 5. INDEMNIFICATION

Section 5.1 Indemnification by Consultant. The Consultant shall indemnify and hold harmless the District, the Board of Education of the District and each individual member thereof, and the District's other officers, employees, and agents (collectively, but not including the District, the "District Representatives"), and each of them, with respect to any and all damages, losses, judgments, costs, and expenses (including, without limitation, attorney's fees and expenses), and other liabilities of whatever nature (each a "Liability" and, if referencing multiple, the "Liabilities") that arise from any negligent act or omission, or any willful misconduct, of the Consultant or any of its directors, officers, employees, or agents (collectively, but not including the Consultant, the "Consultant Representatives") in connection with this Agreement or the Services. The Consultant shall defend, as applicable, the District and the District Representatives with respect to any and each claim, demand, action, or other proceeding (each a "Proceeding") that by allegation or implication is within the scope of the Consultant's indemnification obligations pursuant to this Section. Each such defense must be conducted by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Consultant, at no cost to the District or any of the District Representatives.

Section 5.4 Insurance Not a Limitation on Liability. The obligations pursuant to this Part 5 shall not be deemed or construed to be: (i) conditioned upon, or in any manner limited by, any insurance coverage maintained by a Party or other person or entity; or (ii) conditioned upon the receipt by any Party, person or entity of, or limited to the amount of, any insurance proceeds.

Section 5.5 Interpretation. For avoidance of doubt and for all purposes of this Agreement: (i) a Party's obligation to indemnify another Party, person, or entity ("Indemnitee") means that the "indemnifying" Party shall compensate the Indemnitee for, or secure or protect the Indemnitee against, the harm, loss, damages, costs, expenses, and other liabilities as may be incurred by the Indemnitee, and such obligation shall not be limited solely to third-party claims; and (ii) an indemnifying Party's obligation to hold harmless an Indemnitee means that the indemnifying Party shall not seek compensation from the Indemnitee for, or otherwise seek to make the Indemnitee responsible for, the harm, loss, damages, costs, expenses, and other liabilities incurred by the indemnifying Party.

Section 5.6 Survival. With respect to any and all acts, omissions, and incidents that occur prior to the termination of this Agreement, the Parties' respective rights and obligations pursuant to this Section shall survive termination of this Agreement.

PART 6. INSURANCE

Section 6.1 Required Policies. Prior to commencing any of the Services, the Consultant must procure (if applicable) and, during all periods required by this Agreement, must maintain in effect, the insurance policies required pursuant to this Part 6 ("Required Policies"). The Required Policies include the following:

(i) General Liability Insurance. A policy of commercial general liability insurance that is written on an "occurrence" basis and that provides coverage with a combined single limit of not less than $1,000,000 for all activities conducted by the Consultant pursuant to this Agreement ("General

SAMPLE

Liability Policy"). The General Liability Policy must include, without limitation, coverage for the contractual liability assumed by the Consultant pursuant to this Agreement.

(ii) Business Auto Liability Insurance. A policy of business auto liability insurance (however denominated) that is written on an "occurrence" basis, and has coverage limits of not less than $1,000,000 per occurrence and $1,000,000 aggregate ("Vehicle Liability Policy"). The Vehicle Liability Policy must include, without limitation, coverage for liability, property damage, bodily injury, and uninsured-underinsured motorists.

(iii) Abuse-Molestation Insurance. A policy of abuse-molestation insurance ("Abuse Policy") that: (1) is separate from the General Liability Policy and any professional liability and other insurance policies that the Consultant may have in effect; (2) is written on an "occurrence" basis; (3) has coverage limits of not less than $3,000,000 per occurrence and $6,000,000 aggregate; (4) provides coverage for direct and vicarious liability associated with sexual misconduct and other physical abuse, and for verbal, emotional, mental, and other non-physical abuse; (5) covers acts and omissions by, among others, the Consultant's staff; (6) provides coverage for the District prior to any determination that an accused abuser is guilty; and (7) provides for payment of defense costs outside the Abuse Policy's coverage limits. The Consultant shall comply with any and all risk management controls reasonably required by the insurer that issues the Abuse Policy.

