

Appendix B
Form of Consulting Agreement

**CONSULTING AGREEMENT
BETWEEN
SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM
AND**

[_____]

THIS Consulting Agreement (this "Agreement") is made this ____ day of _____, 2021 in the City and County of San Francisco (the "City"), State of California, by and between: [_____] ("Consultant") and the San Francisco City and County Employees' Retirement System (the "Retirement System").

RECITALS

WHEREAS, the Retirement System is a duly established and existing public retirement system created under the Charter of the City;

WHEREAS, the board of the Retirement System (the "Retirement Board") has plenary authority and fiduciary responsibility for investment of monies and administration of the Retirement System;

WHEREAS, the Retirement Board, through the Retirement System, seeks to retain fiduciary governance consulting services for the Retirement System (the "Proposed Services");

WHEREAS, the Retirement System issued a request for proposal with respect to the Proposed Services ("RFP"), and as a result of the competitive selection process in connection with that RFP (the "RFP Process"), the Retirement System recommended, and the Retirement Board approved, selection of Consultant to provide the Proposed Services based on Consultant's representations during the RFP Process; and

WHEREAS, Consultant represents and warrants that it is qualified to perform the services required by the Retirement System under this Agreement;

Now, THEREFORE, in consideration of the promises and mutual covenants herein contained, Consultant and the Retirement System do hereby agree as follows:

1. **Term of the Agreement.** Subject to Section 8 of this Agreement, the term of this Agreement shall be from [_____, 2021 to _____, 20__]; *provided, however,* that the Retirement System shall have two (2) options to extend the term of the Agreement for a period of one (1) year each option, which the Retirement System may exercise in its sole, absolute discretion.
2. **Engagement.** The Retirement System hereby engages Consultant, and Consultant hereby accepts such engagement, to provide fiduciary governance consulting services to the Retirement System in accordance with the terms and conditions of this Agreement, the Board's policies, and applicable federal, state and local laws.

3. **Services.** Consultant agrees to perform the fiduciary governance services for the Retirement System, as described in the Schedule of Services attached hereto as Exhibit B and incorporated by reference as though fully set forth herein (the "Described Services"). Additional services will be provided only upon and in accordance with a written request by the Executive Director of the Retirement System (the "Executive Director") or designee acting on behalf of the Retirement System (the "Additional Services," together with the Described Services, the "Services").
4. **Compensation.**
- (a) **Fees.** For the full performance and the completion of the Services, Consultant shall be compensated as set forth in the Fee Schedule attached hereto as Exhibit C and incorporated by reference as though fully set forth herein (the "Fees"). The Fees include the compensation for professional services as well as travel and other out-of-pocket expenses, printing, delivery, secretarial and clerical support services and any other costs incurred as may be necessary to perform the Services in a professional manner. No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until reports, services, or both, required under this Agreement are received from Consultant and approved by the Retirement System as being in accordance with this Agreement. The Retirement System may withhold payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall the Retirement System be liable for interest or late charges for any late payments.
- (b) **Fee Ceiling.** In no event shall the annual compensation amount under this Agreement exceed _____ Dollars [\$_____].
- (c) **Payment Does Not Imply Acceptance of Services.** The granting of any payment by the Retirement System, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory Services, although the unsatisfactory character of such Services may not have been apparent or detected at the time such payment was made. Services that do not conform to the requirements of this Agreement may be rejected by the Retirement System and in such case must be replaced by Consultant without delay.
5. **Fiduciary Responsibility.** Consultant acknowledges that this Agreement places it in a fiduciary relationship with the Retirement System. As a fiduciary, Consultant shall discharge each of its duties and exercise each of its powers (as those duties and powers are defined herein) with the competence, care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the course of any enterprise of like character and with like aims, in conformance with the California Constitution, Article XVI, Section 17, California Government Code Sections 31594 and 31595, San Francisco Charter Section 12.100 and with the customary standard of care of a fiduciary governance consultant providing services to a United States employee pension trust (the "Standard of Care"). Consultant shall cause any

and all of its employees, agents and representatives providing services in connection with this Agreement to exercise the same Standard of Care.

