



City and County of San Francisco
Office of the City Attorney

AMENDED AND RESTATED REQUEST FOR INTEREST (RFI)

The City and County of San Francisco

Legal Services for Port of San Francisco Matters

CONTACT: Annette Mathai-Jackson, Annette.MathaiJackson@sfcityatty.org, (415) 274-0427

Schedule*

RFI Issued: February 12, 2026
Deadline for RFI Responses
(Response Due Date): March 10, 2026 (4:30 PM)
Commencement of Services: April 15, 2026

**Dates are subject to change*

Questions and Communications

To ensure fair and equal access to information about this RFI, all questions, requests for clarification, and requests for additional information must be submitted to Annette Mathai-Jackson at Annette.MathaiJackson@sfcityatty.org.

Port of San Francisco • Office of the General Counsel • Pier 1, The Embarcadero • San Francisco, CA 94111 • 415.274.4000

I. PURPOSE OF THE RFI

The City and County of San Francisco (San Francisco), through the Office of the City Attorney (Office), is issuing this Request for Interest (RFI) to seek information and expressions of interest from experienced attorneys or law firms (Candidates) to provide legal services for matters relating to the Port of San Francisco (Services), as described in Section II, below. Work will occur, and tasks will be assigned on an as-needed basis.

The purpose of this RFI is to generate a shortlist of Candidates interested and available to provide the described Services. The Office anticipates it will invite shortlisted Candidates to interview and enter into further discussions. The Office intends to select one or more Candidates to enter into a contract for the Services.

The Office reserves the right, at its sole discretion, to select legal counsel through alternative means or requests for qualifications. Prior to engagement, Candidates must execute a contract, substantially in the form of the contract attached as Appendix B to this RFI. Additionally, before any contract is awarded, Candidates must complete and file the forms listed in Appendix A to this RFI.

II. SCOPE OF SERVICES

The scope of services described below is a general guide and not a complete list of all aspects of the Services sought under this RFI or of all tasks necessary to complete the work. The Services include, but are not limited to, legal services in the following legal practice areas:

1. City and County of San Francisco Resilience Program and Flood Study. Counsel shall provide as-needed legal support, advice and assistance to the City Attorney on land use, real estate, and environmental issues, including but not limited to drafting proposed local, state and federal legislation, meeting and negotiating with the U.S. Army Corps of Engineers (USACE) and other stakeholders, and participating in strategy meetings/calls, in connection with federal regulatory matters for the following projects:

- USACE Chief of Engineers Report for the S.F. Waterfront Coastal Flood Study.
- Water Resources Development Act (WRDA) Amendments
- Facilitate congressional authorization of water resources projects in WRDA.
- Real estate issues related to USACE water resources projects, including USACE Lands, Easements, Rights-of-way, Relocations, and Disposal (LERRDs), and property

valuation for USACE feasibility studies, and how the public trust doctrine and the Burton Act impact LERRDs. Specifically,

- acquisition, termination or amendments of leases, or portions of the leases;
 - land acquisition, easements, or other real estate strategies in connection with demolition or partial demolition of buildings;
 - review of gross appraisal instructions and final draft appraisal reports; and
 - understanding requirements for Federal flood control easements; and/or land acquisition and impacts such easements could have on the lease and use of Port or private property.
- Environmental issues related to USACE water resources projects and the impact the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) could have on such projects.

2. Maritime Law: Provide legal support and advice on conventions and treaties that govern maritime business and other nautical matters. Provide as needed advice or support related to the Port's waterfront operations, including:

- Interpretation and application of federal maritime statutes (e.g., Jones Act, Longshore and Harbor Workers' Compensation Act, and Limitation of Liability Act).
- U.S. Coast Guard and U.S. Department of Transportation, Maritime Administration (MARAD) regulations.
- Marine insurance, vessel registration, and maritime lien issues.
- Maritime-related litigation in federal or state courts, in connection with disputes related to or arising out of Jones Act, allisions, cargo damage or loss, oil spills, or hazardous materials claims.
- Development, revision, and enforcement of port tariffs, including wharfage, dockage, demurrage, and other fees and charges to ensure compliance with applicable statutes and regulations.
- Port-related contracts, including terminal leases, operating agreements, and stevedoring contracts.