(iv) Professional Liability Insurance. A policy of professional liability insurance, with coverage in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate ("Professional Liability Policy"). The District acknowledges that the Professional Liability Policy shall be written on a "claims made" basis. The Professional Liability Policy shall be subject to all of the following: (1) the effective date of the coverage must be shown and must be prior to the date the Consultant commences performance of the Services; (2) the coverage must be maintained, and evidence of coverage must be provided, for at least two years following final payment to the Consultant pursuant to this Agreement; (3) if coverage is canceled or renewed, and not replaced with another claims-made policy having a retroactive coverage date that is prior to or the same as the date the original policy took effect, the Consultant must purchase extended-period coverage (i.e., tail) that provides coverage until the end of the two-year period described in the preceding clause; and (4) upon request, a copy of any and all claims reporting requirements, for original and replacement policies, must be submitted to the District for review.

(v) Cyber Liability. Cyber Liability Insurance with limits of no less than $1,000,000 for each occurrence or event with an annual aggregate of $2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security. The policy shall protect the District and cover breach response costs and regulatory fines and penalties.

(vi) Workers' Compensation Insurance. A policy of workers' compensation insurance as required by California law ("Worker Compensation Policy"). Notwithstanding the insurer standards set forth in Section 6.2 herein, coverage provided by the California State Compensation Insurance Fund shall be deemed, with respect to the Worker Compensation Policy, to satisfy such insurer rating standards.

SAMPLE

Section 6.2 Insurer Standards. The insurance policies required pursuant to this Part 6 must be issued by one or more insurers authorized to do business in the State of California and having an A.M. Best Company rating (i.e., "Best's Rating") of not less than an "A-" (i.e., "A Minus") and Financial Size Category of not less than "VII."

Section 6.3 Situs. Notwithstanding any choice-of-law, conflict-of-laws, or other provision of any federal, state or other law, each of the Consultant's insurance policies must be "situs" California, so that all interpretations and disputes, if any, shall be subject to and governed by California law, any and all actions and other proceedings to interpret or enforce rights or obligations under the Required Policies shall be initiated and commenced in the County of Orange, California.

Section 6.4 Additional Insureds. Each of the General Liability Policy, the Vehicle Liability Policy, and the Abuse Policy shall name (or be endorsed to name) as additional insureds in connection with this Agreement and the Services: (i) the District, the District Board and each individual member thereof, and the District's other officers, employees, and agents (collectively, but not including the District, the "District Agents"). The additional insured endorsements must be ISO form CG 2010 11/85 or alternative approved in advance by the District, in its reasonable discretion. For purposes of this Section, and without otherwise limiting the District's discretion to determine an alternative to form CG 2010 11/85, a combination of ISO forms CG 2010 10/01 and CG 2037 10/01 shall be deemed an acceptable alternative to ISO form CG 2010 11/85.

Section 6.5 Cross Liability and Subrogation.

Subsection 6.5.1 Cross Liability. A cross liability provision in an insurance policy allows the insurance to be applied to each of the policy holder and additional insureds, as if the policy had been issued to each of them. This way, if one insured sues another insured, the insurance policy will still provide coverage. Each of the Required Policies, other than the Worker Compensation Policy, must be endorsed to include a cross liability provision.

Subsection 6.5.2 Subrogation. A waiver of subrogation ensures that, if an insurer pays on a claim or loss, the insurer won't be able to then pursue another party for reimbursement of the amounts paid. An insurance policy may or may not provide for subrogation as to additional insureds, but an insured party typically can waive subrogation on behalf of its insurers. With respect to the Required Policies, the Consultant hereby waives, on behalf of itself and its insurers, any and all rights of subrogation against the District and the District Agents. In addition, each of the Required Policies must be endorsed to include a waiver of subrogation applicable to the District and District Agents.

Section 6.6 Consultant Insurance is Primary. To the extent permitted by law, the Required Policies shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the District and/or any of the District Agents. Each of the General Liability Policy, the Vehicle Liability Policy, the Abuse Policy, Cyber Liability, and the Professional Liability Policy must be endorsed to provide that it is so primary and non-contributory.

Section 6.7 Deductibles and Self-Insured Retentions. The Consultant must disclose in writing to the District any and all deductibles and self-insured retentions applicable to any of the insurance policies the Consultant is to have in effect pursuant to this Agreement. Each deductible or self-insured retention requirement in excess of $10,000 is subject to discretionary approval by the District and, at the option of the District, the Consultant either: (i) must cause the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to claims arising in connection with this Agreement;

SAMPLE

or (ii) must provide a financial guarantee satisfactory to the District that guarantees payment of losses and related investigations, claim administration, and defense expenses. Each insurance policy that is subject to any deductible or self-insured retention must be endorsed to permit the District to pay the deductible or retention in the event the Consultant is the subject of any bankruptcy proceeding (whether voluntary or involuntary) or otherwise is unable to, or does not, pay such amount.

