

City and County of San Francisco

Office of the City Attorney

Request for Qualifications

for

***457(b) DEFERRED COMPENSATION PLAN
LEGAL SERVICES***

Date issued:

October 30, 2020

Response due:

December 31, 2020, 4:30 p.m.

Request for Qualifications for 457(b) Deferred Compensation Plan Legal Services

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Request for Qualifications

I. Introduction, Schedule

A. General

The City and County of San Francisco ("the City"), through the Office of the City Attorney of San Francisco ("City Attorney's Office" or "Office"), is issuing this Request for Qualifications ("RFQ") in search of qualified law firms ("Candidates") to provide legal services on an ongoing, as needed basis, to the San Francisco 457(b) Deferred Compensation Plan ("SFDCP").

The SFDCP is a voluntary deferred compensation 457(b) plan, established by City ordinance. The SFDCP is administered by a third-party administrator, currently Voya Financial. The SFDCP is managed by the San Francisco Employees Retirement System Deferred Compensation Manager, and overseen by a seven-member Board. The Board membership consists of three members elected from the employees and retirees, three mayoral appointees, and one member of the Board of Supervisors. The City Attorney's office acts as general counsel to the SFDCP and the Retirement Board.

As of September 30, 2020, the SFDCP had approximately \$4.0 billion in assets. It offers an array of investment options, including target date funds and a self-directed brokerage option. The SFDCP also offers Roth after-tax contributions.

The Office is issuing this RFQ to create a qualified pool of law firms to provide legal services on an ongoing, as needed basis, to SFDCP (the "Pool"). The Office anticipates selecting up to eight qualified law firms for the Pool ("Selected Candidates"). Selected Candidates must satisfy the minimum qualifications set forth in this RFQ and demonstrate superior expertise in the relevant areas. The Office, in its sole discretion, may choose any candidate from the Pool to provide legal services to the SFDCP.

Candidates selected for the Pool will be eligible to enter into a contract (the "Contract") to perform the work, project or services described in Section II of this RFQ (the "Work"). No Selected Candidate shall have any legal or equitable right to enter into the Contract or to perform the Work as a result of being chosen as a Selected Candidate. The Office reserves the right, at its sole discretion, to select outside legal counsel through alternative means or requests for qualifications. Prior to engagement as counsel, a firm must execute the Contract, substantially in the form of the contract attached as Appendix C to this RFQ, with the Office for that engagement.

The Pool will remain in effect for a period of five years from the date it is established.

B. Schedule

The anticipated schedule for selecting Candidates for inclusion in the Pool is as follows:

<u>Response Phase</u>	<u>Date</u>
RFQ issued by the Office	October 30, 2020
Deadline for submission of written questions or requests for clarification	November 16, 2020 at 4:30 p.m. PDT
Responses due	December 31, 2020 at 4:30 p.m. PDT
Oral interviews, if any, with Candidates selected for further consideration	January 31, 2021

II. Scope of Work

The Scope of Work described below is intended as a general guide and not as a complete list of all aspects of the services to be performed under this RFQ or of all tasks necessary in order to complete the work. The services requested include, but are not limited to, the following:

1. Advise the SFDCP on compliance with applicable laws, including tax laws, securities laws, and other laws relating to qualification issues that may affect the SFDCP design.
2. Recommend amendments to statutes, policies, and procedures to insure the SFDCP complies with applicable qualification criteria, rules and regulations.
3. Prepare and file requests for private letter rulings and other opinions from state and federal regulatory or governing bodies.
4. Advise the SFDCP concerning contracting matters, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
5. Negotiate, draft and review contracts, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
6. Advise the SFDCP, and negotiate, draft and review investment contracts, including contracts for alternative investments.
7. Represent the SFDCP in complex litigation.

Firms responding to this RFQ (“Respondents”) will be expected to familiarize themselves with the SFDCP, its policies, the fiduciary duties and responsibilities of staff and the Retirement Board, relevant ordinance provisions, and state law, without cost.

There is no assurance that counsel will be required on all or any of these particular issues. Appropriate, qualified counsel will be selected for a matter as the need arises.

Selected Candidates will typically respond to work assignments from the City Attorney's Office. The City Attorney's Office will also provide technical assistance, act as liaison to SFDCP personnel, and monitor outside counsel for billing practices and responsiveness to SFDCP's needs.

III. Submission Requirements

A. Time and Place for Submission of Responses

Responses must be received by **4:30 p.m. (PDT) on December 31, 2020** (“Submission Deadline”) and be clearly marked as “*Response to 457(b) Deferred Compensation Legal Services RFQ.*” Responses must be submitted in .PDF form, by e-mail to Robert Bryan, City Attorney’s Office, at robert.bryan@sfcityatty.org and to Jay Huish, SFDCP, at jay.huish@sfgov.org.

B. Format

If Respondent’s response is lengthy, please include a Table of Contents.

C. Content

Completeness, clarity and brevity will be looked upon favorably. Respondent should submit all information requested in this RFQ in the specified format. Responses not meeting RFQ requirements or that are incomplete in any way may be rejected. Respondents are urged to read this RFQ carefully, to take care in the preparation of responses, and to carefully proofread the final versions for accuracy and completeness.

Respondents must submit responses to each item listed in Appendix A attached hereto in the form requested in the appendix. Additionally, before any contracts are awarded, Respondents must file the forms listed on Appendix B attached hereto.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

Respondent must demonstrate that it meets the minimum qualifications outlined below in its response to this RFQ (the “Response”). Any Response that does not demonstrate that the Respondent meets these minimum qualifications by the Submissions Deadline will be considered non-responsive and will not be eligible for consideration in the Pool. The Respondent must:

1. have at least ten (10) years of significant experience as legal counsel in deferred compensation plan matters, including 457(b) plan matters;
2. identify at least one lead attorney who is proposed to provide services under this RFQ, with at least five (5) years of significant experience as legal counsel on deferred compensation plan matters, including 457(b) plan matters; and

3. identify at least one public deferred compensation plan client with assets comparable to or larger than the SFDCP's that Respondent currently represents in deferred compensation matters, including 457(b) matters, or represented at some time after December 31, 2015.

B. Selection Criteria

The City Attorney's Office and SFDCP will evaluate each Response. Responses that merely provide generalities in response to items listed in Appendix A may be deemed non-responsive and will not be eligible for consideration in the Pool. At any time during the evaluation process, the City may require a Respondent to present oral or written clarification of its Response.

The guidelines for analyzing and evaluating Responses are stated below. If eight or fewer responsive Responses are received, the City Attorney's Office, in its sole discretion, may choose not to score Responses to establish the Pool with all Respondents. The City Attorney's Office anticipates that it will evaluate Responses and oral presentations, when requested, based on the criteria below. But, in an effort to reach a decision concerning the best qualified firms, the City Attorney's Office reserves the right to evaluate, at its sole discretion, all factors it deems appropriate, whether or not such factors have been stated in this RFQ. The City Attorney's Office anticipates that Respondents that demonstrate specific 457(b) plan experience on projects similar to the Work will be qualified for the panel of firms that will be eligible to enter into a contract to perform the Work.