3. Public Trust: Provide legal support and advice on the Burton Act and the public trust doctrine.

4. Environmental Law: Provide legal support and advice on compliance with federal, state, and local environmental laws and regulations, including but not limited to the Clean Water Act (CWA), Clean Air Act (CAA), California Environmental Quality Act (CEQA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), McAtter-Petris Act, Coastal Zone Management Act, Porter-Cologne Water Quality Control Act, National Historic Preservation Act, Rivers and Harbors Act, Marine Mammal Protection Act, Endangered Species Act, California Fish and Game Code, and National Environmental Policy Act (NEPA). In addition, provide legal support, advice and representation in connection with:

- Administrative hearings before regulatory agencies such as the U.S. EPA, California Air Resources Board (CARB), Bay Area Air District (formerly known as BAAQMD), San

Francisco Bay Conservation and Development Commission (BCDC), U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife, US Fish and Wildlife, NOAA Fisheries, Department of Toxic Substances Control (DTSC), and Regional Water Quality Control Board.

- Environmental civil or administrative enforcement actions.

III. PREPARING A RESPONSE

Please provide the following information in the manner specified, below:

1. Firm name, address, contact name, title, phone 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 RFI, and any selection process, and any negotiations relating to a contract for the Services described in this RFI.
2. A short introduction or summary description of your experience in the industry, experience with providing relevant services that are identical, or substantially similar to, the Services. Note that Candidates may respond to one or more Services, if the Candidate determines they have expertise to provide legal services in one or more areas.
3. A short introduction or summary description of the Candidate's experience, including years of experience, in the legal practice areas described in Section II above.
4. Name and experience, including representative matters, of the lead attorney(s) who would provide the Services.
5. An organizational chart and brief description of each attorney or employee who may be assigned to provide Services under a contract, including:
 - a. location of office;
 - b. if a firm - title and role within the Candidate's firm;
 - c. if a firm - number of years with the Candidate's firm;
 - d. expected role and responsibilities in providing the Services described in this RFI;
 - e. qualifications and any specialized expertise;
 - f. brief resume; and
 - g. if applicable, all currently active state bar licenses and federal court admissions.
6. Description of any actual or potential conflicts of interest with the City and County of San Francisco, including its constituent boards, commissions, agencies, and departments.
7. Names of up to three clients for whom the Candidate has provided identical or substantially similar Services, including for each: the client contact person, address, email address, and telephone number. The Office will check references submitted by each Candidate.

8. Description of required insurance coverage as described in the contract, including the name of the insurance carrier(s). Please identify whether the coverage is on a per-client basis, or is applied to the firm as a whole.
9. A proposed fee arrangement for the Services you are proposing, including an estimate of the billing rates for up to five years. The fee proposal should include a breakdown of the rates for each attorney and professional staff member (e.g., paralegal) who may be assigned to provide Services. It is expected that the Candidate will offer their government or comparable favorable rates. Please describe fees you propose to charge on any items separate from attorney services, including, but not limited to computerized research, photocopying or subpoena services. Include any other direct or indirect costs that may be incurred by the Office, or any other additional information related to billing that the Candidate believes will be relevant to the Office in considering the Candidate's fees.

IV. EVALUATING RESPONSES

The Office will identify firms whose responses best meet San Francisco's needs. The Office will evaluate the responses to this RFI (each, a "Response") generally in accordance with the following criteria:

1. Experience and Qualifications
 - Specific experience providing Services identical or substantially similar to the work described.
 - Relevant experience of lead attorney(s).
 - Depth of the legal team identified in the Candidate's Response to this RFI, in terms of number and experience.
 - Specifically as to Item 1 of Section II (Scope of Services):
 - experience with USACE Chief of Engineers' reports and authorizing projects strongly preferred
 - experience with WRDA amendment procedures and processes preferred
 - Quality of recently completed Services for existing clients.
 - Conflict-of-interest issues.
 - Malpractice insurance and other insurance coverage.
 - Ability to satisfy the requirements of Section II (Scope of Services).
 - Fees and cost structure for Services described in this RFI.
2. Assigned Staff
 - Professional experience of assigned staff.
 - Staffing model (i.e., resources, skills, and processes to be applied) for Services under this RFI.
3. Demonstrated Professionalism
 - Communication skills, both oral and written.
 - Quality of submitted response.

V. RESPONSE SUBMISSION REQUIREMENTS

All questions, requests for clarification, and requests for additional information regarding this RFI must be submitted to Annette Mathai-Jackson, Annette.MathaiJackson@sfcityatty.org, by March 6, 2026. All questions and requests must be submitted by e-mail. Responses to such questions and requests shall be at San Francisco's sole discretion, and nothing in this RFI shall create an obligation by San Francisco to provide any response to a Candidate. Responses may, at San Francisco's sole discretion, be posted as addenda to this RFI.

Responses must be received by 4:30 pm PT on the Response Due Date. Responses, including any attachments, should be submitted by email to Annette.MathaiJackson@sfcityatty.org. Completeness, clarity and brevity will be looked upon favorably.