Section 6.8 Evidence of Coverage. Prior to, and as a condition precedent to, commencing the Services, the Consultant must provide to the District: (i) such duly-authorized and executed certificates of insurance as reasonably evidence that Required Policies are in full force and effect (each a "Certificate of Insurance"); (ii) a copy of each and all endorsements required pursuant to this Part 6; and (iii) if applicable, the written disclosure of deductibles and self-insured retentions required pursuant to this Part 6. The Certificates of Insurance shall identify those who are to be named as additional insureds in accordance with this Agreement. The Consultant must, as applicable: (i) provide written notice to the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of any such insurance policy; and (ii) provide updated Certificates of Insurance to the District promptly upon renewal of any of the Required Policies.

PART 7. DISPUTE RESOLUTION AND TERMINATION

Section 7.1 Governing Law. Notwithstanding any conflict-of-laws, choice of law, or other provision in any federal, state, or local law or other governmental requirement, this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Each and every claim, demand, action, and other proceeding that arises from this Agreement shall be initiated and conducted only in an appropriate court of competent jurisdiction located in the County of Orange, California.

Section 7.2 Dispute Resolution. The Parties desire to quickly and cost-effectively resolve any disputes related to the interpretation or enforcement of this Agreement. Therefore, each Party shall make best efforts to resolve informally any such disputes. If the Parties are able to agree on the terms and procedures for mediation, the Parties may agree that the informal resolution attempts will include mediation of any such dispute. If, not less than thirty calendar days after first making informal attempts to resolve any such dispute, the informal attempts have been unsuccessful, (or, if the Parties have agreed to mediation, after termination or completion of mediation without resolution of the dispute) either Party may thereafter initiate litigation or other proceedings as deemed appropriate by such Party.

Section 7.3 Attorneys' Fees. In connection with any and each claim, demand, action, mediation, arbitration, and other proceeding between or involving the Parties that arises from this Agreement and/or the Services, each Party shall be responsible for paying its own costs, including, without limitation, attorneys' fees and other legal costs and expenses, including, without limitation, collection expenses, expert witness fees, and court costs.

Section 7.4 Termination for Cause. Either Party (as "Alleging Party") may terminate this Agreement, for cause (e.g. If the Payment or Process Outcomes show that the Program is unsuccessful through no fault of the District), if the other Party (as "Defaulting Party") has defaulted on its obligations pursuant to this Agreement and has not cured that default within thirty (30) days following notice from the Alleging Party that details the default in reasonable detail ("Notice of Default"). In the event a Defaulting Party has not timely cured a default within the applicable thirty-day period, the Alleging Party

SAMPLE

may thereafter provide a notice of termination to the Defaulting Party, and the termination shall be effective immediately upon receipt of the notice by the Defaulting Party.

Section 7.5 District Termination for Convenience. Notwithstanding anything to the contrary, the District, at any time and without need for cause or reason, may terminate this Agreement, in whole or in part, by giving written notice of termination to the Consultant, and such termination shall be effective immediately upon receipt of the notice by the Consultant.

PART 8. MISCELLANEOUS

Section 8.1 Assignment. The Consultant may not assign any of its rights pursuant to this Agreement or delegate any of its obligations pursuant to this Agreement absent the express written consent of the District, which consent the District may withhold, grant, or condition in its sole discretion.

Section 8.2 Entire Agreement/Amendment/RFP. This Agreement sets forth the entire agreement of the Parties with respect to the matters addressed in this Agreement, and this Agreement supersedes and replaces any and all prior and contemporaneous discussions, understandings, and agreements with respect to such matters. This Agreement incorporates all provisions of the Request for Proposals #_____ ("RFP") even if a provision is not expressly stated in this Agreement. If there is an inconsistency between the two documents such that one of the provisions cannot be enforced, the provisions of this Agreement shall control over any inconsistent provision(s) in the RFP. This Agreement may be amended or otherwise modified, in each case, only by a written instrument duly approved, signed, and delivered by both Parties.