The Office will evaluate the responses generally in accordance with the criteria itemized below.

1. Firm Experience and Qualifications (45 Points)

- Specific experience providing legal services similar to the Work to deferred compensation plans of comparable size.
- Relevant experience of lead counsel.
- Depth of the legal team identified in the Response.
- Quality of recently completed projects similar to the Work
- Dismissals or contract terminations of Respondent by a client.
- Conflict of interest issues.
- Malpractice insurance and other fiduciary or professional liability insurance coverage.
- Acknowledgements as set forth in Appendix A, Section 9.
- Quality of responses to items in Appendix A, Sections 1 and 2.
- Ability to satisfy the requirements of the Scope of Work as described in Section II of this RFQ.
- Fees and cost structure for services described in this RFQ.

2. Assigned Staff (30 Points)

- Experience of lead attorney(s) in providing the services under this RFQ to public deferred compensation plans with comparable or greater assets.
- Professional experience and educational qualifications of assigned staff.
- Staffing model (i.e., resources, skills, and processes to be applied) for services under this RFQ.

3. Demonstrated Professionalism (25 Points)

- Communication skills.
- Professionalism and quality of submitted Qualifications Statement

4. Interviews, if any (25 Points)

Following the evaluation of written responses, the City Attorney's Office may require Respondents to participate in interviews to be scheduled by the Office. The Office may limit the Respondents invited to interviews to the highest scoring Respondents, based on scoring under Section IV.B.1-3 above, that it decides is needed to establish the Pool. Respondent should ensure that all significant personnel who will be providing services to the Office are present during any interview. Interview scores will be based on presentation and communication skills. The interview score will be combined with the results of the written response evaluation for a cumulative score.

V. Contract Award

The Office will select up to eight Respondents with which to commence contract negotiations. The selection of any such Respondent shall not imply acceptance by the Office of any terms of Respondent's Response, which are subject to further negotiations and approvals before the Office may be legally bound. The selected Respondents must be willing to enter into a written agreement that is substantially in the form of the Agreement for Professional Legal Services attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of contract negotiations. If a satisfactory contract cannot be negotiated in a reasonable time, the Office, in its sole discretion, may terminate negotiations with any Respondent(s).

VI. Terms and Conditions for Receipt of Responses

A. Errors and Omissions in RFQ

Respondents are responsible for reviewing this RFQ in its entirety. Respondents are to promptly notify the Office, in writing, if there is any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to the Office promptly after discovery, but in no event later than 4:30 p.m. (PDT) on November 30, 2020 to Robert Bryan (robert.bryan@sfcityatty.org). Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and any request for written interpretation or clarification of RFQ questions or procedures must be in writing and submitted by email not later than 4:30 p.m. (PDT) on November 16, 2020 to Robert Bryan (robert.bryan@sfcityatty.org). The Office will only respond to inquiries for written interpretation or clarifications of RFQ questions or procedures. This opportunity to seek interpretation or clarification of the RFQ is not an opportunity to ask general questions. The Office will post written interpretations and clarifications on the Office website (<http://www.sfcityattorney.org/>).

C. Objections to RFQ Terms

Should a Respondent object on any ground to any provision or legal requirement set forth in this RFQ, the Respondent must, not later than 4:30 p.m. (PDT) on November 16, 2020, provide written notice to the Office (addressed to Robert Bryan (robert.bryan@sfcityatty.org)) setting forth with specificity the grounds for the objection. The failure of a Respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any objection a Respondent may have.

D. Addenda

The Office may modify this RFQ, prior to the Submissions Deadline, by issuing addenda, which will be posted on the Office website (<http://www.sfcityattorney.org/>). Respondents shall be responsible for ensuring that its response reflects any and all addenda issued by the Office prior to the Submissions Deadline regardless of when the response is submitted. Therefore, the Office recommends that Respondents consult the websites frequently, including shortly before the response due date, to ensure that Respondent has downloaded all addenda.

E. Term of Response

Submission of a Response signifies that the proposed services and fees are valid for at least 180 calendar days from the Submissions Deadline and that the fees contained therein are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Response

A Respondent may revise a response on the Respondent's own initiative at any time before the Submissions Deadline. The Respondent must submit the revised response in the same manner as the original, as set forth in Section III of this RFQ. A revised response must be received by the Submissions Deadline. In no event will a statement of intent to submit a revised response or commencement of a revision process extend the Submissions Deadline for any Respondent.

At any time during the response evaluation process, the Office may require a Respondent to provide oral or written clarification of its response. The Office reserves the right to make an award without further clarifications of responses received.

G. Errors and Omissions in Response

Failure by the Office to object to an error, omission, or deviation in the response will in no way modify the RFQ or excuse the Respondent from full compliance with the specifications of this RFQ or any contract awarded pursuant to this RFQ.

H. Financial Responsibility

The Office accepts no financial responsibility for any costs incurred by a Respondent in responding to this RFQ. Responses submitted in response to this RFQ are the property of the Office and may be used in any way deemed appropriate by the Office.

I. Respondent's Obligations under the Campaign Reform Ordinance

Respondents must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code.

City law bans persons who are seeking or recently entered into government contracts from making contributions to certain candidates for City elective office. The ban applies when:

1. The City, a state agency on whose board an appointee of a City elective officer serves, the Unified School District, or the Community College District is a party to a contract,
2. The contributor is a party to the contract or is an affiliate (see discussion below) of a party to the contract;
3. The contract or series of contracts in the same fiscal year has a total anticipated or actual value of \$100,000 or more in a fiscal year.

If these three conditions are met, then the contributor is prohibited from making a contribution to the candidate. This applies from the time that the contractor submits a Response to the City to become a party to the contract until either (a) negotiations regarding the Response terminate (and the contractor is not awarded the City contract), or (b) twelve months have passed since the contract was approved.

Affiliates of a contractor are the entity's directors, principle officers (including its chairperson, chief executive officer, chief financial officer, chief operating officer, or any similar position), individuals or entities holding a share of the organization of ten percent or greater, and any subcontractor listed on the organization's bid for a City contract.

See San Francisco Campaign and Governmental Conduct Code §1.126.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal or Request for Qualifications, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contractors' bids, responses to request for proposals or qualifications and all other records of communications between the Office and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided by Respondent that is covered by Section 67.24(e) will be made available to the public upon request.

K. Public Access to Meetings and Records

If a Respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Respondent must comply with Chapter 12L. The Respondent must include in its response (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Respondent's meetings and records, and (2) a summary of all complaints concerning the Respondent's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Respondent shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Respondent's Chapter 12L submissions shall be grounds for rejection of the response and/or termination of any subsequent agreement reached on the basis of the response.