VI. TERMS AND CONDITIONS OF THIS RFI

1. Responses to this RFI become the exclusive property of San Francisco. Materials provided to the San Francisco can be requested by the public in accordance with the California Public Records Act and San Francisco Administrative Code Section 67.24(e).
2. San Francisco accepts no financial responsibility for any costs incurred by Candidates in responding to this RFI document ("Respondents"). Respondents shall absorb all expenses they incur resulting from their response and any participation in any associated discussions. Participation in this process is voluntary and non-compensable, and no contract of any kind will be awarded as a result of this process.
3. San Francisco may, in its sole discretion, ask shortlisted Respondents to present their material in person or remotely to San Francisco's representatives at San Francisco's offices, and the costs of such presentations shall be solely the responsibility of the Respondent.
4. A Respondent that is recommended for a contract with the Office must conduct and clear a conflict of interest check or obtain approved waivers before the Office will enter a contract.
5. San Francisco, at its sole discretion, will determine if a request for proposals or other competitive solicitation may be issued at a later date. Submission of a Response does not guarantee any future business with San Francisco. The issuance of this RFI does not constitute agreement by San Francisco that any contract will actually be entered into by San Francisco. San Francisco expressly reserves the rights to:
 - a. Waive or correct any defect or informality in any proposal, response or response procedure;
 - b. Reject any or all responses and re-issue a new RFI, RFQ or RFP;
 - c. Prior to the submission deadline for responses, modify all or any portion of the schedule for receiving responses;
 - d. Procure any materials, equipment, products or services specified in this RFI by any other means; or

- e. Determine that no contract or services will be pursued.

Appendix A

Standard Forms

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

If a Respondent has already filled out items 1-3 (See note under item 3.) on the chart, **the Respondent should not do so again unless the Respondent's answers have changed.** To find out whether these forms have been submitted, the Respondent 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>Request for Taxpayer Identification Number (IRS Form W-9)</p> <p>Request for Taxpayer Identification Number and Certification</p> <p>https://sfcitypartner.sfgov.org/pages/index.aspx</p> <p>https://www.irs.gov/pub/irs-pdf/fw9.pdf</p>	<p>This form provides the City with your taxpayer ID number, which is then used to assign your firm a City 5-digit Supplier ID Number.</p>	<p>Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102</p> <p>(415) 944-2442 sfcitypartnersupport@sfgov.org Org</p>
<p>Business Tax Declaration Form (Form P-25)</p> <p>http://newbusiness.sfgov.org/vendor</p>	<p>This Declaration is used to determine if you are physically "doing business in San Francisco" and therefore are required to pay business taxes.</p>	<p>Email: ttx.VendorAccounts@sfgov.org (415) 554-6718 Mail: Controller's Office City Hall, Room 484 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102</p>

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

<u>Vendor Registration Package</u>	Combines the above forms and as well as vendor business profile in one easy location.	Email: <u>Vendor.File.Support@sfgov.org</u> Fax: (415) 554-6261 Mail: Vendor Registration Package City and County of San Francisco Vendor File Support City Hall, Room 484 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102- 4685
--	---	---

Supplemental Forms

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

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

WHERE THE FORMS CAN BE FOUND ON THE INTERNET

Office of Contract Administration

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

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

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

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

Equal Benefits forms: Click “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 (“City Attorney”), and **[Insert name of Law Firm]**, a _____ (“Counsel”) (each a “Party” and collectively the “Parties”).

Recitals

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

A. The San Francisco Charter vests the City Attorney with authority to represent City in legal proceedings and retain outside legal counsel to assist with such representation.

B. Counsel is known for its expertise in the area of **[Insert area(s) of expertise]** and is well-qualified to assist City Attorney in providing the professional legal services described in Article 1 of this Agreement. Accordingly, City Attorney wishes to retain Counsel to provide those services.

C. Counsel will report to and work under the direction and control of City Attorney in providing services under this Agreement.

Now, **THEREFORE**, the Parties agree as follows:

Article 1 Scope of Services

1.1 Scope.

1.1.1 Upon request of City Attorney, Counsel shall advise and assist City Attorney on matters concerning **[describe scope of services as appropriate, include “as needed” when engaging counsel for intermittent/as needed work] [“Litigation” or “Matter” or other appropriate defined term]**. The scope of services is more fully described in Appendix

A, "Scope of Services," of this Agreement. The scope of services may be modified from time to time, in writing, by mutual agreement of City Attorney and Counsel.