Section 8.3 Waiver. No waiver by a Party of any provision of this Agreement shall be binding or enforceable unless it is set forth in writing and has been duly approved and signed by the waiving Party. The failure of a Party to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

Section 8.4 Notice. Each notice or demand given pursuant to this Agreement (each a "Notice") must be in writing and delivered by: (i) personal service; (ii) registered or certified U.S. Mail, return receipt requested, and postage prepaid; (iii) FedEx, UPS, or other reliable private delivery service, signature on delivery receipt required and delivery charges prepaid; or (iv) electronic mail (i.e., email) transmission (with original of the Notice deposited into the U.S. mail, first-class postage prepaid, within twenty-four hours after transmission). Notices: (i) must be addressed and sent to the applicable person(s) and address(es) specified for purposes of Notice in Exhibit B to this Agreement; and (ii) shall be deemed to have been given or served only upon actual receipt by the recipient. As an additional condition to sending a Notice by email, the reference (or "re") line must be specified as "NOTICE: AGREEMENT FOR CONSULTANT SERVICES." Because email addresses are subject to change more frequently than physical addresses, if a Notice is to be sent by email, and unless the sender has actual knowledge of the then-current correct email address of each intended recipient, the sender must call and verify the then-current email address of each intended recipient prior to sending the Notice, or must use some other method of delivering the Notice. A Party may change its address or other contact information for purposes of this Section by written notice in accordance with this Section. This Section shall not be deemed or construed to apply to: (i) communications between the Parties for purposes of

SAMPLE

the day-to-day administration of this Agreement; or (ii) service of process in accordance with any applicable law or rule of court.

Section 8.5 Severability. If a court of competent jurisdiction determines that any term, condition, or provision of this Agreement is invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect, and shall not be affected, impaired, or invalidated in any way.

Section 8.6 Exhibits and Recitals. Any and all recitals set forth herein and any and all exhibits attached hereto are hereby incorporated as operative and effective provisions of this Agreement. In the event any one or more of the exhibits to this Agreement incorporate all or any portion of any proposal for the Services provided by the Consultant, and any provision in the main body of this Agreement or elsewhere in any Exhibit conflicts with or otherwise is inconsistent with any provision in the proposal, the provision in the main body of the Agreement or elsewhere in the Exhibits shall govern over the provision in the proposal.

Section 8.7 Fair and Reasonable Interpretations. Each Party acknowledges that, prior to the Effective Date, that Party has received, or had unqualified opportunities to receive, independent advice from its own legal counsel regarding meaning of the provisions herein and the advisability of entering into this Agreement. Therefore, the provisions of this Agreement shall be interpreted based on their fair and reasonable meanings, and not for or against a Party based on whether that Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

Section 8.8 Headings and Captions. The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed to establish, define, or limit the meaning of any Section or other provision.

Section 8.9 Correct Legal Requirements Deemed Included. Each and every provision required by any applicable law to be included in this Agreement is hereby deemed to be so included, and this Agreement shall be construed and enforced as if all such provisions are so included.

Section 8.10 No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own purposes, and this Agreement shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action, or other proceeding by any third party.

Section 8.11 Agreement is Public Record. Notwithstanding anything to the contrary: (i) nothing in this Agreement shall be deemed or construed to constitute confidential information; and (ii) this Agreement is a public record which the District may disclose in accordance with California law or otherwise.

(The remainder of this page intentionally left blank.)

SAMPLE

PART 9. EXECUTION OF AGREEMENT

Section 9.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties. Signature pages sent via email shall also constitute original signatures under this Agreement.

Section 9.2 Due Authority. Each person who signed this Agreement on behalf of a Party shall be deemed and construed to thereby represent and warrant that he or she has been duly authorized by that Party to sign, and thereby bind the Party to, this Agreement.

In witness of the foregoing, the Parties have executed this Agreement, as evidenced by the signatures below of their respective, duly authorized representatives.

DISTRICT:	CONSULTANT:
Santa Ana Unified School District	[Consultant Name]
By: _____	By: _____
Signature	Signature
Michael Esparza	
Printed Name	Printed Name
Director of Purchasing	
Title	Title
_____	_____
Date Signed	Date Signed

SAMPLE

EXHIBIT "A"
SCOPE OF SERVICES

The aim of the Program is to remedy learning loss that has occurred due to the pandemic, with a priority on serving students of color, English language learners, students with disabilities, and students experiencing poverty. The District is open to virtual, in-person, or hybrid tutoring models and appreciates Providers with experience adapting to changing conditions (e.g., flexibility in response to potential COVID-19 disruptions to in-person learning).

The District's primary focus is on its goals and outcomes. As long as the Program meets the District's minimum service level requirements for sessions and Program length, the District is open to any innovations, methodologies, or value-add components the Provider can offer.