Consultant acknowledges that, to comply with the above-described fiduciary duties, it must maintain independence from all interests other than the interests of the Retirement System members and beneficiaries, as those interests are expressed by the Retirement Board. Consultant further acknowledges that the Retirement System staff acts as the agent for the Retirement Board in its relationship with the Consultant but is subordinate to the Retirement Board and cannot direct Consultant to consider interests contrary to those expressed by the Retirement Board. Consultant warrants that it will not delegate its fiduciary responsibilities under this Agreement.

6. Disclosures.

- (a) **RFP.** Consultant represents and warrants that its statements, dated [____], in its response to the RFP, are true and correct.
- (b) **Disclosure of Interest.** Consultant shall fully and promptly disclose to the Retirement System any fact or relationship which would compromise or materially affect its ability to faithfully perform its duties under this Agreement.
- (c) **Intellectual Property.** The Services and deliverables that Consultant provides under this Agreement shall not infringe upon any patent rights, copyright, trade secret or any other proprietary right or trademark, or any other intellectual property rights of any other third party.

7. Personnel.

- (a) **Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant. Consultant will comply with the Retirement System's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the Retirement System's request, must be supervised by Consultant. Consultant shall commit adequate resources to complete the services within the schedule specified in this Agreement.
- (b) **Key Personnel.** The Retirement System may designate in writing, from time to time, that certain personnel of Consultant are "key personnel." Consultant shall immediately notify the Retirement System in writing of any changes in key personnel within its organization.

- 8. Budget Authorization.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City Controller, and any amount of the Retirement System's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any

kind to the Retirement System 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. The Retirement System 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 City Mayor and the City Board of Supervisors. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

This Section 8 controls against any and all other provisions of this Agreement.

9. **Invoices.** Consultant shall submit invoices for the Services in a form acceptable to the Retirement System, along with an itemized statement of Services, at the end of each quarter. Consultant shall send invoices to:

Name
Title
San Francisco Employees' Retirement System
1145 Market Street, 7th Floor
San Francisco, CA 94103-1561
name@sfgov.org

Consultant shall also send electronic copies of such invoices to:
name@sfgov.org.

From time to time, the Retirement System may specify another recipient or address for invoices by written notice to Consultant in accordance with Section 21 of this Agreement

10. **False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35 (the "False Claims Ordinance"), including the enforcement and penalty provisions, is incorporated into this Agreement. Consultant acknowledges that Consultant is subject to the False Claims Ordinance, which provides that any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in the False Claims Ordinance. Under the False Claims Ordinance, a contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Retirement System a false claim or request for payment or approval; (b) knowingly makes or uses or causes to be made or used a false record or statement to get a false claim paid or approved by the Retirement System; (c) conspires to defraud the Retirement System by getting a false claim allowed or paid by the Retirement System; (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 Retirement System; or (e) is a beneficiary of an inadvertent submission of a false claim to the Retirement System, subsequently discovers the falsity of the claim and fails to disclose the false claim to the Retirement System within a reasonable time after discovery of the false claim.

11. **Taxes.** Consultant shall have the sole obligation to pay any taxes, including without limitation payroll taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant under this Agreement.
12. **Independent Contractor.**
- (a) **Independent Contractor Status.** In performing the Services, Consultant or any agent or employee of Consultant 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 under this Agreement. Consultant or any agent or employee of Consultant shall not have employee status with the Retirement System, nor be entitled to participate in any plans, arrangements, or distributions by the Retirement System pertaining to or in connection with any retirement, health or other benefits that the Retirement System may offer its employees. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees and its agents. Consultant 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 Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Retirement System and Consultant or any agent or employee of Consultant.
- (b) **Payment of Taxes.** If any governmental authority should, nevertheless, determine that Consultant is an employee for purposes of collection of any employment taxes, then the Retirement System's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to the Consultant and to the applicable governmental authority does not exceed the maximum amount specified in Section 4 of this Agreement. Consultant shall refund any amounts necessary to affect that reduction.
13. **Insurance.**
- (a) Without in any way limiting Consultant's liability pursuant to Section 14 of this Agreement, Consultant must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
- (1) worker's compensation, in statutory amounts, with employers' liability limits not less than \$[] each accident;
- (2) commercial general liability insurance with limits not less than \$[] each occurrence, including without limitation combined single limit for bodily injury and property damage, including contractual liability, personal injury, products, completed operations and hired and non-owned automobiles;