1.1.2 City Attorney shall retain final authority over all aspects of City's response to the **[Litigation/Matter/other Defined Term]**.

1.1.3 City Attorney shall designate one or more deputies to monitor, review and participate in all aspects of the **[Litigation/Matter/other Defined Term]**. Counsel is authorized to take appropriate legal steps to handle the **[Litigation/Matter/other Defined Term]** as it pertains to any and all claims made and relief sought **[add if appropriate: "as to the individuals represented by Counsel.]"** **[modify if needed depending on nature of services]** Counsel shall keep City Attorney's designated staff updated on the **[Litigation/Matter/other Defined Term]**.

1.1.4 Counsel shall handle any press contact it receives related to the **[Litigation/Matter/other Defined Term]** in coordination with City Attorney. Counsel shall make every effort not to make statements to the press about any matters in which Counsel is representing City without the consent of City Attorney. Counsel shall not make or distribute any press releases without the express permission of City Attorney.

1.1.5 Counsel shall, upon request, provide copies of pleadings, discovery requests and responses, and relevant correspondence related to the **[Litigation/Matter/other Defined Term]** to City Attorney **[modify if needed depending on nature of services]**. Counsel shall consult in advance with, and obtain the prior approval of, City Attorney concerning all substantive aspects of the **[Litigation/Matter/other Defined Term]** as it relates to City.

1.1.6 Counsel shall provide sufficient resources, including attorney time and competent personnel, to handle the **[Litigation/Matter/other Defined Term]** through judgment after trial court proceedings or, subject to approval as provided herein, through settlement **[modify if needed depending on nature of services]**.

1.2 **Maintaining Attorney-Client Privilege.** Counsel acknowledges that it has no authority to waive the attorney-client privilege on behalf of City and agrees to conduct its activities relating to all services under this Agreement in such a manner as to maintain the confidentiality of communications between Counsel and City (including City Attorney and any City official or employee). Counsel further agrees not to waive the attorney-client privilege or attorney work-product protection with respect to documents or communications obtained or conducted in connection with services under this Agreement without the express written consent of City Attorney. Counsel's obligations under this Section 1.2 shall survive the termination or expiration of this Agreement.

1.3 **Status Reports.** Counsel shall provide 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 start of work under 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. Upon request by City Attorney and without charge to City,

Counsel shall confer with City Attorney on each Status Report for a period not exceeding one hour.

Article 2 Term of the Agreement

2.1 **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, City Attorney exercising the right to terminate under Section 8.1, “Termination,” of this Agreement.

2.2 **Options to Extend.** This Agreement may be extended for up to **[insert years]** years in the sole and absolute discretion of City Attorney, on the same terms and conditions, by modifying this Agreement as provided in Section 11.5, “Modification to this Agreement.” If there is any fee modification in the extension period, charges shall not increase more than 2% of the rate of the year immediately before such increase.

2.3 **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 City Attorney gives Counsel either written or oral notice to proceed with performing the services under this Agreement.

Article 3 Financial Matters

3.1 **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 Section 3.105 of City’s Charter. 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.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Compensation.

3.2.1 **Approved City Supplier.** Counsel is an approved City supplier (**Supplier Number _____**) and, if necessary, has registered its business with City’s Office of the Treasurer and Tax Collector, and submitted a declaration of compliance under Article 131 of City’s Labor and Employment Code with City’s Contract Monitoring Division.

3.2.2 **Fee and Expense Schedule.** City shall compensate Counsel for services under this Agreement as set forth in the Fee and Expense Schedule attached hereto as Appendix **XX [depending on any preceding Appendices]**, 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 and Expense Schedule sets forth a breakdown of the fees and reimbursable amounts payable under this Agreement. The compensation of Counsel is conditioned upon City Attorney's prior reasonable determination that Counsel has rendered satisfactory services in accordance with this Agreement. Compensation shall be payable within a reasonable time from City Attorney's receipt of invoices in accordance with Section 3.3, "Method of Payment." In no event shall City be liable for interest or late charges.

3.2.3 **Not to Exceed Contract Amount.** In no event shall the total fees and reimbursable amounts payable under this Agreement exceed **Insert amount in words (\$Insert amount in numbers – no decimal point if “.00”)**. The not to exceed amount may not be modified except by written instrument executed and approved in the same manner as this Agreement.

3.3 **Method of Payment.**

3.3.1 **Invoices and Payment.** 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. 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. Payments will be made to Counsel no more frequently than once each month. 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 provide to City Attorney a current certificate of insurance and endorsement in accordance with Section 5.1.3 (Certificates).