L. Reservations of Rights by the City

The issuance of this RFQ does not constitute an agreement by the Office that any contract will actually be entered into by the Office. The Office expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all responses;
3. Reissue a Request for Proposals or Qualifications;
4. Prior to the Submission Deadline, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any services to be provided under this RFQ, or the requirements for contents or format of the responses; or
5. Procure any services specified in this RFQ by any other means.

M. No Waiver

No waiver by the Office of any provision of this RFQ shall be implied from any failure by the Office to recognize or take action on account of any failure by a Respondent to observe any provision of this RFQ.

VII. Contract Requirements

A. Nondiscrimination in Contracts and Benefits

Selected Candidates contracting with the City will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in

contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the Contract Monitoring Division's website at <http://www.sfgsa.org/index.aspx?page=6058>.

B. Minimum Compensation Ordinance (MCO)

Selected Candidates contracting with the City will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P. Generally, the MCO requires contractors to provide employees covered by the MCO who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract. Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

C. Health Care Accountability Ordinance (HCAO)

Selected Candidates contracting with the City will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q. Respondents should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

D. Conflicts of Interest

Selected Candidates will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including (i) Section 15.103 of the City's Charter, (ii) Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and (iii) Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. Selected Candidates will be required to acknowledge that they are familiar with these laws; certify that they do not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if they become aware of any such fact during the term of their engagement with the Office.

Individuals who will perform work for the Office on behalf of the Selected Candidates might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying Selected Candidates that the City has selected such Respondents for inclusion in the Pool.

VIII. Protest Procedures

A. Protest of Non-Responsiveness Determination

Within five business days of the Office's issuance of a notice of non-responsiveness, any Respondent that has submitted a response and believes that the Office has incorrectly determined that its response is non-responsive may submit a protest, captioned "Notice of Protest." Such protest must be received by the Office on or before the fifth business day following the Office's issuance of the notice of non-responsiveness. The protest must include a written statement specifying in detail each of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the Respondent must specify facts and evidence sufficient for the Office to determine the validity of the protest.

B. Protest of Pool

Within five business days of the Office's issuance of a notice of intent to select Respondents for the Pool, any Respondent not selected for the Pool that has submitted a responsive response and believes that the Office has incorrectly selected another Respondent for the Pool may submit a written protest, captioned "Notice of Protest." Such protest must be received by the Office on or before the fifth business day after the Office's issuance of the notice of intent to place respondents in the pool.

The protest must include a written statement specifying in detail each one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the Respondent must specify facts and evidence sufficient for the Office to determine the validity of the protest.

C. Delivery of Protests

All protests must be delivered by email to Robert Bryan, City Attorney's Office, at robert.bryan@sfcityatty.org, and received by the due date as described above. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

APPENDIX A
RFQ Questions

To respond to this RFQ, Respondents must respond to each of the items below, in the same order listed. Completeness, clarity and brevity will be looked upon favorably. Please limit your responses to the items in this Appendix A to no more than fifteen (15) pages total with a font of at least 12 points (excluding required attachments and attorneys' resumes). Please restate each question in bold face before your response and be as specific as possible. Answers that merely provide generalities may be deemed non-responsive. The written consent of the Office will be required prior to the substitution of any personnel identified as assigned to provide services under this RFQ.

1. Firm Organization and Background

a) Please provide a short introduction and executive summary of the firm's qualifications of not more than two pages which include the name, address, telephone number, email address and facsimile number of the person authorized to represent the Respondent with respect to all notices, negotiations, discussions and other communications relating to this RFQ, to any further selection process, and to any negotiations related to a contract for the services described in this RFQ.

b) Please provide narrative statements which demonstrate that Respondent meets the minimum qualifications set forth in Section IV.A of this RFQ. Narrative statements should not exceed three pages and should address the following:

- i. A brief description of your firm, including its history, when the firm's investment law practice began, the location of the firm's offices, the number of attorneys specializing in deferred compensation law, and the number of such attorneys in California; and
- ii. identify and describe the experience of the lead attorney, who must have at least five (5) years of experience in deferred compensation law for public pension plan clients.

c) Please provide an overall description of Respondent's firm, including the following:

- i. Respondent's organizational structure (e.g., corporation, partnership, limited liability company);
- ii. ownership structure, including any parent or affiliated companies and/or joint ventures;
- iii. years in existence;
- iv. years of experience in deferred compensation law, including 457(b) law;

- v. financial condition;
- vi. major practice areas;
- vii. total number of attorneys and total number of other employees; and
- viii. headquarters and regional office locations, including the number of attorneys at each location specializing in deferred compensation law, including 457(b) plan law.

d) Please describe any changes in the firm's ownership structure or senior staffing within the last two years. Please describe any future changes that Respondent anticipates.

e) Please provide an organizational chart and briefly describe each attorney who may be assigned to provide services under this RFQ, including for each attorney:

- i. location of office;
- ii. title and role within Respondent's firm;
- iii. number of years with Respondent's firm;
- iv. years of experience in deferred compensation law, and specifically 457(b) plan law;
- v. expected role and responsibilities in providing the services described in this RFQ;
- vi. qualifications and any specialized expertise; and
- vii. brief resume.

2. Qualifications and Experience

a) Describe Respondent's expertise working with public deferred compensation plans, including 457(b) plans. Include range of responsibilities.

b) Please provide a list of public deferred compensation plans that are clients, including 457(b) plans, that Respondent represents which would demonstrate the firm's ability to represent the SFDCP.

c) Describe Respondent's knowledge of City and County of San Francisco laws and applicable open meeting and public records laws.

d) Briefly and specifically describe Respondent's experience and qualification to provide the Work, including recent instances in which you have represented in these matters deferred compensation plans of a size comparable to, or larger than, the SFDCP. With respect to these engagements, please describe your firm's specific role in performing the Work, the name of the client, number of years serving this client, and the names of the attorneys in charge of this client.

e) Please describe why Respondent and its services are superior to other firms providing these services and Respondent's competitive advantage, if any.

3. Staff

a) Identify the attorneys who will be directly assigned to matters within the Scope of Work, their responsibilities for handling this relationship, their experience and qualifications, and the number of years they have practiced deferred compensation law, including 457(b) plan law. Include brief resumes.

4. Fees

a) Please describe Respondent's proposed fee arrangement for the services described in this RFQ. Please include a breakdown of the rates for each attorney who may be assigned to provide services under this RFQ. You may wish to propose, and state whether this proposal is negotiable. Please be as specific and creative as possible. State whether the firm offers discounted rates for governmental entities.

b) Please describe the fees Respondent charges on any items separate from attorney services, including, but not, limited to such items as computerized research, photocopying or subpoena services. Please describe any other direct or indirect costs that may be incurred by the Office. Please describe whether Respondent applies a markup charge for outside vendor services.

c) State whether Respondent offers discounted rates for governmental entities.

d) Please discuss any additional information related to billing that Respondent believes will be relevant to the Office in considering the Respondent's fees.