- (3) professional or fiduciary indemnity (errors and omissions) insurance in the aggregate minimum of \$[_____]; and
 - (4) technology errors and omissions liability with limits of not less than \$[_____] each claim with respect to failure against programming errors, software performance, failure to perform work as agreed, and errors and omissions in connection with the products and services provided.
- (b) Commercial general liability insurance policy must be endorsed to: (i) name as additional insured the Retirement System and its officers, agents, and employees; and (ii) provide 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.
- (c) All policies shall be endorsed to provide thirty (30) days' advance written notice to the Retirement System of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the Retirement System in accordance with Section 21 hereof.
- (d) Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of five (5) years beyond the expiration or earlier termination of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration or earlier termination of the Agreement, such claims shall be covered by such claims-made policies.
- (e) Should any of the required insurance be provided 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 annual aggregate limit shall be double the occurrence or claims limits specified in this section.
- (f) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Retirement System receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Retirement System may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- (g) Before commencing any services under this Agreement, Consultant shall furnish to the Retirement System certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are

authorized to do business in the State of California, and that are satisfactory to the Retirement System, in form evidencing all coverages set forth herein. Consultant shall also furnish to the Retirement System such certificates and endorsements on an annual basis.

- (h) If Consultant will use any subcontractor(s) to provide services under this Agreement, Consultant shall require the subcontractor(s) to provide all necessary insurance and to name the Retirement System, its officers, agents and employees and the Consultant as additional insureds.
- (i) Approval of the insurance by the Retirement System shall not relieve or decrease the liability of Consultant hereunder.

- 14. Indemnification.** Consultant shall indemnify and save harmless the Retirement System and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof (a) arising directly or indirectly from any breach of any representation or warranty made by Consultant in this Agreement, (b) arising directly or indirectly from any breach of any covenant, agreement or obligation of Consultant contained in this Agreement, including without limitation breach of fiduciary duty, breach of the Standard of Care, breach of trust or breach of confidentiality, (c) arising directly or indirectly from any (i) bad faith, (ii) negligence, (iii) willful misconduct or (iv) improper or unethical practice in violation of law by Consultant or its agents or (d) for injury to or death of a person, including employees of Consultant or loss of or damage to property, arising directly or indirectly from Consultant's performance of this Agreement, including, but not limited to, Consultant's use of facilities or equipment provided by the Retirement System or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the Retirement System, except, in the case of each of subsection (c) and subsection (d) of this Section 14, to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except, in the case of subsection (d) of this Section 14, where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the Retirement System and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Consultant, its subcontractors or either's agent or employee. The foregoing indemnities shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the Retirement System's costs of investigating any claims against the Retirement System. In addition to Consultant's obligation to indemnify the Retirement System, Consultant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Retirement System 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 Consultant by the Retirement System and continues at all times thereafter. Consultant shall indemnify and hold the Retirement System 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 the Retirement System, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

15. **Limitation on Liability of the Retirement System.** The Retirement System's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in Section 4 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the Retirement System 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.

16. **Default; Remedies.**

- (a) Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
- (1) Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following sections of this Agreement:
 - (A) Section 10 (False Claims);
 - (B) Section 11 (Taxes);
 - (C) Section 13 (Insurance);
 - (D) Section 20 (Proprietary or Confidential Information);
 - (E) Section 25 (No Assignment or Subcontracting);
 - (F) Section 31 (Alcohol and Drug-Free Workplace); and
 - (G) Section 44 (Compliance with Laws).
 - (2) Consultant 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 the Retirement System to the Consultant;
 - (3) Consultant (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property or (E) takes action for the purpose of any of the foregoing; or
 - (4) a court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's 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 Consultant.