3.3.2 **Cumulative Tracking Report.** Counsel shall provide a monthly report specifying its cumulative billings under the Agreement and notify City Attorney in writing immediately when the amount of billing has reached **Insert amount in words (\$Insert amount in numbers – no decimal point if “.00”, should be 80% of NTE amount, e.g., \$300,000 NTE and notice due at \$240,000)**. The monthly report shall be substantially in the form of the document attached hereto as Appendix **XX [depending on any preceding Appendices]**.

3.4 **Retention, Audit and Inspection of Records.** Counsel agrees to maintain and make available to City, during regular business hours, records, including accurate books, accounting records, and records of financial transactions, relating to its work under this Agreement, in their original form, in accordance with requirements prescribed by City. Counsel will permit City to audit, examine and make copies of 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.

3.5 **Submitting False Claims.** Counsel, or any subcontractor authorized under this Agreement, shall not submit any false claims to City. Any contractor, subcontractor or consultant

who submits a false claim shall be liable to City for the statutory penalties set forth in San Francisco Administrative Code Section 21.35.

Article 4 Services and Resources

4.1 **Services Counsel Agrees to Perform.** Counsel agrees to perform the services stated in Article 1 **[include if applicable: [and Appendix A, “Scope of Services.”]]** Officers and employees of City Attorney are not authorized to request, and City Attorney is not required to reimburse the Counsel for, services beyond the scope of services in Article 1 **[include if applicable: [and Appendix A],** unless this Agreement is modified as provided in Section 11.5, “Modification to this Agreement.”

4.2 **Approvals by City Attorney; 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 shall be given solely by City Attorney or City Attorney’s 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.

4.3 **Counsel Responsibility.** Counsel shall report to, and work under the direction and control of, City Attorney or City Attorney’s designee, in performing services under this Agreement. 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 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.

4.4 Personnel.

4.4.1 **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.

4.4.2 **Named Personnel.** City Attorney selected Counsel based on the unique skills and experience of counsel and the following named personnel:

ADD NAME OF PRIMARY CONTACT Lead Attorney

(a) The lead attorney named above shall be the principal contact with City Attorney. Any change in the lead attorney 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 notice to and discussions with City Attorney.

(b) Counsel shall staff all 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 4.4.1, “Commitment of Qualified Personnel,” above and as otherwise provided in this Agreement. Counsel must obtain prior approval from City

Attorney whenever the lead attorney anticipates assigning multiple staff to attend meetings, hearings or other proceedings and to perform the scope of services under this Agreement.

(c) Counsel shall consult with City Attorney about the most cost-effective method of performing services under this Agreement, including but not limited to using City staff or City Attorney staff, including City Attorney investigators, to perform certain work as appropriate.

4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.5.1 Independent Contractor. For the purposes of this Section 4.5, the term Counsel shall be deemed to include not only Counsel, but also any agent or employee of Counsel. Counsel acknowledges and agrees that Counsel shall be deemed at all times to be an independent contractor and wholly responsible for the manner in which Counsel performs the services and work under this Agreement. Counsel will not represent or hold itself out to be an employee of City at any time. 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 is liable for its acts and omissions. 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. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Counsel. Any terms in this Agreement referring to direction from City and City Attorney 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 4.5.1. Should City determine that Counsel is not performing in accordance with the requirements of this Section 4.5.1, 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 warrants immediate remedial action by Counsel, City shall contact Counsel and provide Counsel in writing with the reason for requesting such immediate action.

4.5.2 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 California Employment Development Division or Franchise Tax Board, determine that Counsel is a City employee for purposes 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 4.5

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 4.5.

4.6 Assignment and Subcontracting.

4.6.1 **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 consent in City Attorney's sole and absolute discretion.

4.6.2 **Limitations on Subcontracting.** Counsel is prohibited from subcontracting this Agreement or any part of it unless Counsel first obtains City Attorney'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 City Attorney's sole and absolute discretion. An agreement made in violation of this provision shall confer no rights on any other entity and shall, at City Attorney's sole option, be void.

Article 5 Insurance and Indemnity

5.1 Insurance. [Subject to change depending upon scope of services]

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

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

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

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

(d) Professional Liability Insurance with limits not less than twenty million dollars (\$20,000,000) each claim covering legal malpractice arising from any services provided under this Agreement;

(e) Technology Errors and Omissions Liability coverage, with limits of twenty million dollars (\$20,000,000) for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the

performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Insurance with limits of not less than twenty million dollars (\$20,000,000) per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 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 5.1 requires Counsel to maintain shall provide for the following: (i) name as additional insureds 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 City Attorney, Counsel will provide a complete copy of each insurance policy required under Section 5.1.1, "Required Coverage," of this Agreement.