5. Conflicts of Interest

a) Please describe Respondent's systems and processes for identifying and mitigating actual or potential conflicts of interest. Please provide a copy of Respondent's conflicts of interest policy, if any.

b) Please describe any actual or potential conflicts of interest that Respondent or any attorney with Respondent may have in providing the services described in this RFQ. Please describe in detail the nature of the conflict and what consents would be required under the Rules of Professional Responsibility.

6. References

Please provide three current deferred compensation plan client references, with assets similar to or greater than SFDCP's in size, for whom you provide legal services, including client name, contact and telephone number and email address. 457(b) plan references are preferred.

7. Disputes and Litigation

a) Please identify every instance within the last five years in which a client dismissed Respondent or terminated a contract with Respondent for services similar to those described in this RFQ.

b) Please describe all actual or pending litigation (including case name, court, case number, and date filed), grand jury inquiries, indictments, convictions, and state ethics board proceedings in the last ten years relating to the Respondent, or any attorney or employee with the Respondent that arises from the Respondent's business, including the outcome. Please describe all pending or threatened administrative proceedings or investigations by a federal, state or local agency.

c) Please describe in detail all malpractice and fee dispute claims made against Respondent in the last five years, including disposition or current status.

8. Conflicts of Interest

a) Does your firm have a written conflict of interest policy?

b) Describe how your firm deals with professional ethics in connection with its representation of clients. What does the firm do to insure there are no conflicts of interest? What process does the firm maintain in order to provide a consistent, high standard of professional ethics?

c) Please describe any actual or potential conflict of interest that may arise as a result of your selection to represent the City Attorney's Office in SFDCP-related matters. Describe in detail the nature of the conflict and what consent would be required under the Rules of Professional Responsibility.

d) Has your firm ever represented firms with which SFDCP might contract? If so, identify the name of each such client and the period of representation.

9. Acknowledgements

a) Please include a statement acknowledging that, by responding to this RFQ, Respondent and its attorneys and staff are "restricted sources" as that term is defined in the San Francisco Campaign and Governmental Conduct Code, Section 3.216.

b) Please include a statement acknowledging that, by responding to this RFQ, Respondent has reviewed the form services contract attached to this RFQ as Appendix C. Please identify any provisions to which Respondent will not agree or would request revision, and provide an explanation for each objection and revision.

10. Miscellaneous

a) Please provide the level of coverage of Respondent's malpractice insurance and any other fiduciary or professional liability insurance the firm carries, including the name of the insurance carrier(s). Please identify whether the

coverage is on a per client basis, or whether the coverage is applied to the firm as a whole. Please identify all deductibles or self-insured retentions.

b) Please identify all fidelity insurance coverage, including carriers and policy limits.

c) Please discuss any additional information that Respondent would like the Office to know about Respondent that may impact consideration of Respondent as a potential service provider to the Office or SFDCP.

APPENDIX B

Standard Forms

Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFQ package. Instead, this Appendix describes the forms, where to find them on the Internet (see last page), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (See note under item 3.) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor Support at the Controller's Office at (415) 554-6702.

Where the forms are on the Internet

Office of Contract Administration

Homepage: <http://www.sfgov.org/oca>
Business with the City"

Click on "How to Qualify to Do

Form	Purpose/Info	Routing
<p><u>Request for Taxpayer Identification Number</u> (IRS Form W-9)</p> <p>Request for Taxpayer Identification Number and Certification</p> <p>https://sfcitypartner.sfgov.org/pages/index.aspx</p> <p>https://www.irs.gov/pub/irs-pdf/fw9.pdf</p>	<p>This form provides the City with your taxpayer ID number, which is then used to assign your firm a City 5-digit Supplier ID Number.</p>	<p>Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102</p> <p>(415) 944-2442 sfcitypartnersupport@sfgov.org</p>
<p><u>Business Tax Declaration Form</u> (Form P-25)</p> <p>http://newbusiness.sfgov.org/vendor</p>	<p>This Declaration is used to determine if you are physically "doing business in San Francisco" and therefore are required</p>	<p>Email: <u>ttx.VendorAccounts@sfgov.org</u> (415) 554-6718 Mail: Controller's Office City Hall, Room 484 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102</p>

	to pay business taxes.	
<p><u>Declaration of Nondiscrimination in Contracts and Benefits</u> <i>with supporting documentation</i> (Form CMD-12B-101)</p> <p>https://sfgov.org/cmd/forms-resources</p>	<p>This Declaration is used by the City’s Human Rights Commission to determine if the vendor has employees and offers benefits to these employees. If the vendor does, then the vendor must demonstrate to the Human Rights Commission that the vendor offers equal benefits (health, retirement, sick leave...) to employees with spouses and to employees with domestic partners by submitting with the Declaration copies of the vendor’s benefit plans and personnel handbook that evidence compliance with the Human Rights</p>	<p>Website: www.sfgov.org/cmd Email: cmd.equalbenefits@sfgov.org Mail: Contract Monitoring División 30 Van Ness Ave., Suite 200 San Francisco, CA 94102-6033 415-581-2310</p>

	Commission's standards. For additional information please visit City Administrator's Contract Monitoring Division's website.	
Vendor Registration Package	Combines the above forms and as well as vendor business profile in one easy location.	Email: Vendor.File.Support@sfgov.org Fax: (415) 554-6261 Mail: Vendor Registration Package City and County of San Francisco Vendor File Support City Hall, Room 484 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685

Supplemental Forms

Depending on the requirements specified in the bid you are responding to, you may be requested to complete one of the below forms. These supplemental forms are bid specific and are required in addition to the mandatory forms above.

Form:	Required If:
Minimum Compensation Ordinance (MCO) Declaration (pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.
Health Care Accountability Ordinance (HCAO) Declaration (pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 20 employees (more than 50 employees for non-profit organizations) including employees of any parent, subsidiaries and subcontractors.
Insurance Requirements (pdf)	If the bid package requires the successful bidder to demonstrate proof of insurance

WHERE THE FORMS CAN BE FOUND ON THE INTERNET

Office of Contract Administration

Homepage: <https://sfgov.org/oca/>

Purchasing forms: Click on “Resources” under the “Vendor Information” banner.

GSA – Office of the City Administrator, Contracts Monitoring Division (CMD)

CMD’s homepage: <https://sfgov.org/cmd/>

Equal Benefits forms: Click “12B Equal Benefits Program” in the column on the left side of the page.

APPENDIX C

Form of Agreement for Professional Legal Services

AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
and
[LAW FIRM]
For Professional Legal Services

This Agreement, dated for convenience of reference as of [DATE], is by and between the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Office of the City Attorney (the "City Attorney"), and [LAW FIRM], a _____ (“Counsel”), collectively the “Parties.”