- (b) On and after any Event of Default, the Retirement System 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, the Retirement System shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Consultant any Event of Default; Consultant shall pay to the Retirement System on demand all costs and expenses incurred by the Retirement System in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The Retirement System shall have the right to offset from any amounts due to Consultant under this Agreement or any other agreement between the Retirement System and Consultant all damages, losses, costs or expenses incurred by the Retirement System as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement.
- (c) 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. **Termination for Convenience.** The Retirement System shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Retirement System shall exercise this option by giving Consultant written notice of termination (the "Termination Notice"). The Termination Notice shall specify the date on which termination shall become effective.

Upon receipt of the Termination Notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to affect the termination of this Agreement on the date specified by the Retirement System and to minimize the liability of Consultant and the Retirement System to third parties as a result of termination. All such actions shall be subject to the prior approval of the Retirement System. Such actions shall include, without limitation, the cessation of performance of all services under this Agreement on the date(s) and in the manner specified by the Retirement System, the completion of performance of any service that the Retirement System designates to be completed prior to the date of termination specified by the Retirement System or such other actions as directed by the Retirement System. Consultant agrees to cooperate with the Retirement System to ensure an orderly termination process.

Within thirty (30) days following the termination date specified by the Retirement System, Consultant shall submit to the Retirement System an invoice, which shall provide details of all activities and services rendered through the date of termination.

18. Rights and Duties upon Termination. This Section 18 and the following sections of this Agreement shall survive termination of this Agreement:

- (a) Section 4(c) (Payment Does Not Imply Acceptance of Services);
- (b) Section 10 (False Claims);
- (c) Section 11 (Taxes);
- (d) Section 12 (Independent Contractor);
- (e) Section 13 (Insurance);
- (f) Section 14 (Indemnification);
- (g) Section 15 (Limitation on Liability of the Retirement System);
- (h) Section 20 (Proprietary or Confidential Information);
- (i) Section 22 (Ownership of Results);
- (j) Section 23 (Works for Hire);
- (k) Section 24 (Audit and Inspection of Records);
- (l) Section 39 (Modifications);
- (m) Section 40 (Administrative Remedy);
- (n) Section 41 (California Law; Venue);
- (o) Section 42 (Construction);
- (p) Section 43 (Entire Agreement); and
- (q) Section 46 (Severability).

Subject to the immediately preceding sentence, upon termination of this Agreement, this Agreement shall terminate and be of no further force or effect. Consultant shall transfer title to the Retirement System, and deliver in the manner, at the times, and to the extent, if any, directed by the Retirement System, any work in progress, completed work and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the Retirement System.

19. Prohibited Activities.

- (a) Consultant represents and warrants that it does not and shall not knowingly employ, retain or compensate in any capacity: any employee, fiduciary, agent, consultant or other service provider of the Retirement System, or any member of the Retirement Board, who either could influence the award of this Agreement or any competing agreement, or who does or will have any direct or indirect financial interest in this Agreement ("Interested Person"), and any spouse or economic dependent of any Interested Person.
- (b) By executing this Agreement, Consultant certifies that it does not know of any fact which constitutes a violation of: (i) Section 15.103 of the Charter, (ii) Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, as amended, (iii) Section 87100 et seq. of the Government Code or (iv) Section 1090 et

seq. of the Government Code, and further agrees promptly to notify the Retirement System if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that individuals who will provide services under this Agreement may be deemed consultants under state and local conflict of interest laws. Consultant agrees to use its best efforts to require that such individuals submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the Retirement System within ten (10) calendar days of the Retirement System's written request.

- (c) Consultant further acknowledges that it is familiar with Section 3.216 of the San Francisco Campaign and Governmental Conduct Code, as amended (the "Gifts Ordinance"), which prohibits an officer or employee of the Retirement System from soliciting or accepting any gift from a person who the officer or employee knows or has reason to know is a restricted source. The Gifts Ordinance defines "restricted source" to mean: (i) a person doing business with or seeking to do business with the department of the officer or employee; or (ii) any person who during the prior twelve (12) months knowingly attempted to influence the officer or employee in any legislative or administrative action. Consultant certifies that it does not know of any facts that constitute a violation of those provisions and agrees that it will immediately notify the Retirement System if it becomes aware of any such fact during the term of this Agreement.
- (d) Consultant shall comply with San Francisco Administrative Code Chapter 12K. Consultant 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 (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Consultant is subject to the enforcement and penalties in Chapter 12K. Consultant is required to comply with all of the applicable provisions of Chapter 12K, irrespective of the listing of obligations in this Section 19.

