



**City and County of San Francisco**  
**Office of the City Attorney**

***Request for Qualifications***

*-for-*

***INVESTMENT LEGAL SERVICES***

**Dated: January 4, 2023**

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**City and County of San Francisco**  
**OFFICE OF THE CITY ATTORNEY**  
**Request for Qualifications**  
**INVESTMENT LEGAL SERVICES**

**I. INTRODUCTION**

**A. General**

The City and County of San Francisco (the “City”), through the Office of the City Attorney (the “Office”), is issuing this Request for Qualifications (“RFQ”) in search of qualified law firms (“Candidates”) to provide investment legal services on an ongoing, as-needed basis, with a focus on legal advice related to complex investments, both domestic and international, under consideration by the San Francisco City and County Employees’ Retirement System (“SFERS”). The investments may involve public equity, private equity, fixed-income, real assets, absolute return, private credit and fixed income. SFERS’s investments may include, without limitation, separate accounts, co-investments and commingled funds. SFERS’s alternative investments portfolio may include, without limitation, direct investments, secondary investments, and investments in commingled and partnership vehicles focusing on venture capital, buyout, turnaround, mezzanine debt, distressed debt, and approved special situations. The Office also seeks Candidates to provide similar investment legal services on an ongoing, as needed basis, for the San Francisco Retiree Health Care Trust Fund (“RHCTF”).

SFERS is a defined benefit pension plan established by the City Charter (the “Charter”). SFERS is administered by a seven-member Retirement Board. The Retirement Board consists of three members elected by SFERS members, three members appointed by the Mayor, and one member of the Board of Supervisors, who is appointed by the President of the Board of Supervisors. The Office serves as general counsel to SFERS and the Retirement Board. SFERS has an investment portfolio valued at approximately \$33 billion,<sup>1</sup> allocated to different asset classes, including U.S. equity, international equity, global fixed income, real assets, private equity, private credit and absolute return. The assets are managed by in-house staff and external managers. Consultants provide recommendations and advice to the Retirement Board and SFERS staff.

The RHCTF is a trust established by the Charter in 2008 to provide a funding source to defray the cost to the City and other participating employers to pay for health coverage for retired persons and their survivors entitled to health coverage. RHCTF assets are held for the sole and exclusive purpose of providing health coverage to eligible retired persons and their survivors, and defraying the reasonable expenses of administering the RHCTF. The RHCTF is governed by the San Francisco Retiree Health Care Trust Fund Board (“RHCTF Board”), a five-member body that has exclusive authority and control over the administration of the RHCTF,

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<sup>1</sup> As of November 30, 2022

investments of trust assets, and disbursements from the trust in accordance with the Charter. The RHCTF consists of two sub-trusts (City and County of San Francisco and the Community College District) and collectively has a portfolio of approximately \$743 million<sup>2</sup> allocated to different asset classes, including U.S. equity, international equity, credit, rate sensitive, private equity, private real estate and risk mitigating strategies.

Through this RFQ, the Office will establish a pool of Candidates that satisfy the qualifications set forth in this RFQ and demonstrate expertise in the relevant areas, as determined through the evaluation process described in Section IV(B) of this RFQ. The Office may include up to twelve (12) Candidates scoring above 70 points in the pool. The pool will remain valid for a period of two (2) years from the date it is established.

The Candidates selected for the pool are the “Qualified Candidates.” Qualified Candidates will be eligible to enter into a contract (a “Contract”) to establish an attorney client relationship with the Office and perform the work, projects and services described in Section II of this RFQ (the “Work”). The Office anticipates entering into Contracts with multiple Qualified Candidates. No Qualified Candidate shall have any legal or equitable right or obligation to enter into a Contract or to perform the Work as a result of being chosen as a Qualified Candidate. The Office reserves the right, at its sole discretion, to select outside legal counsel for the Work through alternative means. The Office anticipates that any Contract entered into with a Qualified Candidate will have an initial term of three (3) years, as well as two (2) options to extend the term by a period of up to two (2) years each extension.

## **B. Limitation on Communication During Solicitation**

From the date this RFQ is issued until the date the competitive process of this RFQ is completed (either by cancelation or final Award of a Contract(s)), Candidates and their subcontractors, vendors, representatives and/or other parties under Candidate’s control, shall communicate solely with SFERS General Counsel, Cecilia Mangoba (cecilia.mangoba@sfcityatty.org). Any attempt to communicate with any party other than Cecilia Mangoba – including any City official, representative or employee – is strictly prohibited. Failure to comply with this communications protocol may, at the sole discretion of City, result in the disqualification of the Candidate or potential Candidate from the competitive process. This protocol does not apply to communications with the City regarding business not related to this RFQ or where a Candidate is providing legal advice and services to the Office under an existing agreement.

