

City and County of San Francisco

City Attorney's Office

Request for Qualifications for

**Portfolio Monitoring and
Securities Litigation Evaluation and Reporting
for the San Francisco City and County
Employees' Retirement System**



Date issued:

September 25, 2024

DEADLINE FOR SUBMISSION:
2024

4:30 p.m., October 23, 2024,

**Request for Qualifications for Portfolio Monitoring and
Securities Litigation Evaluation and Reporting for SFERS**

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Request for Qualifications

I. INTRODUCTION

A. General

The San Francisco City Attorney's Office ("Office") serves as counsel for the San Francisco City and County Employees' Retirement System ("SFERS"). The Office is issuing this Request for Qualifications ("RFQ") in search of qualified law firms ("Proposers") to provide portfolio monitoring and securities litigation monitoring, evaluation and reporting services for SFERS. Proposers shall submit their materials according to the timelines and requirements in this RFQ. Each submission will be reviewed for the minimum qualifications in Section IV of this RFQ. Those Proposers who meet the minimum qualifications will be evaluated further as set forth in this RFQ.

SFERS is a public, defined-benefit pension plan established by the Charter of the City and County of San Francisco ("City"). SFERS is administered by a seven-member Retirement Board ("Board"). The Board is comprised of three elected employee members, three mayoral appointees, and one member of the San Francisco Board of Supervisors. SFERS is charged with administering retirement, disability and death benefits for its members and their beneficiaries.

SFERS has an approximately \$35.3¹ billion investment portfolio allocated to different asset classes, including U.S. equity, international equity, global fixed income, alternative assets and real estate. The assets are managed by in-house staff and external investment managers. The Bank of New York Mellon provides custodial services.

To ensure that SFERS continues to adequately identify and evaluate securities litigation actions in which it has an interest, the Office intends to enter into agreements with up to four (4) law firms to monitor SFERS's investment portfolio and monitor, evaluate and report on securities actions relating to SFERS's assets in both the United States and in foreign jurisdictions. Those agreements will have an initial term of three (3) years, with two (2) options to extend for up to two (2) years each, which the Office may exercise in its sole, absolute discretion. The Office will identify Proposers to include in its candidate pool. The Office is not guaranteeing a contract to all Proposers who are selected to be in the candidate pool as a result of the RFQ. When a Proposer enters into a contract with the Office, that Proposer becomes a "Contractor." The Office is not guaranteeing any amount of work to any Contractor. Any Proposer in the candidate pool not selected to enter into an agreement with the Office will remain in the candidate pool for five (5) years, and at the Office's sole discretion, may be awarded an agreement during that time.

Contractors will be responsible for, among other things, obtaining SFERS's trading information directly from its custodian bank, monitoring the portfolio, identifying and evaluating securities litigation and other actions in which SFERS has a financial interest, and notifying the Office of those actions that the Proposer believes merit further consideration for a more active role. The selected Proposers will also be required to provide periodic reports on activities.

Proposers should be aware that, if SFERS decides to pursue active involvement in a securities or other litigation action, the Office will conduct a separate selection process for litigation counsel. Entering a contract with the Office to provide portfolio monitoring and securities litigation evaluation and reporting services will not automatically lead to being selected as litigation counsel.

¹ As of June 30, 2024.

B. Limitation on Communication During Solicitation

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

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

C. Schedule

The anticipated schedule for selecting a Proposer is:

Proposal Phase	Date
RFQ is issued by the Office	September 25, 2024
Deadline for submission of written questions or requests for clarification	October 3, 2024 at 4:30 pm PDT
Publication of responses to written questions or requests for clarification	October 4, 2024
Qualification submissions due	October 23, 2024 at 4:30 pm PDT
Oral interviews including reference checks, if any, with Proposers selected for further consideration (anticipates scoring twice)	October-November 2024
Notice of selection to Proposers	December 2024
Contract Negotiations	January-February 2025

II. SCOPE OF WORK

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all services under this RFQ. Proposers may suggest a modified scope as part of their proposal. The services requested will include but not be limited to:

- Monitoring SFERS's investment portfolio to identify any losses that may have occurred as a result of a violation or potential violation of federal or state securities or other laws,

or a potential breach of any duty owed SFERS, and notify the Office, in a timely manner, of such cases where SFERS has a financial interest.