5.1.3 Certificates. Before starting work under this Agreement, Counsel shall submit to 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. Counsel shall submit certificates of insurance and additional insured policy endorsements by e-mail to **Contracts.Insurance@sfcityatty.org**.

5.1.4 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.

5.1.5 **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. City shall not process requests for payments originating after such lapse 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 City Attorney's 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.

5.1.6 **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.

5.2 **Indemnification.**

5.2.1 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 City.

5.2.2 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.

5.2.3 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.

Article 6 Liability of City

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF COMPENSATION PROVIDED FOR IN SECTION 3.2.3, “NOT TO EXCEED CONTRACT AMOUNT.” 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.

Article 7 Payment of Taxes

7.1 **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.

7.2 **Withholding.** Counsel agrees that it is obligated to pay all amounts due to 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 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 into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination.

8.1.1 **Termination Without Cause.** City Attorney, in City Attorney’s 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. City will also reimburse Counsel’s costs necessarily incurred in discontinuing further work incurred through the termination date to the extent such costs are otherwise payable under this Agreement.

8.1.2 **Non-Exclusive Remedies.** City’s right to terminate this Agreement under this Section 8.1 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.

8.1.3 **Duties Upon Termination; Expiration of Agreement.** Upon any termination of this Agreement, including expiration of the Term of the Agreement, and subject to the California Rules of Professional Conduct, Counsel shall upon request provide City with complete and accurate copies or originals (returned in the same format, including metadata, provided to Counsel) of all documents in its possession belonging to City, at no additional cost to City. Counsel further agrees to take all other steps reasonably necessary to cause an orderly transition of services without detriment to the rights of City.

8.2 Termination for Default; Remedies.

8.2.1 Event of Default. 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:

3.5	Submitting False Claims	10.2.2	California Rules of Professional Conduct
4.6	Assignment and Subcontracting	10.3	Prohibition on Use of Political Funds For Political Activity
Article 5	Insurance and Indemnity	11.8	Compliance with Laws
7.1	Taxes	Article 12	Data and Security

(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 (10) days after written notice thereof from City to Counsel.

(c) Counsel (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) 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; (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Counsel.

8.2.2 Default Remedies. 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. 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.

8.3 **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.

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

1.2	Maintaining Attorney Client Privilege	8.2.2	Default Remedies
3.5	Submitting False Claims	Article 9	Rights in Deliverables
4.5	Independent Contractor; Payment of Employment Taxes and Other Expenses	11.6	Governing Law; Venue
Article 5	Insurance and Indemnity	11.7	Interpretation of Agreement
6.1	Liability of City	11.8	Severability
7.1	Taxes	Article 12	Data and Security

Article 9 Rights in Deliverables

9.1 **Ownership of Documents, Reports and Data Files.** Any and all work product, including but not limited to, 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 (“Work Product”), 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.

9.2 **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 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 provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 Conflict of Interest.

10.2.1 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 City if it becomes aware of any such fact during the term of this Agreement. Counsel further certifies that it will notify City Attorney if it later learns of any violations of these governmental ethics laws.

10.2.2 California Rules of Professional Conduct. By executing this Agreement, Counsel certifies that its attorneys and staff are in compliance with the California Rules of Professional Conduct, regularly ensures that its attorneys and staff receive guidance and training on the California Rules of Professional Conduct, and that its attorneys are member of the California Bar in good standing. Counsel further certifies that it has conducted a conflicts check within its firm and certifies that it has no conflict of interest prohibited by the California Rules of Professional Conduct with respect to its assistance to City Attorney or has made a complete disclosure to City Attorney of any conflict of interest and obtained a written conflicts waiver from City Attorney, in City Attorney's sole and absolute discretion. Counsel must promptly report to City Attorney the existence of any actual or potential conflict of interest and the Parties must resolve the conflict to City Attorney's satisfaction before representation proceeds. Counsel is responsible for its subcontractors throughout the course of the work required to perform the work or services under this Agreement. **Counsel acknowledges that it has a continuing obligation to promptly inform the City Attorney regarding any actual or potential conflict of interest.**

10.3 Prohibition on Use of Public Funds for Political Activity. In performing services under this Agreement, Counsel shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Counsel is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Nondiscriminatory Employment and Business Opportunities Practices.

10.4.1 Counsel Shall Not Discriminate. Counsel shall comply with the provisions of Articles 131 and 132 of the San Francisco Labor and Employment 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.

10.4.2 Subcontracts. Counsel shall incorporate by reference in all subcontracts, as may be permitted under this Agreement, the provisions of §§131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment 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.