If an interested party or Candidate intends to respond to this RFQ, kindly send an e-mail to SFERS General Counsel, Cecilia Mangoba (cecilia.mangoba@sfcityatty.org) providing notice that the Candidate will be replying to this RFQ. This notification will permit the Office to monitor compliance with the requirements of this section.

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<sup>2</sup> As of September 30, 2022

### C. Estimated RFQ Schedule

The following schedule sets forth the timetable for selecting Qualified Candidates, establishing the pool and entering into Contracts with certain Qualified Candidates. Any changes in the fixed dates for items 1 – 4 will be noticed by an addendum to this RFQ. The dates given for items 5 - 7 are merely estimates and not binding on the Office.

1.	Issuance of this RFQ	<i>January 4, 2023</i>
2.	Questions or Requests for Clarification	<i>January 13, 2023, 4:30 p.m. (PST)</i>
3.	Issuance of Addendum to RFQ Responding to Questions or Requests for Clarification	<i>January 20, 2023</i>
4.	Qualifications Statement Submission Deadline	<i>February 8, 2023, 4:30 p.m. (PST)</i>
5.	Notice to Candidates of Satisfaction of Minimum Qualifications (Section III(A)); Office establishes pool	<i>February – April 2023</i>
6.	Continued evaluation of Qualifications Statements, interviews and reference checks	<i>February – April 2023</i>
7.	Contract negotiations with select Qualified Candidates	<i>May 2023</i>

It is the responsibility of the Candidate to check for any Addendum to this RFQ or other posted pertinent information.

### II. SCOPE OF WORK

The Office seeks qualified investment transactions counsel to assist on an ongoing, as needed basis, with the following:

- a) Prepare, draft and negotiate investment contract documents on behalf of SFERS and the RHCTF, including for the types of investments described in Section I(A) of this RFQ.
- b) Provide advice on issues arising from investment transactions, including but not limited to, issues raised by confidential offering memoranda, prospectuses, or similar offering materials; due diligence issues raised by the Office, as well as SFERS or

- RHCTF staff or consultants; indemnification provisions; key economic terms (e.g. distribution waterfalls and claw back provisions); offshore entities, tax matters related to fund ownership and investment financing; placement agents; choice of law and venue provisions; confidentiality issues; bankruptcy and securities law issues; digital assets, international sanctions; and other liability issues and matters pertaining to due diligence, both pre-closing and post-closing.
- c) Develop and form alternative investment structures, including limited partnership vehicles.
  - d) Provide advice on foreign, federal, state and local laws, rules and regulations that may apply to, or otherwise affect, SFERS and RHCTF investments, including but not limited to regulatory compliance advice.
  - e) Provide advice on monitoring and oversight of investments, including but not limited to, bankruptcy issues, securities laws issues, and altering terms of the investment.
  - f) Provide advice relating to custody bank matters, including but not limited to securities lending and foreign exchange transactions; prepare, draft and negotiate associated contracts.

If selected, Candidates will be expected to familiarize themselves with the operations and portfolios of SFERS and the RHCTF, the fiduciary duties and responsibilities of the Retirement Board and RHCTF Board, and relevant Charter provisions, City ordinances and state law, without charging or billing such time.

The above description of the Work is intended as a general guide and not as a complete description of all aspects of the Work or of all tasks necessary in order to complete the Work. There is no assurance that the Office will require legal services on any or all of these particular issues. Appropriate, qualified counsel will be selected for a matter as the need arises.

The Office will assign the Work to Qualified Candidates that enter into a Contract. The Office will also provide technical assistance, act as liaison to SFERS and RHCTF personnel, and monitor outside counsel for billing practices and responsiveness.

### **III. SUBMISSION REQUIREMENTS**

#### **A. Required Components of the Qualifications Statement**

To respond to this RFQ, a Candidate must submit a Statement of Candidate's Qualifications (a "Qualifications Statement") on or before the submission deadline set forth in Section IV(A) of this RFQ (the "Submission Deadline"). The Qualifications Statement must be signed by a person authorized to bind the Candidate to the representations, commitments and statements contained in the Qualifications Statement.

Selection of successful Candidates will be based upon specific qualifications, experience and expertise demonstrated in the Qualifications Statement. Qualifications, experience and expertise of key individuals, especially the lead attorney assigned, will have the greatest impact on the selection process. Please be brief, but as specific as possible. The Qualifications Statement should not exceed fifteen (15) pages (not including the exhibits specified below).