This Agreement is made with reference to the following facts and circumstances:

- A.** City wishes to retain Counsel to provide professional legal services, on an as-needed basis, on behalf of the City and County of San Francisco Deferred Compensation Plan (“SFDCP”), as more fully described in Exhibit A.
- B.** The San Francisco Charter vests the City Attorney with authority to represent City and outside legal counsel to assist him with such representation.
- C.** Counsel is known for its expertise in the areas as set forth in Exhibit A and is well qualified to assist the City Attorney in accordance with the provisions of this Agreement.
- D.** Counsel will report to and work under the direction and control of the City Attorney as provided in this Agreement.
- E.** This Agreement creates an on-going attorney client relationship between Counsel and City, including but not limited to the SFDCP. The attorney client relationship shall remain in place at all times from the effective date of this Agreement until such time as either party provides written notice of its intent to terminate the attorney client relationship. The attorney client relationship will remain in place continuously under this Agreement until such notice is provided, regardless of whether Counsel is actively performing legal work for City at any given time.

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF SERVICES

1.1 Scope

- (a) Upon request of the City Attorney, Counsel shall provide legal services as described in the Schedule of Services attached hereto as Exhibit A and incorporated by reference

as though fully set forth herein (the “SFDCP Matters”). The scope of services as set forth in Exhibit A may be modified from time to time, in writing, by the City Attorney.

[If Counsel Provides a Letter of Engagement:] Counsel’s level of representation of City is more specifically described in its letter of [Date of Letter of Engagement] attached hereto as Exhibit [___]. To the extent there is any conflict or inconsistency between the terms of engagement set forth in Counsel's [Date of Letter of Engagement] letter, and the terms of this Agreement, the Parties agree that terms of this Agreement shall control.

(b) The City Attorney, as the chief legal officer of the City and County of San Francisco, shall retain final authority over all aspects of City's response to the SFDCP Matters.

(c) Counsel is authorized to take appropriate legal steps to handle SFDCP Matters as it pertains to any and all claims made and relief sought. The City Attorney shall designate members of his staff to monitor, review and participate in the handling of all aspects of the SFDCP Matters

(d) Counsel shall not make or distribute any press releases without the express permission of the City Attorney. Counsel shall make every effort not to make statements to the press about any matters in which Counsel is representing the City without the consent of the City Attorney.

(e) Counsel shall, upon request, provide copies of pleadings, discovery requests and responses, and relevant correspondence related to SFDCP Matters to the City Attorney. Counsel shall consult in advance with, and obtain the prior approval of, the City Attorney concerning all substantive aspects of SFDCP Matters as it relates to City.

(f) Counsel shall provide sufficient resources, including attorney time, and competent personnel to handle SFDCP Matters through judgment after trial court proceedings or, subject to approval as provided herein, through settlement.

1.2 Ownership of Documents, Reports and Data Files. Any and all drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents originated and prepared by Counsel or its approved subcontractors pursuant to this Agreement shall be and become the property of and will be transmitted to City for its use in any manner it deems appropriate. Any such work product shall be attorney work product and subject to the attorney-client privilege of City. If City disseminates any or all of such information to other persons who are not public officers or employees, it may identify Counsel as the source of said information. City need not receive Counsel's authorization for any such dissemination, but will seek to advise of such dissemination before it is done. Nothing herein shall modify existing law regarding ownership of an attorney's work product, nor limit in any respect an attorney's obligations under the applicable Rules of Professional Conduct.

1.3 Retention of Records. Counsel shall maintain records, including records of financial transactions, pertaining to the performance of this Agreement, in their original form, in accordance with requirements prescribed by City. These records shall be retained for a period of no fewer than five years following the expiration date of this Agreement. Said records shall be

subject to examination and audit by authorized City personnel at any time during the term of this Agreement or within the five years following the termination date of this Agreement.

1.4 Maintaining Attorney-Client Privilege. Counsel acknowledge that they have no authority to waive the attorney-client privilege on behalf of City and agree to conduct their activities relating to this matter in such a manner as to maintain the confidentiality of communications between Counsel and City (including the City Attorney and any City official or employee). Counsel further agree not to waive the attorney-client privilege with respect to documents or communications obtained or conducted in connection with this matter without the express written consent of the City Attorney.

2. TERM. The term of this Agreement (the "Term") shall be from [BEGINNING DATE] to [END DATE], unless sooner terminated according to the terms of this Agreement, including, but not limited to, the City Attorney's exercising its rights to terminate under Section 6 of this Agreement. This Agreement may be further extended for up to two year by agreement of the City Attorney and Counsel.

3. EFFECTIVE DATE. This Agreement shall become effective upon full execution and delivery of this Agreement by both Parties, provided that Counsel shall not perform any work under this Agreement until the City Attorney gives Counsel either written or oral notice to proceed with performance of the scope of services under this Agreement.

4. COMPENSATION

4.1 Approved City Supplier. As a condition of receiving payment for services rendered under this Agreement, Counsel shall become an approved City supplier by registering its business with the City's Office of the Treasurer and Tax Collector and submitting a declaration of compliance with Chapter 12B of the City's Administrative Code.

4.2 Fee and Expense Schedule. City shall compensate Counsel for all of the services rendered by Counsel under this Agreement as set forth in the Fee and Expense Schedule attached hereto as Exhibit B, subject to the terms and conditions in this Agreement. Such compensation is the total compensation for all services this Agreement contemplates. The Fee and Expense Schedule may not be modified except by written instrument executed and approved in the same manner as this Agreement. The Fee Schedule sets forth a breakdown of the fees and reimbursable amounts payable under this Agreement. Notwithstanding anything to the contrary herein, the compensation of Counsel is conditioned upon City Attorney's prior reasonable determination that the services have been satisfactorily rendered in accordance with this Agreement. Compensation shall be payable within a reasonable time from receipt of invoices in accordance with Section 5. In no event shall City be liable for interest or late charges.

4.3 Not to Exceed Contract Amount. In no event shall the total fees and reimbursable amounts payable under this Agreement exceed _____ dollars (\$_____.00). The not to exceed amount may not be modified except by written instrument executed and approved in the same manner as this Agreement. Counsel shall keep City Attorney informed on a periodic basis, not less than monthly, of the amount of its billings and

notify City Attorney in writing immediately upon determining that such amount is within _____ dollars (\$_____.00) of the total amount of funds available under this Agreement.

4.4 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of City's Charter, including Article 3.105. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Counsel's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

5. METHOD OF PAYMENT

5.1 Invoices. As a condition to City's obligation to pay any compensation, Counsel must furnish invoices under this Agreement in a form reasonably acceptable to City Attorney. Counsel shall provide City Attorney with monthly invoices that identify services by task with a brief descriptive narrative of the service provided, by whom rendered, and the time (hours and fractions thereof) expended. Payments will be made to Counsel no more frequently than once each month. Counsel must submit all statements for services rendered and expenses incurred to City Attorney or his designee. Payments will be made to Counsel upon approval of City Attorney consistent with the terms and conditions of this Agreement. In no event shall City be liable for interest or late charges. In addition, as a condition to City's obligation to pay, Counsel shall have provided to City Attorney a current certificate of insurance and endorsement in accordance with Section 8.3.