20. **Proprietary or Confidential Information.** Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the Retirement System and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Retirement System. Consultant agrees that all information disclosed by the Retirement System to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

21. **Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail (with confirmation of receipt) or by fax (with confirmation of receipt), and shall be addressed as follows (or to such other recipient or address as either party from time to time may specify in writing to the other party in accordance with this notice provision):

To the Retirement System:

Name
Title
San Francisco Employees' Retirement System
1145 Market Street, 7th Floor
San Francisco, CA 94103-1561
Name@sfgov.org

To Consultant:

22. **Ownership of Results.** Any interest of Consultant or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the Retirement System in a useable format (including electronic format) upon demand by the Retirement System; *provided, however*, Consultant may retain and use copies for reference and as documentation of its experience and capabilities. The Retirement System shall have the unrestricted authority to publish, disclose, distribute or otherwise use in whole or in part any reports, data or other materials prepared under this Agreement, crediting Consultant as the source.
23. **Works for Hire.** If, in connection with services performed under this Agreement, Consultant 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 Retirement System. If it is ever determined that any works created by Consultant or its subcontractors under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to the Retirement System, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the prior written approval of the Retirement System, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.
24. **Audit and Inspection of Records.** Consultant agrees to maintain and make available to the Retirement System, during regular business hours, accurate books and accounting records relating to its work under this Agreement, including copies of all invoices. Consultant will permit the Retirement System 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. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) 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 the Retirement System by this Section 24.

25. **No Assignment or Subcontracting.** The services to be performed by Consultant under this Agreement are personal in character and Consultant shall perform the work contemplated with resources available within its own organization. Neither this Agreement nor any duties or obligations hereunder may be assigned, subcontracted or delegated by Consultant without prior written consent of the Retirement System.
26. **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.
27. **Local Business Enterprise Utilization.** Consultant shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B. Consultant is subject to the enforcement and penalty provisions in San Francisco Administrative Code Chapter 14B.
28. **Nondiscrimination; Penalties.**
 - (a) **Non Discrimination in Contracts.** Consultant shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code, as amended, which are incorporated herein by reference. Consultant shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Consultant is subject to the enforcement and penalty provisions in such chapters.
 - (b) **Nondiscrimination in the Provision of Employee Benefits.** Consultant shall comply with the provisions of San Francisco Administrative Code Section 12B.2. Consultant 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, on real property owned by the City, or where work is being performed for the Retirement System elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

- (c) **Condition to Agreement.** As a condition to this Agreement, Consultant shall execute and submit the "S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits" form (form CMD-12B-101) with supporting documentation to the Retirement System.
29. **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F, as amended, are incorporated herein by this reference and made part of this Agreement. By executing this Agreement, Consultant confirms that Consultant has read and understood that the 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.
30. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), as amended, the City urges Consultant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.
31. **Alcohol and Drug-Free Workplace.** The Retirement System reserves the right to deny access to, or require Consultant to remove from, the Retirement System's or the City's facilities agents of Consultant who the Retirement System has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the Retirement System's ability to maintain safe work facilities or to protect the health and well-being of the Retirement System's employees and the general public. The Retirement System shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the Retirement System's or the City's facilities. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription.
32. **Compliance with Americans with Disabilities Act.** Consultant shall provide the services under this Agreement in a manner that complies with the Americans with Disabilities Act of 1990, as amended, including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.
33. **Sunshine Ordinance.** Consultant acknowledges that under Section 67.24(e) of San Francisco Administrative Code, contracts, contractors' bids, responses to requests for proposals and all other records of communications between the Retirement System and persons or firms seeking contracts, shall be open to public inspection immediately after a contract has been awarded. All information provided by Consultant that is covered by that ordinance (as it may be amended) will be made available to the public upon request.
34. **Limitations on Contributions.** By executing this Agreement, Consultant acknowledges its obligations under Section 1.126 of the San Francisco 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 Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Consultant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Consultant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 of the San Francisco Campaign and Governmental Conduct Code by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the Retirement System.