10.4.3 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.

10.5 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 Labor and Employment Code Article 111 (Article 111), including the remedies provided, and implementing guidelines and rules.

10.6 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 Labor and Employment Code Article 121, including the remedies provided, and implementing regulations, as the same may be amended from time to time.

10.7 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.

10.8 Limitations on Contributions. By executing this Agreement, Counsel acknowledges its obligations under Section 1.126 of City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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 (a) 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; (b) a candidate for that City elective office; or (c) 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 (12) months after the date 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 ten percent (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 City department with whom it is contracting.

10.9 Consideration of Criminal History in Hiring and Employment Decisions.

Counsel agrees to comply fully with and be bound by all of the provisions of Article 142, “City Counsel/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Labor and Employment Code (“Article 142”), including the remedies provided, and implementing regulations, as may be amended from time to time.

10.10 Food Service Waste Reduction Requirements. Counsel shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.11 Tropical Hardwood and Virgin Redwood Ban. Pursuant to Section 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.

Article 11 General Provisions

11.1 Notices and Communications.

11.1.1 Default or Data Breach. Any notice of default or data breach must be sent by certified mail, or other trackable hard-copy written communication, and also by e-mail, with the sender using the receipt notice feature.

To City: Managing Attorney
San Francisco City Attorney’s Office
1 Dr. Carlton B. Goodlett Pl., Room 234
San Francisco, CA 94102
Contract.Notices@sfcityatty.org

To Counsel: **[insert name of contractor, mailing address, and e-mail address]**

11.1.2 General Notices and Communications. Unless otherwise indicated in this Agreement, all other written notices, communications, and invoices sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: **POINT OF CONTACT DCA**
Title
San Francisco City Attorney’s Office
ADDRESS
San Francisco, CA 94102

EMAIL@sfcityatty.org

To Counsel: [insert name of contractor, mailing address, and e-mail address]

Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change.

11.2 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 an agent such as 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 persons with disabilities in providing services, benefits or activities 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.

11.3 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.

11.4 Entire Agreement. This contract sets forth the entire Agreement between the Parties and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, “Modification of this Agreement.”

11.5 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.

11.6 Governing Law; Venue. 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.

11.7 Interpretation of Agreement. This Agreement has been drafted through a cooperative effort of City and Counsel, and both Parties have had an opportunity to review the Agreement reviewed and consult with 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.

11.8 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.9 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.10 **Incorporation of Recitals.** The matters recited at the beginning of this Agreement are hereby incorporated into and made part of this Agreement.

11.11 **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.

Article 12 Data and Security

12.1 **City Data.** “City Data” includes, without limitation, all data received, collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Work Product (as defined in Section 9.1), proprietary, confidential and private information. Upon request from City Attorney, and subject to the California Rules of Professional Conduct, Counsel shall promptly provide City Attorney with complete and accurate copies or originals (returned in the same format including metadata, provided to Counsel) of all City Data in its possession, at no additional cost.

12.2 **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. Counsel is responsible for its subcontractors throughout the course of the work required to perform the work or services under this Agreement.

12.3 **Protection of Private Information.** If this Agreement requires 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.

12.4 **Use of City Data.** Counsel agrees to hold City Data received, collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement in strictest confidence. Counsel shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. If required by a court of competent jurisdiction or an administrative body to disclose City’s Data, Counsel will notify City in writing prior to any such disclosure in order to give City an opportunity to oppose any such disclosure, except when prohibited by law. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by City. Access to City Data must be strictly controlled and limited to Counsel’s staff assigned to services under this Agreement on a need-to-know basis only. Counsel is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for

Counsel's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Counsel, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose other than performing services under this Agreement.

12.5 Data Privacy and Information Security Program. Without limiting Counsel's obligation of confidentiality as further described herein, Counsel shall establish and maintain a data privacy and information security program (e.g., a program based on the most current cybersecurity standards such the standards established by a) the National Institute of Standards and Technology [NIST] Special Publication 800-53 (Revision 4), or its successor; and b) the International Organization for Standardization [ISO]/International Electrotechnical Commission [IEC] 27001:2022 standards, as updated from time to time), including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of City Data; (b) protect against any anticipated threats or hazards to the security or integrity of City Data; (c) protect against unauthorized disclosure, access to, or use of City Data; (d) ensure the proper disposal of City Data; and (e) ensure that all of Counsel's employees, agents, and subcontractors, if any, comply with all of the foregoing. Counsel shall continually monitor its cybersecurity operations and take any action necessary to assure City's Data is safeguarded in accordance with the terms of this Agreement.