5.2 Submitting False Claims. Pursuant to San Francisco Administrative Code Section 21.35, Counsel - or any subcontractor authorized under this Agreement - who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. Counsel or any approved subcontractor will be deemed to have submitted a false claim to the City if Counsel or any such subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

5.3 Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Counsel.

6. TERMINATION

6.1 Termination Without Cause. City Attorney, in his sole discretion, may terminate this Agreement for City's convenience and without cause, at any time, by giving Counsel at least thirty (30) days written notice of such termination. In the event of such termination, City will pay Counsel for those services performed in accordance with this Agreement, and to the satisfaction of City, up to the date of termination. In no event will City be liable for costs incurred by Counsel after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this Section or is not permitted under Section 11 or any other provision of this Agreement. The limitations set forth in this Section shall not prevent Counsel from recovering costs that Counsel necessarily incurred in discontinuing further work after receipt of the termination notice to the extent such costs are otherwise payable under this Agreement.

6.2 Non-Exclusive Remedies. City's right to terminate this Agreement under this Section 6 is not its exclusive remedy but is in addition to all other remedies available to City by law, in equity, or under the provisions of this Agreement.

6.3 Duties Upon Termination. Upon any termination of this Agreement, and subject to the California Rules of Professional Conduct, Counsel shall immediately provide City with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to City. Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of City.

7. STAFFING

7.1 Commitment of Qualified Personnel. Services under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Counsel. Particular tasks must be performed by lawyers with appropriate levels of experience for the performance of such tasks.

7.2 Named Personnel. The law office of [LAW FIRM] shall provide the legal services required under this Agreement. Counsel has been selected due to the unique skills and experience of counsel and the following named personnel:

[NAME OF PERSONNEL], Lead Attorney

The lead attorney(s) named above shall be the principal contact with City Attorney. Any change in the lead attorney(s) or addition to or substitution of any of the other named staff requires City Attorney's prior written approval. Staffing decisions required to be taken by Counsel in an emergency for which prior written approval of City Attorney is not feasible shall be limited to such emergency situation only, taken by Counsel in a reasonable manner and require immediate follow-up discussions with City Attorney.

At all times Counsel shall staff meetings, hearings, proceedings and the other elements of the scope of services to be rendered under this Agreement in a cost effective manner, consistent with the requirements of Section 7.1 above and as otherwise provided in this Agreement. Prior approval must be obtained from City Attorney whenever the lead attorney anticipates the assignment of multiple staff to attend meetings, hearings or other proceedings and to perform the various elements of the scope of services to be rendered under this agreement.

Before undertaking any document organization or review, any drafting of any motion, pleading, letter or other document, any legal research or any other significant legal work, Counsel shall consult with City Attorney about the most cost effective method of doing work including but not limited to using City staff or City Attorney staff to do as much of the work as appropriate.

8. INSURANCE

8.1 Required Coverage. Without in any way limiting Counsel's liability pursuant to the "Indemnification" section of this Agreement, and subject to approval by City's Risk Manager of the insurer and the policy forms, Counsel shall procure and maintain throughout the Term of this Agreement, at Counsel's sole expense, the following insurance:

(a) Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness;

(b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, and Non-Owned and Hired auto coverage, as applicable; and

(d) Professional Liability Insurance with limits not less than one million dollars (\$1,000,000) each claim covering legal malpractice arising from any services provided under this Agreement.

8.2 Liability Policies. Each policy shall be with an insurer with a rating comparable to A-, VIII or higher, that is authorized to do business in the State of California. Except for Professional Liability Insurance, all liability policies that this Section requires Counsel to maintain shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or

the onset of which occurred or arose) in whole or in part during the policy period. If requested by the City Attorney, Counsel will provide a complete copy of each insurance policy required under Section 8.1 of this Agreement.

8.3 Certificates. Before the commencement date of this Agreement, Counsel shall deliver to the City Attorney a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by City Attorney.

8.4 General Annual Aggregate Limits. Should Counsel provide any of the required liability insurance under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be twice the occurrence or claims limits specified above.

8.5 Lapse in Coverage. Should any required insurance lapse during the term of this Agreement, Counsel shall immediately notify City Attorney. Regardless of whether City Attorney receives such notice from Counsel, City Attorney shall have the sole option to direct Counsel to immediately discontinue all work under this Agreement. Requests for payments originating after such lapse shall not be processed until City Attorney receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City Attorney may, at his sole option, terminate this Agreement upon the lapse of any required insurance, and City shall have no further obligation to pay Counsel after such termination.

8.6 Claims Made Forms. Should any of the required insurance be provided under a claims-made form, Counsel shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of the term of this Agreement, so if any occurrences during the term of this Agreement give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

8.7 Review of Requirements. At the request of the City Attorney, Counsel and City Attorney shall periodically review the limits and types of insurance carried pursuant to this Section 8. If the general commercial practice in City is to carry liability insurance in an amount or coverage materially greater than the amount or coverage being carried by Counsel for risks comparable to those associated with the activities to be conducted under this Agreement, then the amounts or coverage carried by Counsel shall be increased to conform to such general commercial practice.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Limitations on Assignment. Counsel shall not, without written consent of City Attorney, assign or transfer any interest in this Agreement, or delegate its performance of duties under this Agreement, in whole or in part; and no approval of any assignment, transfer, or

delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties. Counsel recognizes and agrees that the services to be performed under this Agreement are personal in nature, and City Attorney may give, withhold or condition his consent in his sole and absolute discretion.

9.2 Limitations on Subcontracting. Counsel is prohibited from subcontracting this Agreement or any part of it unless Counsel first obtains City's written approval of the subcontractor and the scope of services to be performed under any subcontract. Any such subcontracting will be subject to the approval of City Attorney in his sole and absolute discretion. An agreement made in violation of this provision shall confer no rights on any other Party and shall, at City's sole option, be void.

10. CONFLICTS OF INTEREST

10.1 Potential Violations of Governmental Ethics Laws. By executing this Agreement, Counsel certifies that it does not know of any violation of Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement. Counsel further certifies that it will notify the City Attorney if it later learns of any violations of these governmental ethics laws.

10.2 California Rules of Professional Conduct. By executing this Agreement, Counsel further certifies that it has made a complete disclosure to City Attorney of any conflict of interest prohibited by the California Rules of Professional Conduct. Counsel has done a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to City Attorney or has obtained a written conflicts waiver from the City Attorney, in his sole and absolute discretion. The existence of any actual or potential conflict of interest must be promptly reported by Counsel to City Attorney and resolved to City Attorney's satisfaction before representation proceeds. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination of this Agreement by City Attorney.

11. LIMITATION OF LIABILITY. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF COMPENSATION PROVIDED FOR IN EXHIBIT B (FEE AND EXPENSE SCHEDULE) ATTACHED HERETO. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

12. NONDISCRIMINATORY EMPLOYMENT AND BUSINESS OPPORTUNITIES PRACTICES

12.1 Counsel Shall Not Discriminate. Counsel shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Counsel agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, height, weight, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Counsel, in any of Counsel's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Counsel.