Qualifications Statements that merely provide generalities may be deemed non-responsive, and therefore not evaluated further. Qualifications Statements should include factual examples that demonstrate the expertise of the assigned attorneys and their individual value to SFERS and the RHCTF. Please note that if the Office enters into a Contract with a Qualified Candidate, written consent of the Office is required before the firm may substitute any personnel listed in its Qualifications Statement.

In order to be considered as a Qualified Candidate, please provide the following requested information in the order indicated:

## **1. Introduction**

- a) Provide a brief introduction and executive summary of the Qualifications Statement.
- b) Provide the name, address, telephone number, and email address of the person authorized to represent the Candidate with respect to all notices, negotiations, discussions and other communications relating to this RFQ, to any further selection process, and to finalize the Contract for the Work.

## **2. Firm Background and Qualifications**

- a) Provide a brief description of your firm, when the firm's investment management law practice began, the locations of the firm's offices, the number of attorneys specializing in investment management law, and the number of attorneys in California. Please provide a firm organization chart as an exhibit.
- b) Describe the firm's ownership structure, and identify and describe any parent or affiliated companies, partnerships, joint ventures or other legal entities.
- c) Briefly and specifically describe your firm's experience and qualifications to provide the Work, including recent instances in which you have represented public pension plans of a size comparable to, or larger than, SFERS, in investment matters. With respect to these engagements, please describe your firm's specific role in performing the services, the name of the client, number of years serving this client, and the names of the attorneys in charge of this client.
- d) From January 1, 2022 to December 31, 2022, how many investment transactions did you/your firm handle on behalf of (i) sponsors and funds and (ii) investors and limited partners? Please also provide a breakdown of (1) the type of investor/limited partner (e.g., public pension plan or other institutional investor), and (2) the asset classes for these investments (e.g., buyout, venture, private credit, real assets, absolute return).
- e) Describe your firm's experience and expertise working with public pension plans, including range of responsibilities and services provided.
- f) Describe your firm's experience representing sponsors and funds based outside the United States, especially China. Relatedly, describe your firm's experience representing investors and limited partners in international funds. If your firm does not have staff with expertise based in the local jurisdiction, please describe how your firm is able to obtain the expertise needed to adequately advise clients.

- g) Describe the qualities, characteristics, processes or other factors that distinguish your firm from other firms providing services similar to the Work.
- h) Describe your firm's knowledge of City laws, and applicable open meeting and public records laws. What other California public entities does your firm advise and how long have these entities been clients of the firm?

### **3. Staff**

- a) Minimum Qualification. The lead attorney assigned to this representation must have at least 10 years of relevant experience. Any Qualifications Statement that does not demonstrate that the lead attorney meets this minimum requirement by the Submission Deadline will be considered non-responsive and will not be eligible for inclusion in the pool or award of a Contract.
- b) Identify the attorneys who will be directly assigned to perform the Work, and describe their responsibilities for handling this relationship.
- c) For each attorney who will be directly assigned to perform the Work, describe their experience and qualifications, including the number of years they have practiced law generally, and investment management law specifically. Please describe any particular areas of expertise within the types of investments/asset classes described in the Work. Include brief resumes as exhibits.

### **4. References**

Provide three references from current public pension plan clients that are similar to SFERS in size, for whom you provide investment management legal services, including client name, contact and telephone number and email address.

### **5. Fees**

- a) Provide a fee proposal for the services identified in this RFQ, including hourly rates of the attorneys and staff assigned, and any alternative billing arrangements such as a per transaction cap you may wish to propose. Please be as specific and creative as possible.
- b) State whether the firm offers discounted rates for governmental entities, and please describe the discounted rates.
- c) Describe how your firm will help the Office to control legal costs associated with the Work.

### **6. 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 ensure there are no conflicts of

- interest? What process does the firm maintain in order to provide a consistent, high standard of professional ethics?
- c) Describe any actual or potential conflicts of interest that may arise if your firm is selected to represent the Office in SFERS and RHCTF-related investment matters. Describe in detail the nature of the conflict and what consent would be required under the Rules of Professional Responsibility.
  - d) Please confirm that the attorneys assigned to the SFERS and RHCTF relationships agree to timely file a California Fair Political Practices Commission Statement of Economic Interest (Form 700).

## **7. Litigation or Claims**

- a) Describe all actual or pending litigation, administrative proceedings, investigations, grand jury inquiries, indictments, convictions, and state ethics board proceedings in the last ten years relating to the firm, or any attorney or employee with the firm that arises from the firm's business, including the outcome. Describe all pending or threatened investigations by a federal, state or local agency.
- b) Describe in detail all malpractice and fee dispute claims made against your firm in the last five years, including disposition or current status.
- c) Identify every instance within the last five years in which your firm was dismissed as legal counsel with respect to its representation similar to that called for in this RFQ, or had a contractual relationship expire without extension or renewal.