- Using internal and external resources to identify, evaluate and monitor securities and other litigation in which SFERS has an interest.
- Advising the Office of situations where litigation or arbitration may be warranted in a matter, including an assessment of likely outcome, whether SFERS should remain in the plaintiff class or opt out, various deadlines that affect SFERS's rights, and other factors, as appropriate, that enable the Office and SFERS to make an informed decision on how to proceed.
- Identifying, monitoring, evaluating and reporting to the Office on U.S. and international litigation that impacts SFERS's portfolio.
- Regular reporting to the Office, which includes at least the following information:
 - Identifying newly filed securities or other litigation cases or arbitrations in which SFERS has losses or a financial interest, including the estimated value of the losses.
 - Identifying class action settlements and upcoming proof of claim deadlines for those cases in which SFERS has a financial interest.
 - Providing legal analysis and a calculation of losses in cases where the loss or potential loss is significant enough that SFERS may consider joining the litigation or taking an active role under its Securities Litigation Policy, a copy of which is attached to this RFQ as Appendix C.
- Being responsive and available on an as-needed basis to confer and provide recommendations to the Office and SFERS on newly filed, pending, and recently settled securities litigation or other cases in which SFERS has a financial interest.

Proposers will be expected to familiarize themselves with SFERS, its investment policies, the fiduciary duties and responsibilities of the Retirement Board and SFERS, and relevant Charter provisions and state law, without cost.

The above description of the Scope of Work is intended as a general guide and not as a complete description of all aspects of the services under the RFQ.

III. SUBMISSION REQUIREMENTS

A. Time and Place for Submission of Qualifications

Each Proposer shall submit four (4) copies of its Qualifications Statement in a sealed envelope, clearly marked and separately bound, to the Office at the address below. Qualifications Statements must be clearly marked, "Qualifications Statement for Investment Legal Services RFQ." Qualifications Statements must be received by the Office no later than 4:30 p.m. (PST) on October 23, 2024, 2024. Qualifications Statements may be delivered in person or sent via courier or U.S. mail to:

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

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

In addition to submitting four (4) hard copies of the Qualifications Statement, each Proposer must provide its Qualifications Statement in .PDF format to the Office at the email address provided above with a cc to Linda.Ma@sfcityatty.org by the same Submission Deadline.

B. Content

Proposers interested in responding to this RFQ must submit the following information, in the order specified below:

1. Background

- A one-page introduction and executive summary.
- The name, address, telephone number, and email address of the person authorized to represent the Proposer with respect to all notices, negotiations, discussions and other communications relating to this RFQ, to any further selection process, and to any negotiations relating to a contract for the services.
- An overall description of Proposer's firm or company, including its history, organization structure, legal structure, ownership, financial condition, the major practice areas, and the total number of its employees.
- The headquarters and regional office locations and number of staff at each location, and the areas of practice at each location.
- Information about the number of years that Proposer has been handling (a) securities litigation matters generally, (b) U.S. securities litigation monitoring services for public pension plans, and (c) non-U.S. securities litigation monitoring services for public pension plans.

2. Staff

- Identify Proposer's staffing model for the services.
- Identify the personnel who will be directly assigned to provide services under the RFQ, and their role within Proposer's organization, their responsibilities for handling this relationship, their experience, qualifications and any specialized expertise, including the number of years providing the services under this RFQ. Include brief resumes.
- Identify whether any attorney intended to provide services to the Office and SFERS has ever been disciplined or censured by any regulatory body or court. If so, provide the relevant facts.
- Identify members of the Proposer's board of directors, if applicable.
- Identify the Proposer's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, and any other principal officer, if applicable.
- Identify each person who owns ten percent (10%) or more of the Proposer.

3. Qualifications

- Describe Proposer's experience and qualifications to provide the work described

in this RFQ, including recent instances in which Proposer has provided similar services to public pension plans of a fund size comparable to or larger than SFERS. With respect to those engagements, please describe Proposer's specific role in performing the work, the name of the client(s), number of years serving the client(s), and the names of the attorneys in charge of the client(s).