12.2 Subcontracts. Counsel shall incorporate by reference in all subcontracts, as may be permitted under this Agreement, the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from City Attorney) and shall require all subcontractors to comply with such provisions. Counsel's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

12.3 Non-Discrimination of Benefits. Counsel does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, or where any part of this Agreement is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension or retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing registration.

12.4 Declaration. As a condition to this Agreement, Counsel shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD 12B-101) with supporting documentation.

13. NOTICES

All notices or other communications to either Party by the other as may be required by this Agreement shall be deemed given when made in writing and delivered in person or deposited in the United States mail as follows:

To City:

San Francisco City Attorney's Office
City and County of San Francisco
1390 Market Street, Fourth Floor
San Francisco, CA 94102
e-mail: robert.bryan@sfcityatty.org
Attn: Robert Bryan, Deputy City Attorney

To the Counsel:

[ADDRESS AND INFORMATION]

e-mail: _____

Attn: _____

or to such other address as either City or Counsel may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section 13 at least ten (10) days prior to the effective date of such change.

Any notice hereunder shall be deemed to have been given three (3) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by e-mail to the address set forth herein or such other e-mail as may be provided from time to time.

14. INDEPENDENT CONTRACTOR; PAYMENT OF TAXES AND OTHER EXPENSES

14.1 Independent Contractor. For the purposes of this Section 14, "Counsel" shall be deemed to include not only Counsel, but also any agent or employee of Counsel. Counsel acknowledges and agrees that at all times, Counsel or any agent or employee of Counsel shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Counsel, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Counsel or any agent or employee of Counsel shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Counsel or any agent or employee of Counsel is liable for the acts and omissions of itself, its employees and its agents. Counsel shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Counsel's performing services and work, or any agent or employee of Counsel providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Counsel or any agent or employee of Counsel. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Counsel's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Counsel performs work under this Agreement. Counsel agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Counsel's compliance with this section. Should City determine that Counsel, or any agent or employee of Counsel, is not performing in accordance with the requirements of this Agreement, City shall provide Counsel with written notice of such failure. Within five (5) business days of Counsel's receipt of such notice, and in accordance with Counsel's policy and

procedure, Counsel shall remedy the deficiency. Notwithstanding, if City believes that an action of Counsel, or any agent or employee of Counsel, warrants immediate remedial action by Counsel, City shall contact Counsel and provide Counsel in writing with the reason for requesting such immediate action.

14.2 Payment of Taxes and Other Expenses. Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Counsel is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Counsel which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Counsel for City, upon notification of such fact by City, Counsel shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Counsel under this Agreement (again, offsetting any amounts already paid by Counsel which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 14 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Counsel shall not be considered an employee of City. Notwithstanding the foregoing, Counsel agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

15. INDEMNIFICATION.

15.1 Counsel shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Counsel's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Counsel; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Counsel's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except where such Claims are the result of the sole active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

15.2 In addition to Counsel's obligation to indemnify City, Counsel specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Counsel by City and continues at all times thereafter.

15.3 Counsel shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

16. DEFAULT; REMEDIES

16.1 Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

(a) Counsel fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

5.2	Submitting False Claims.	17.	Proprietary or Confidential Information of City
5.3	Taxes	24.3	Compliance with Laws
8.	Insurance	24.12	Prohibition on Political Activities with City Funds
9.	Assignment and Subcontracting	24.13	Protection of Private Information

(b) Counsel fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Counsel.

(c) Counsel (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Counsel or of any substantial part of Counsel's property or (E) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Counsel or with respect to any substantial part of Counsel property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Counsel.

16.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Counsel any Event of Default; Counsel shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of such costs or expenses are incurred at the

maximum rate then permitted by law. City shall have the right to offset from any amounts due to Counsel under this Agreement or any other agreement between City and Counsel all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Counsel pursuant to the terms of this Agreement or any other agreement.

16.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

17. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY. Counsel understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Counsel will have access to private or confidential information, including, without limitation, attorney work product and information subject to the attorney-client privilege, which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Counsel agrees that all information created by Counsel for City or disclosed by City to Counsel shall be held in confidence and used only in performance of the Agreement. This section shall survive the termination or expiration of this Agreement.

18. WORKS FOR HIRE. If, in connection with services performed under this Agreement, Counsel or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Counsel or its subcontractors under this Agreement are not works for hire under U.S. law, Counsel hereby assigns all copyrights to such works to City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of City, Counsel may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. AUDIT AND INSPECTION OF RECORDS. Counsel agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Counsel will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Counsel shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

20. NON-WAIVER OF RIGHTS. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such

default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

21. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN. Pursuant to §804(b) of the San Francisco Environment Code, City urges Counsel not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

22. DRUG-FREE WORKPLACE POLICY. Counsel acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Counsel agrees that any violation of this prohibition by Counsel, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

24. GENERAL CONDITIONS

24.1 Severability. Any provision or portion of this Agreement prohibited as unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

24.2 Governing Law. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

24.3 Compliance with Laws. Counsel shall keep itself fully informed of City's Charter, codes, ordinances and regulations of City and of all state and federal laws in any manner affecting the performance of this Agreement and must at all times comply with such codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

24.4 Modifications to this Agreement. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto or except as otherwise expressly provided in this Agreement.

24.5 Survival. The following sections shall survive any termination, expiration or cancellation of this Agreement:

1.2	Ownership of Documents, Reports and Data Files	17	Proprietary or Confidential Information of City
5.2	Submitting False Claims.	18	Works for Hire
5.3	Taxes	24.1	Severability
8	Insurance	24.2	Governing Law
11	Limitation of Liability	24.4	Modifications to this Agreement
14	Independent Contractor; Payment of Taxes and Other Expenses	24.13	Protection of Private Information
15	Indemnification	24.16	Interpretation of Agreement

24.6 Approvals by City; Point of Contact. Except as otherwise provided in this Agreement or as otherwise required by City's Charter, all approvals or consents requested or required hereunder may be given by City Attorney or his designee. All such approvals or consents may be given or withheld in City Attorney's sole discretion, unless otherwise expressly provided. Silence shall not be considered approval of City for any purposes hereof. Any legal advice given by Counsel with respect to this representation shall be rendered to City Attorney, or City Attorney's designee.

24.7 Counsel Responsibility. Counsel shall report to, and work under the direction and control of, City Attorney or his designee, in the performance of the services. Counsel agrees to be solely responsible, however, for its own actions and those of its subordinates and subcontractors throughout the term of this Agreement. Counsel shall handle any press contact it receives directly or indirectly in connection with the subject of this Agreement in coordination with City Attorney. Counsel also agrees that any court and administrative filings, written opinions and any correspondence containing substantive advice shall be reviewed and approved by City Attorney before issuance.