## **8. Miscellaneous**

- a) Provide the limits of your firm's malpractice insurance coverage, including insurance carriers. Identify whether the coverage is on a per client basis, or whether the dollar figure is applied to the firm as a whole. Identify all deductibles or self-insured retentions.
- b) Acknowledge that, by responding to this RFQ, your firm and its attorneys and staff are "restricted sources" as that term is defined under the San Francisco Campaign and Governmental Conduct Code.
- c) Acknowledge that, by responding to this RFQ, your firm has reviewed the form of contract attached to this RFQ as Appendix B and is willing to enter into a written agreement that is substantially similar.
- d) Discuss any additional information that you would like us to know about your firm that may impact our consideration of your firm as a potential legal service provider to the Office, or to SFERS and the RHCTF.

**B. Required City Registration**

Before any Contract is awarded, Candidates must file the forms listed in Appendix A.

**IV. SUBMISSION AND SELECTION PROCESS**

**A. Time and Place for Submission of Qualifications Statements**

Each Candidate shall submit four (4) copies of its Qualifications Statement in a sealed envelope, clearly marked and separately bound to the Office at the address below. Qualifications Statements must be clearly marked, “Qualifications Statement for Investment Legal Services RFQ.” Qualifications Statements must be received by the Office no later than 4:30 p.m. (PST) on Wednesday, February 8, 2023. Qualifications Statements may be delivered in person or sent via courier or U.S. mail to:

Cecilia Mangoba  
Office of the City Attorney  
1390 Market Street, Seventh Floor  
San Francisco, CA 94102  
Email: [cecilia.mangoba@sfcityatty.org](mailto:cecilia.mangoba@sfcityatty.org)

Other means of transmission (including facsimile) will not be accepted.

In addition to submitting four hard copies of the Qualifications Statement, each Candidate must provide its Qualifications Statement in .PDF format to the Office at the email address provided above by the same Submission Deadline.

**B. Evaluation Process**

The Office will evaluate each Candidate’s Qualifications Statement. Any Qualifications Statement that does not detail each of the issues and qualifications raised in Section III will, at the discretion of the Office, be considered non-responsive and will preclude the Candidate from further consideration. Any Qualifications Statement that does not demonstrate that the firm’s lead attorney meets the minimum experience requirement by the Submission Deadline will be considered non-responsive and will not be eligible for consideration as a Qualified Candidate. At any time during the evaluation process, the Office may require Candidates to present written clarifications of their respective Qualifications Statements.

Set forth below are the guidelines the Office will use in evaluating responses to this RFQ. The Office anticipates that it will evaluate Qualifications Statements based on the following criteria:

**1. Firm Experience (30 Points)**

- (a) Specific experience providing legal services similar to the Work for public pension plans of comparable size.
- (b) Nature and quality of recently completed projects similar to the Work.
- (c) Nature and quality of responses to additional qualifications regarding the Work.
- (d) Results of reference checks for firm.

**2. Assigned Staff (30 Points)**

- (a) Experience and qualifications of lead attorney and proposed team in providing services similar to the Work for public pension plans of similar size to SFERS.
- (b) Professional and educational qualifications of proposed attorneys.
- (c) Results of reference checks for attorneys.
- (d) Indicated availability and responsiveness to the Office on short notice, depth of team, and ability to handle multiple matters concurrently.

**3. Fee Proposal (10 Points)**

- (a) Proposed fees and charges for the Work, and any alternative billing arrangements proposed.
- (b) Proposed strategies to help the Office control legal costs associated with the Work.

**4. Demonstrated Professionalism; Miscellaneous (15 Points)**

- (a) Responsiveness to City requirements, including but not limited to conflicts issues, insurance, litigation and claims.
- (b) Written communication skills.
- (c) Professionalism and quality of submitted Qualifications Statement.

The Evaluation Panel will hold oral interviews with Candidates that have met the Minimum Qualifications and whose Qualifications Statement received a score of at least 60 Points. Prior to the oral interviews, the Office will send a letter to each invited Candidate regarding the format and general rules of the interview, and request that the Candidate identify the team members who will be participating in the interview. The Office reserves the right to limit participation in the

panel interviews to Candidates' key/lead team members. The interview evaluation process will be scored based on Candidates' responses to the Office's questions. The interview scores will be based on the following:

**5. Oral Interviews (15 Points)**

- (a) Oral communication skills, including responsiveness to questions.
- (b) Professionalism and presentation.
- (c) Any additional insights gathered from interview.