DISTRICT GOAL. The District's overarching goal for the Program is to rapidly improve literacy skills for students in grades 3-5. The District seeks a Provider to help support this goal through the provision of high-impact and quality tutoring services.

PROGRAM SIZE AND STUDENT POPULATION. The District seeks to serve 3,000 students through the Program. Information about the likely student population is included below. The District shall determine which students are eligible for the Program but note that the makeup of the participating student population may not match the table below precisely.

PROGRAM LENGTH AND REQUIREMENTS. The District will arrange for participating students to be available for tutoring sessions after the school day. The Program will identify two (2) cohorts of students to receive services, with the first cohort implemented in the Fall and the second in the Winter/Spring. Each cohort will run for 12-weeks.

SAMPLE

EXHIBIT "B"
PARTY REPRESENTATIVES

Consultant

A. As of the Effective Date, the Consultant Administrators (see Section 1.3 of the main body of this Agreement) are:

(i) [insert name and title], who is the primary Consultant contact person with respect to administration of this Agreement; and

(ii) [insert name and title], who is the secondary Consultant contact person in the event the Consultant's primary contact person is unavailable or in other extraordinary circumstances.

B. As of the Effective Date, the Consultant representative to whom Notices are to be sent in accordance with Section 8.4 of the main body of this Agreement, and that person's contact information, are:

Send Notices to:
[insert Consultant entity name]
Attn: [insert representative name and title]
[insert street address]
[insert city, state, zip code]
Email: [insert person's email address]

District

A. As of the Effective Date, the District Administrators (see Section 1.3 of the main body of this Agreement) are:

(i) [insert name and title], who is the primary District contact person with respect to administration of this Agreement.

(ii) [insert name and title], who is the secondary District contact person in the event the District's primary contact person is unavailable or in other extraordinary circumstances.

(iii) [insert name and title], who is the tertiary District contact person in the event the District's primary and secondary contact persons are unavailable or in other extraordinary circumstances.

B. As of the Effective Date, the District representatives to whom Notices are to be sent in accordance with Section 8.4 of the main body of this Agreement, and their respective contact information, are:

Send Notices to:
Santa Ana Unified School District
Attn: Purchasing Department
1601 E. Chestnut Ave
Santa Ana, CA 92701
Email: Purchasing.Contracts@sausd.us

Send copies of Notices to:
Santa Ana Unified School District
Attn: Chief Business Official
1601 E. Chestnut Ave
Santa Ana, CA 92701
Email: _____@sausd.us

SAMPLE

EXHIBIT "C"
[RESERVED]

SAMPLE

District Agreement Number: [IK12 Number]
Requested Department: [IK12 Dept]

EXHIBIT "D"
CERTIFICATION REGARDING ON-SITE PERSONNEL

District: Santa Ana Unified School District
Consultant: [Insert Consultant Name]
Agreement: Agreement for Consultant Services dated _____, 2023

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that all of the following is true and correct:

(i) The undersigned is a duly authorized representative of the Consultant identified above on this form and, in that capacity, has executed this certification on behalf of the Consultant;

(ii) The Consultant has fully complied with the requirements of this Agreement for criminal-history background checks of On-Site Personnel, including, without limitation, with respect to personnel that the Consultant may consider to be employees of its contractors or consultants, if any;

(iii) None of the On-Site Personnel identified on the Attachment(s) to this certification have any pending criminal proceeding for, or have been convicted of, any violent or serious felony as defined in Education Code Section 45122.1;

(iv) The Consultant shall permit only those persons identified on the Attachment(s) to this certification to provide any of the Services, or otherwise be present at any of the District's schools.

Representative Name: _____

Representative Title: _____

Representative Signature: _____

Date Signed: _____

SAMPLE

CERTIFICATION REGARDING ON-SITE PERSONNEL – ATTACHMENT SHEET

Consultant: [Insert Consultant Name]

Instructions

(i) For each person, insert all required information (as specified in the table below) in one row of the table.

(ii) In the "Driver License/ID" column in the table below, identify the state that issued the driver's license or other official identification, and the driver's license or identification number.

(iii) If identifying more than ten On-Site Personnel: (i) use copies of this Attachment to identify the additional On-Site Personnel; and (ii) on each such copy, specify the page number and total number of pages where indicated at the bottom of this Attachment.

	On-Site Personnel Name	Sex	Date of Birth	Height	Weight	Hair Color	Eye Color	Driver License/ID
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

SAMPLE

Page _____ of _____