12.6 Data Security. Counsel shall provide and maintain up-to-date security with respect to (a) the work being performed; (b) Counsel's physical facilities; and (c) Counsel's networks, to prevent unauthorized access or "hacking" of City Data. Counsel shall provide security for its networks and all internet connections consistent with best practices observed by well-managed SaaS (Software as a Service) working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. At a minimum, Counsel will maintain appropriate safeguards to restrict access to City Data to those employees, agents or service providers of Counsel who need the information to carry out the purposes for which it was disclosed to Counsel. For information disclosed in electronic form, Counsel agrees that appropriate safeguards include electronic barriers (e.g., "firewalls," Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion detection or similar barriers), password and multifactor authentication protected access to City Data. For information disclosed in written form, Counsel agrees that appropriate safeguards include secured storage of City Data. Counsel warrants to City its compliance, in performing its obligations hereunder, with the California Information Practices Act (Civil Code §§ 1798 et. seq.), as applicable, as periodically amended or updated.

12.7 Data Transmission. Counsel shall ensure that all electronic transmission or exchange of City Data with City and/or any other parties expressly designated by City shall take place via secure means (using HTTPS or SFTP or equivalent with adequate access management controls). Counsel shall also ensure that all data exchanged shall be used solely for the purposes enumerated in the Agreement. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Counsel. City reserves the right to change or modify without consent any City information transmission resources, including but not limited to operating systems, hardware, and/or network configuration, to protect City's

information transmission resources against any security vulnerabilities and unauthorized access or abuse. Counsel shall ensure that no City Data of any kind is transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City.

12.8 Loss or Unauthorized Access to City Data; Security Breach Notification.

Counsel shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. Counsel shall notify City under Section 11.1.1 of any actual or potential exposure or misappropriation of City Data (any “Leak”) within **twenty-four (24) hours** of the discovery of such, but within **twelve (12) hours** in the event the Data Leak involved personally identifiable information or other event requiring notification. Counsel will reasonably cooperate with City and with law enforcement authorities in investigating any such Leak, at Counsel’s expense. Counsel will likewise reasonably cooperate with City and with law enforcement agencies in any effort by City to notify affected or potentially affected parties, at Counsel’s expense. Additionally, Counsel shall pay to provide the affected individuals with eighteen (18) months of free credit monitoring services, if the Leak involves information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this Subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak of City Data.

12.9 Mobile Device Management. Counsel shall ensure both corporate-owned and personally-owned mobile devices used in connection with this Agreement have Mobile Device Management (“MDM”) installed. At a minimum, the MDM should: (a) enforce Counsel’s security policies and perform real-time compliance checking and reporting; (b) enforce strong passwords for access to mobile devices; (c) perform on-demand remote wipe if a mobile device is lost or stolen; and (d) mandate device encryption.

Article 13 MacBride And Signature

13.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Section 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Counsel confirms that Counsel has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

COUNSEL

Approved by:

[Name of Firm],

Katharine Hobin Porter
Managing Attorney

By: _____
[Insert name]
[Insert title]

City Supplier Number: **[Supplier Number]**

Approved as to Form:

David Chiu
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Appendices **[CONFIRM USE AND LETTERING, ELIMINATE ANY UNUSED APPX]:**

- XX: Scope of Work
- XX: Fee and Expense Schedule
- XX: Sample Billing Report

Appendix A Scope of Services

Appendix 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 4.4.2 (Named Personnel) 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 City Attorney or designee. For purposes of regular and routine administration of this Agreement, City Attorney's designee is the individual identified in Section 11.1.2 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 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 4.4.2 of the Agreement. In no event shall Counsel bill, nor shall City pay, more than the amount certified by 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 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 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 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 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. City has negotiated competitive rates with outside vendors for these services, if Counsel wishes to use 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 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 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 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 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 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 report each month that tracks all fees for professional services charged under this Agreement against the overall not to exceed amount set in Section 3.2.3, 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 Appendix **XX [confirm Appx number]**, on a cumulative basis from the start date of the Agreement. Counsel’s report shall be substantially in the form of the document attached hereto as Appendix **XX [confirm Appx number]**.

**Appendix C
Sample Billing Report**

City and County of San Francisco
City Attorney's Office Monthly Accruals

Matter Name	Collected Fees to Date	Collected Expenses to Date	*A/R	Fee *WIP	Expenses *WIP
Subtotals:					

Total Fees to Date:
Percentage of \$XXX,XXX NTE

Total Costs to Date:
Percentage of \$XXX,XXX NTE

- * "A/R" means Accounts Receivable
- * "WIP" means Work in Progress (but not yet billed)