**C. Selection of the Pool**

Up to twelve (12) Candidates with the highest scores over 70 will be included in the pool. In its discretion, the Office may conduct interviews or other follow up processes to identify firms within the pool for Contracts. During any interview, all those significant members of the firm who will be providing the services covered by the RFQ are expected to be present.

**V. TERMS AND CONDITIONS GOVERNING THIS RFQ**

**A. Errors and Omissions in RFQ**

Candidates are responsible for reviewing all portions of this RFQ. Candidates shall promptly notify the Office, in writing, if the Candidate discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification shall be by email submitted to the email address set forth in Section IV(A) promptly after discovery, but in no event later than five working days prior to the Submission Deadline. Modifications and clarifications will be made by addenda as provided below.

**B. Inquiries Regarding this RFQ**

All questions, requests for clarification, and requests for additional information regarding this RFQ must be submitted to Cecilia Mangoba, Cecilia.Mangoba@sfcityatty.org by 4:30 p.m. (PST) on January 13, 2023. All such questions and requests must be submitted by e-mail. Responses to such questions and requests shall be at the Office's sole discretion and nothing in this RFQ shall create an obligation by the Office to provide any response to the submitting party. Responses may, at the Office's sole discretion, be posted as addenda to this RFQ. Completeness, clarity and brevity will be looked upon favorably.

### **C. Objections to RFQ Terms**

Should any Candidate object, on any ground, to any provision or requirement set forth in this RFQ, the Candidate must, not more than ten calendar days after the RFQ is issued, provide written notice to the Office specifically setting forth the grounds for the objection. The Candidate shall provide written notice by email submitted to SFERS General Counsel, Cecilia Mangoba at the email address set forth in Section IV(A). The failure of a Candidate to object in the manner set forth in this subsection shall constitute a complete and irrevocable waiver of any such objection.

### **D. Addenda to this RFQ**

The Office may modify this RFQ, prior to the Submission Deadline, by issuing a written addendum that is posted to the website. Each Candidate is responsible for ensuring that its Qualifications Statement reflects any and all addenda issued by the Office prior to the Submission Deadline, regardless of when its Qualifications Statement is submitted. Thus, the Office recommends that Candidates consult the website frequently, including shortly before submitting their Qualifications Statement, to determine if any addenda have been issued.

### **E. Candidate Amendment of Qualifications Statement**

A Candidate may amend its Qualifications Statement on its own initiative at any time before the Submission Deadline. Any amendment shall be made by submitting a new Qualifications Statement in its entirety (regardless of the scope of the amendment), with the amended portions marked or highlighted. The Candidate shall submit the amended Qualifications Statement prior to the Submission Deadline, in the same manner as otherwise required herein for Qualifications Statements.

In no case will a statement of intent to submit an amended Qualifications Statement, or commencement of an amendment process, extend the Submission Deadline.

At any time during the evaluation process, the Office may require a Candidate to provide oral or written clarification of its Qualifications Statement. The Office reserves the right to selected Qualified Candidates for the pool without further clarifications of Qualifications Statements received.

## **F. Term of Qualifications Statement**

Submission of a Qualifications Statement signifies that the proposed services and fees are valid for 180 calendar days from the date of the Submission Deadline and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

## **G. Errors and Omissions in Qualifications Statement**

Failure by the Office to object to an error, omission or deviation in the Qualifications Statement will in no way modify the RFQ or excuse the responding Candidate from full compliance with the specifications of the RFQ, or any Contract awarded pursuant to the RFQ. No waiver 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 Candidate to observe any provision of this RFQ.

## **H. Public Disclosure**

All documents under this RFQ process are subject to public disclosure per the California Public Records Act (California Government Code Section §7920.000 *et seq.*) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Contracts, Proposals, responses, and all other records of communications between the City and Candidates shall be open to inspection immediately after a contract has been awarded. Nothing in this Administrative Code 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 benefit until and unless that person or organization is awarded the contract or benefit.

If the Office receives a Public Records Request ("Request") pertaining to this RFQ, the Office will use its best efforts to notify the affected Candidate(s) of the Request and to provide the Candidate with a description of the material that the Office deems responsive and the due date for disclosure ("Response Date"). If the Candidate asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Candidate that is exempt from disclosure and directs the Office in writing to withhold such material from production ("Withholding Directive"), then the Office will comply with the Withholding Directive on the condition that the Candidate seeks judicial relief on or before the Response Date. Should Candidate fail to seek judicial relief on or before the Response Date, the Office shall proceed with the disclosure of responsive documents.