35. **Minimum Compensation Ordinance.** If applicable, Consultant shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Consultant is subject to the enforcement and penalty provisions in San Francisco Administrative Code Chapter 12P. By signing and executing this Agreement, Consultant certifies that it is in compliance with San Francisco Administrative Code Chapter 12P.
36. **Health Care Accountability Ordinance.** If applicable, Consultant shall comply with San Francisco Administrative Code Chapter 12Q. Consultant shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Consultant is subject to the enforcement and penalty provisions in Chapter 12Q.
37. **Prohibition on Use of Public Funds for Political Activity.** In performing the services under this Agreement, Consultant shall comply with San Francisco Administrative Code Chapter 12G, as amended, which prohibits funds appropriated 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. Consultant is subject to the enforcement and penalty provisions in such chapter.
38. **First Source Hiring Program.** Consultant must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Consultant is subject to the enforcement and penalty provisions in Chapter 83 of the San Francisco Administrative Code.
39. **Modifications.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

40. **Administrative Remedy.** All disputes, controversies or claims arising under or relating to this Agreement shall be settled by the Executive Director. The Executive Director's decision shall be deemed an exhaustion of all administrative remedies. However, the Executive Director's decision shall not preclude resorting to judicial remedy.
41. **California 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.
42. **Construction.** All section headings in this Agreement are for reference only and shall not be considered in construing this Agreement. Terms such as "hereunder" or "herein" refer to this Agreement as a whole. Terms such as "include" or "including" shall be deemed followed by the words "without limitation." References to consents, approvals, determinations or other decisions of the Retirement System shall refer to the sole judgment of the Retirement System.
43. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions. The attached Exhibits A, and B are a part of this Agreement.
44. **Compliance with Laws.** Consultant shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the 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 local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
45. **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney on behalf of the Retirement System must be reviewed and approved in writing in advance by the Office of the City Attorney of the City (the "City Attorney"). No invoices for services provided by law firms or attorneys, including without limitation, as subcontractors of Consultant, will be paid unless the provider received advance written approval from the City Attorney.
46. **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.
47. **Cooperative Drafting.** 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.

48. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which counterparts shall together constitute one and the same instrument.

49. **Public Disclosure.**

(a) Consultant hereby acknowledges that the Retirement System is a "public agency" subject to the provisions of the Public Records Act, which provides generally that all records relating to a public agency's business constitute "public records or files," and are open to public inspection, disclosure and copying in the manner provided in the Public Records Act, unless specifically exempted under the Public Records Act. Consultant hereby acknowledges that the Retirement System is subject to the Open Meetings Act, which provides generally for open meetings for legislative bodies, including the Retirement Board, and the Sunshine Ordinance, which provides generally that all records relating to a public agency's business are open to public inspection and copying unless exempted under the Sunshine Ordinance and for open meetings for policy bodies such as the Retirement Board.

(b) Consultant shall not make any claim against the Retirement System if the Retirement System makes available to the public or otherwise discloses any report, notice or other information the Retirement System received from Consultant or its Agents which was required to be made public or is disclosed by the Retirement System pursuant to the Public Records Act, the Open Meetings Act or the Sunshine Ordinance or as required by a governmental authority or otherwise required by law and that the Retirement System determines in good faith is not exempt from disclosure.

(c) Consultant acknowledges that under Section 67.24(e) of the San Francisco Administrative Code, as amended, contract, contractors' bids, responses to requests for proposals and all other records of communications between the Retirement System and persons or firms seeking contracts, shall be open to public inspection immediately after a contract has been awarded. All information provided by Consultant that is covered by that ordinance (as it may be amended) will be made available to the public upon request.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

**SAN FRANCISCO CITY AND COUNTY
EMPLOYEES' RETIREMENT SYSTEM**

[_____]

By: _____
JAY HUISH
Executive Director

By: _____
Name: _____
Title: _____

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By: _____
Robert Bryan
Deputy City Attorney