24.8 Notification of Limitations on Contributions. By executing this Agreement, Counsel acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Counsel's board of directors; Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Counsel; any subcontractor listed in the

bid or contract; and any committee that is sponsored or controlled by Counsel. Counsel certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

24.9 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

24.10 Requiring Minimum Compensation for Covered Employees. Counsel shall comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco.

24.11 Requiring Health Benefits for Covered Employees. Counsel shall comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse.

24.12. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Counsel may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Counsel agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Counsel violates the provisions of this section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Counsel from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Counsel's use of profit as a violation of this section.

24.13. Protection of Private Information. If this Agreement requires the City to disclose "Private Information" to Counsel within the meaning of San Francisco Administrative Code Chapter 12M, the terms and provisions of which are incorporated herein, Counsel shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the services provided for under this Agreement. Any failure on the part of Counsel to comply with the requirements of Chapter 12M will subject Counsel to the enforcement and penalty provisions in Chapter 12M.

24.14 Food Service Waste Reduction Requirements. Counsel shall comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and

implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

24.15 Consideration of Criminal History in Hiring and Employment Decisions.

Counsel agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Counsel/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>.

24.16. Consideration of Salary History. Counsel shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Counsel is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Counsel is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Counsel is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section

24.16 Interpretation of Agreement. This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

25. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Counsel acknowledges and agrees that he or she has read and understood this section.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

DENNIS J. HERRERA
City Attorney

COUNSEL

[LAW FIRM],
a _____

By: _____
[NAME]
[Insert title]

By: _____
[NAME]

Federal Employer Number

Exhibits:

- A: Schedule of Services
- B: Fee and Expense Schedule

EXHIBIT A

Schedule of Services

The following description of the scope of services is intended as a general guide and not as a complete description of all aspects of services that Counsel may be retained to perform or of all the task necessary to complete the services that Counsel may be retained to perform.

1. Advise the SFDCP on compliance with applicable laws, including tax laws, securities laws, and other laws relating to qualification issues that may affect the SFDCP design.
2. Recommend amendments to statutes, policies, and procedures to insure the SFDCP complies with applicable qualification criteria, rules and regulations.
3. Prepare and file requests for private letter rulings and other opinions from state and federal regulatory or governing bodies.
4. Advise the SFDCP concerning contracting matters, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
5. Negotiate, draft and review contracts, including but not limited to, contracts with third party administrators, custodians, consultants, investment advisors, and investment managers.
6. Advise the SFDCP, and negotiate, draft and review investment contracts, including contracts for alternative investments.
7. Represent the SFDCP in complex litigation.

EXHIBIT B

Fee and Expense Schedule

City agrees to compensate Counsel under this Agreement in the amount and manner set forth below:

A. Charges for Professional Services. Counsel shall be paid for professional services of any attorneys or other timekeepers assigned to City matters at the following hourly rates:

[Name of Attorney(s)]	[Title]	[Hourly Rate]
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These rates shall not be modified except by written instrument executed and approved in the same manner as this Agreement. As stated in section 7.2 of the Agreement, any change in the lead attorney or addition of attorneys or timekeepers other than those listed above requires the prior written approval of the City Attorney or designee. For purposes of this Agreement, the City Attorney’s designee is the individual identified in Section 13, Notices, of this Agreement. If Counsel wishes to charge for the services of additional attorneys or timekeepers, Counsel shall provide written notice with the name, title and hourly rate of the attorney or staff member, and obtain the written approval of the City Attorney or designee before charging for any services they provide. Counsel shall not increase the rate for these attorneys or staff from the amount specified in that written notice for the term of the agreement, except as provided above.

Counsel shall use efficient and cost effective means in rendering services as set forth in section 7.2 of the Agreement. In no event shall Counsel bill, nor shall the City pay, more than the amount certified by the City. Charges for preparing, processing or reviewing bills are not reimbursable under this Agreement.

B. Travel Time. Counsel shall not be compensated for travel time in connection with performing services under this Agreement unless Counsel obtains advance written approval from the City Attorney or designee. When invoicing for approved travel time, Counsel shall indicate the starting and ending location of the trip, and the purpose of the travel.

C. Out of Pocket Expenses. City shall reimburse Counsel for its reasonable and necessary actual out-of-pocket expenses incurred in the course of rendering services consisting only of the expenses set forth below. All travel expenses shall be reimbursed in accordance with the City and County of San Francisco – Office of the Controller, Accounting Policies and Procedures, as they may periodically be updated. <http://famis.sfgov.org/controllerspolicies>

- 1) Transportation (airline, rental car, rail, bus, taxi, public transportation or ride sharing) expenses. When invoicing for travel expenses, Counsel shall indicate the starting and ending location of the trip, and the purpose of the travel. Counsel shall obtain pre-approval in writing by the City Attorney or designee for airline expenses and only Coach/Economy Class fares will be reimbursed.
- 2.) Hotel expenses for overnight travel that have been pre-approved in writing by the City Attorney or designee. Counsel shall make every effort to obtain a government rate

- 3) Meals while Counsel is required to travel outside of the 9 Bay Area counties for City business, though meals shall not exceed current GSA (“CONUS rates”) rates for any given area.
- 4) Filing fees;
- 5) Charges for express mail, delivery charges and courier service. The City has negotiated competitive rates with outside vendors for these services, if Counsel wishes to use the City’s vendors;
- 6) In-house and outsourced document reproduction expenses (in-house photocopying shall not exceed \$0.10 per page; outside reproduction at actual cost);
- 7) Charges for subpoena services and fees;
- 8) Court reporter charges and transcript costs. If Counsel believes a video recorded deposition is necessary, Counsel shall obtain prior approval from the City Attorney or designee; and
- 9) Expert witness fees, subject to the following prior written approval process: Counsel shall provide advance notice that one or more expert may be necessary for a particular matter, and shall provide a rationale justifying the need for the expert. If the City Attorney or designee agrees, Counsel shall obtain a written proposal and budget from the recommended expert, as well as information establishing the expert’s qualifications, and provide those materials to the City Attorney or designee for review and written approval before engaging the expert.

If Counsel anticipates incurring an expense not listed above in Paragraph C(1) – (9) that Counsel believes should be reimbursable, Counsel shall obtain advance written approval from the City Attorney or designee, or the expense shall not be eligible for reimbursement.

Counsel shall include supporting documentation, such as an invoice, for all expenses and costs for which Counsel seeks reimbursement under this Agreement.

The amount of out-of-pocket expenses that the City shall reimburse under this Agreement shall not exceed _____ dollars (\$_____). Counsel shall use cost effective means in incurring any permitted reimbursable cost. No markup or surcharge shall be added.

D. Reporting. Counsel shall provide a written summary each month that tracks all fees for professional services charged under this Agreement against the overall not to exceed amount set in Section 4.2, on a cumulative basis from the start date of the Agreement. The report shall also track all expenses and costs charged under this Agreement against the overall not to exceed amount for out-of-pocket expenses set in Section B of this Exhibit B, on a cumulative basis from the start date of the Agreement.