## **I. Candidate's Obligations under the Campaign Reform Ordinance**

If a contract awarded pursuant to this RFQ has (A) a value of \$100,000 or more in a fiscal year and (B) requires the approval of an elected City official, Candidates are hereby advised:

1. Submission of a Proposal in response to this RFQ may subject the Candidates to restrictions under Campaign and Governmental Conduct Code Section 1.126, which prohibits City contractors, Candidates, and their affiliates from making political contributions to certain City elective officers and candidates; and
2. Before submitting a Proposal in response to this RFQ, Candidates are required to notify their affiliates and subcontractors listed in the awarded contract or Proposal of the political contribution restrictions set forth in Campaign and Governmental Conduct Code section 1.126.

This restriction applies to the party seeking the contract, the party's board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than ten percent, and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the awarded contract or Proposal. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

The people and entities listed in the preceding paragraph may not make a campaign contribution to the elected official at any time from the submission of a Proposal for a contract until either: (1) negotiations are terminated and no contract is awarded; or (2) twelve months have elapsed since the award of the contract.

A violation of Section 1.126 may result in criminal, civil, or administrative penalties. For further information, Candidates should contact the San Francisco Ethics Commission at [\(415\) 252-3100](tel:415-252-3100) or go to <https://sfethics.org/compliance/city-officers/city-contracts/city-departments/notifying-bidders-and-potential-bidders>.

## **J. Reservations of Rights by the City**

The issuance of this RFQ does not constitute an agreement by the City, the Office, SFERS or the RHCTF that any subsequent selection process will occur or that any Contract will be entered into by the Office. The Office expressly reserves the right at any time to:

- 1) Waive any defect in any Qualifications Statement or the procedure set forth in this RFQ;
- 2) Reject any or all Qualifications Statements;
- 3) Issue a new request for qualifications or a request for proposals in lieu of this RFQ;
- 4) Prior to the Submission Deadline, modify all or a portion of the selection process, including deadlines for accepting responses, the specifications or requirements for any services to be provided under the RFQ, or the requirements for content or format of the Qualifications Statements;
- 5) Procure all or any portion of the Work by any other means;

- 6) Extend the Submission Deadline, or accept amendments to Qualifications Statements after expiration of the dates set forth in this RFQ;
- 7) Cancel this RFQ at any time in the process; and
- 8) Determine that the Work will not be pursued.

**K. Subcontracting**

Firms are prohibited from subcontracting all or any part of the services to be performed without prior written approval from the Office. Any agreement made in violation of this provision shall confer no rights on any other party and shall, at the Office's sole option, be void.

**L. Financial Responsibility**

The City accepts no financial responsibility for any costs incurred by a Candidate in responding to this RFQ. Submissions of the RFQ will become the property of the City and may be used by the City in any way deemed appropriate.

**VI. PROTESTS**

**A. Protest of Non-Responsiveness Determination**

Within five working days of the Office's issuance of a notice of non-responsiveness, any firm that has submitted a Qualifications Statement and believes that the Office has incorrectly determined that its submission is non-responsive may submit a written notice of protest by email or mail to SFERS General Counsel, Cecilia Mangoba at the email or mail address set forth in Section IV(A) of this RFQ. Such notice of protest must be received by the Office on or before the fifth working day following issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Candidate, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

**B. Protest of Qualified Candidate Pool**

Within five working days of the Office's issuance of a notice of intent to establish the pool of Qualified Candidates, any Candidate that has submitted a responsive Qualifications Statement and believes that Office has incorrectly selected another law firm for its pool of Qualified Candidates may submit a written notice of protest by email or mail to SFERS General

Counsel, Cecilia Mangoba at the email or mail address set forth in Section IV(A) of this RFQ. Such notice of protest must be received by the Office on or before the fifth working day after the Office's issuance of the notice of intent.

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

### **C. Delivery of Protests**

Protests must be delivered to SFERS General Counsel, Cecilia Mangoba at the email or mail address set forth in Section IV(A) of this RFQ, and must be received by not later than 4:30 p.m. (PST) on the applicable deadline. A Notice of Protest shall be transmitted by a means that will objectively establish the date the City received the Notice of Protest. If a Notice of Protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein.

## **VII. CITY CONTRACTING REQUIREMENTS**

### **A. Form of Contract**

The Qualified Candidate must be willing to enter into a written agreement that is substantially similar to the form of the Contract attached hereto as Appendix B. Failure to timely execute the Contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the Contract, shall be deemed an abandonment of a contract offer.

### **B. Nondiscrimination in Contracts and Benefits**

A Candidate selected pursuant to this RFQ may not, during the term of the Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the 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 and 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 such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

### **C. Minimum Compensation Ordinance**

A Candidate selected pursuant to this RFQ shall comply with Administrative Code Chapter 12P. A Candidate selected pursuant to this RFQ shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. A Candidate selected pursuant to this RFQ is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Note that the hourly gross compensation currently required under the MCO 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.

### **D. Health Care Accountability Ordinance**

A Candidate selected pursuant to this RFQ shall comply with the requirements of Chapter 12Q. For each Covered Employee, an awarded Candidate shall provide the appropriate health benefit set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO). If a Candidate selected pursuant to this RFQ chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q and the Health Commission's minimum standards are available at <http://sfgov.org/olse/hcao>. Any Subcontract entered into by Candidate shall also be required to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section.

### **E. Conflicts of Interest**

Qualified 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 Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California. Each Qualified Candidate will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Contract.

Individuals who will perform work for the City on behalf of each Qualified Candidate 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 the Qualified Candidate of such requirement.

**Appendix A**  
**Standard Forms**

## Appendix A

### 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](mailto: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>

Click on "How to Qualify to Do Business with the City"

Form	Purpose/Info	Routing
<p><a href="#"><u>Request for Taxpayer Identification Number</u></a> (IRS Form W-9)</p> <p>Request for Taxpayer Identification Number and Certification</p> <p><a href="https://sfcitypartner.sfgov.org/pages/index.aspx">https://sfcitypartner.sfgov.org/pages/index.aspx</a></p> <p><a href="https://www.irs.gov/pub/irs-pdf/fw9.pdf">https://www.irs.gov/pub/irs-pdf/fw9.pdf</a></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 <a href="mailto:sfcitypartnersupport@sfgov.org">sfcitypartnersupport@sfgov.org</a></p>
<p><a href="#"><u>Business Tax Declaration Form</u></a> (Form P-25)</p> <p><a href="http://newbusiness.sfgov.org/vendor">http://newbusiness.sfgov.org/vendor</a></p>	<p>This Declaration is used to determine if you are physically "doing business in San Francisco" and therefore are required to pay business taxes.</p>	<p>Email: <a href="mailto:ttx.VendorAccounts@sfgov.org"><u>ttx.VendorAccounts@sfgov.org</u></a> (415) 554-6718 Mail: Controller's Office City Hall, Room 484 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102</p>

<p><b><u>Declaration of Nondiscrimination in Contracts and Benefits</u></b> <i>with supporting documentation</i> (Form CMD-12B-101)</p> <p><a href="https://sfgov.org/cmd/forms-resources">https://sfgov.org/cmd/forms-resources</a></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.</p> <p>For additional information please visit City Administrator's <b><u>Contract Monitoring Division</u></b>'s website.</p>	<p>Website: <a href="http://www.sfgov.org/cmd">www.sfgov.org/cmd</a>  Email: <a href="mailto:cmd.equalbenefits@sfgov.org">cmd.equalbenefits@sfgov.org</a>  Mail: Contract Monitoring División  30 Van Ness Ave., Suite 200  San Francisco, CA 94102-6033  415-581-2310</p>
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<p><b><u>Vendor Registration Package</u></b></p>	<p>Combines the above forms and as well as vendor business profile in one easy location.</p>	<p>Email: <a href="mailto:Vendor.File.Support@sfgov.org">Vendor.File.Support@sfgov.org</a>          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</p>
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**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.

<b>Form:</b>	<b>Required If:</b>
<p>Minimum Compensation Ordinance (MCO) Declaration (<a href="#">pdf</a>)</p>	<p>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.</p>
<p>Health Care Accountability Ordinance (HCAO) Declaration (<a href="#">pdf</a>)</p>	<p>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.</p>
<p>Insurance Requirements (<a href="#">pdf</a>)</p>	<p>If the bid package requires the successful bidder to demonstrate proof of insurance</p>

## **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 B**

### **Form of Agreement for Professional Legal Services**

**City and County of San Francisco  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**AGREEMENT BETWEEN  
CITY AND COUNTY OF SAN FRANCISCO**

**and**

**[Insert name of Law Firm]  
For Professional Legal Services**

This Agreement, dated for convenience of reference as of **[Insert 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 **[Insert name of 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, to assist the City Attorney by providing the services described in Section 1.1, below.
- B.** The San Francisco Charter vests the City Attorney with authority to represent City in legal proceedings and retain consultants and outside legal counsel to assist him with such representation.
- C.** Counsel is known for its expertise in the area of **[Insert area(s) of expertise]** 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. 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 advise and assist the City Attorney on matters concerning **[describe scope of services as appropriate] [“Litigation” or**

**“Matter”**]. The scope of services may be modified from time to time, in writing, by the City Attorney.

Counsel’s level of representation of City is more specifically described in its letter of **[provide date of engagement letter]** attached hereto as Exhibit **[xx]**. To the extent there is any conflict or inconsistency between the terms of engagement set forth in Counsel’s **[Insert date]** 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 **[Litigation or Matter]**.

(c) Counsel is authorized to take appropriate legal steps to handle the **[Litigation or Matter]** as it pertains to any and all claims made and relief sought **[ “as to the individuals represented by Counsel.”]** The City Attorney shall designate members of his staff to monitor, review and participate in the handling of all aspects of the **[Litigation or Matter]**.

(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 the **[Litigation or Matter]** to the City Attorney. Counsel shall consult in advance with, and obtain the prior approval of, the City Attorney concerning all substantive aspects of the **[Litigation or Matter]** as it relates to City.

(f) Counsel shall provide sufficient resources, including attorney time, and competent personnel to handle the **[Litigation or Matter]** 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 Litigation [or Matter] 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.

**1.5 Status Reports.** Counsel shall provide the City Attorney, without charge to City, a written status report on work performed (the “Status Report”) not less frequently than once every \_\_\_\_\_ **[insert amount in words and number, e.g.; thirty (30)]** days from the commencement of the term of this Agreement (the “Reporting Period”). The Status Report shall include, but not be limited to, the following: (a) a list of the attorneys who have provided services during the Reporting Period; (b) a description of significant issues resolved or other significant progress made during the Reporting Period; and (c) outstanding issues known to Counsel that remain unresolved. The Status Report shall not exceed more than **[insert amount in words and number, e.g.; two (2)]** pages. **[Insert if you have a form that you would like Counsel to use:** The form shall be substantially in the form of the document attached hereto as Exhibit **XX.**] Upon request by City Attorney and without charge to City, Counsel shall confer with City Attorney on each Status Report for a period or periods not exceeding a total of 1 hour.

**2. TERM.** The term of this Agreement (the “Term”) shall be from **[Insert beginning date]** to **[Insert ending 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 one 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 **[XX]** **[and if applicable, any terms and conditions set forth Engagement Letter]**, 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 **[Insert amount in words]** (\$\_\_\_\_\_.00) **[Insert amount in numbers]**. 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 \_\_\_\_\_ **[Insert amount in words]** (\$\_\_\_\_\_.00) **[Insert amount in numbers]** 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.

**5.4 Withholding.** Counsel agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Counsel further acknowledges and agrees that City may withhold any payments due to Counsel under this Agreement if Counsel is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Counsel, without interest, upon Counsel coming back into compliance with its obligations.

## **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 **[Insert name of Law Offices]** 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:

\_\_\_\_\_  
**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.

**7.3 Contractor Vaccination Policy.** Counsel acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(a) **A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.**

(b) **In accordance with the Emergency Declaration, Counsel agrees that:**

(i) **Counsel has read the Contractor Vaccination Policy pertaining to the obligations of City;**

(ii) **Where applicable, Counsel shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds,**

(iii) **If Counsel grants Covered Employees an exemption based on medical or religious grounds, Counsel will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).**

**7.4 Use of City Attorney Investigators.** Counsel agrees to use investigators of City Attorney in developing information necessary to perform the services described herein.

## **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 Automobile 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 General 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 SECTION 4.3. 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

\_\_\_\_\_  
\_\_\_\_\_

e-mail: \_\_\_\_\_

Attn: \_\_\_\_\_  
Deputy City Attorney

To the Counsel:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Insert name & address of Counsel]**

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 City
5.3	Taxes	24.3	Compliance with Laws
8.	Insurance	24.12	Prohibition on Political Activities with C 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 or, 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	24.17	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](http://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](http://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

**24.17 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

COUNSEL

**DAVID CHIU**  
City Attorney

**[Name of Firm],**  
a \_\_\_\_\_

Approved and Approved as to form:

By: \_\_\_\_\_  
**Katharine Hobin Porter**  
Managing Attorney

By: \_\_\_\_\_  
**[Insert name]**

\_\_\_\_\_  
Federal Employer Number

Exhibits:

A:

B: Fee and Expense Schedule

## EXHIBIT A

## 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]
-----------------------	---------	---------------

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 nine 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 **[Amount in words] \$\_\_\_\_\_ [Amount in numbers]**. 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 C of this Exhibit B, on a cumulative basis from the start date of the Agreement.