- Identify the number of U.S. securities litigation cases in the past five (5) years where Proposer represented the lead plaintiff. Describe generally the issues and procedural posture of those cases, results achieved, and whether Proposer's client was a public pension plan.
- Identify the number of international securities litigation cases in the past five (5) years in which Proposer has been involved representing a party or parties to the matter. Describe generally the issues and procedural posture of those cases, the jurisdiction in which the case was filed, results achieved, and whether Proposer's client was a public pension plan.
- Describe the primary challenges for institutional investors attempting to recover losses in international markets, and Proposer's approach to addressing those challenges.
- Identify the international jurisdictions in which Proposer is most experienced, and the basis for that experience.
- Describe Proposer's knowledge of City laws, and applicable open meeting and public records laws.
- List separately all engagements with the City or SFERS in the last five (5) years, ranked on the basis of total staff hours and by type of engagement, including the scope of work and dates of the engagement.

4. Approach to Portfolio Monitoring and Securities Litigation Evaluating and Reporting Services

- Describe Proposer's overall approach to portfolio monitoring services, and provide a detailed description of Proposer's process for reviewing holdings and analyzing and calculating losses.
- Describe the method and frequency that Proposer obtains transactional data from the custodian bank.
- Describe Proposer's policies and procedures that would govern retention, security and confidentiality of SFERS's data obtained from SFERS, the City, or its custodian bank ("SFERS Data").
- Describe how SFERS Data would be retained and used in connection with data from other clients of Proposer.
- Describe Proposer's overall approach to securities litigation monitoring, evaluation and reporting services. Describe the types of securities that Proposer can monitor, evaluate and report.
- Describe generally the resources Proposer uses to identify possible securities litigation and other claims and actions that may involve SFERS.
- Describe Proposer's resources and capabilities to identify, monitor, evaluate and analyze U.S. litigation that impacts SFERS, including calculating losses, analyzing funding agreements, evaluating the risks and benefits of SFERS's

- options, and other aspects of U.S. litigation.
- Describe Proposer’s resources and capabilities to identify, monitor, evaluate and analyze non-U.S. litigation that impacts SFERS, including calculating losses, analyzing funding agreements, evaluating the risks and benefits of SFERS’s options, and other aspects of non-U.S. litigation.
- Describe how Proposer calculates damages, and how it calculates, on average, the percentage of losses that SFERS may be expected to recover (a) in a class action, (b) as a lead plaintiff in a class action, and (c) as a sole plaintiff, if successful.
- Describe how Proposer assigns work within its team.
- If Proposer is able to provide monitoring, evaluation and reporting for investments other than securities, please describe that monitoring, evaluating and reporting capability.
- Describe Proposer’s reporting and notification process generally, including methodology and frequency of reporting. Please provide two (2) recent sample reports.
- Describe Proposer’s ability to identify and promptly notify the Office and SFERS of potential or newly filed cases in which SFERS has losses, and how Proposer makes that notification.
- Describe Proposer’s ability to provide written legal analysis on class action cases in which SFERS has losses. Please provide samples.
- Describe the information, if any, a client can access online and how often that information is updated.
- Is Proposer able to file proof of claims on a client’s behalf? Please provide Proposer’s capabilities.
- Is Proposer able to prospectively monitor securities litigation and settlement claims filed by SFERS’s custodian, to insure full recovery?
- Describe any trainings Proposer could provide to SFERS staff or the Retirement Board on portfolio monitoring or securities litigation.
- Describe why Proposer and its services are superior to other firms providing these services and Proposer’s competitive advantage, if any.

5. Fees

- Please describe any charges or fees associated with Proposer providing the services required under this RFQ. Generally, the Office expects that these services are provided without fees or other costs to the Office or SFERS.

6. References

- Provide client references for three (3) current public pension fund clients similar to or larger than SFERS in fund size for which Proposer provides services sought under this RFQ. Provide client name, contact and telephone number and email address.

7. Conflicts of Interest

- Does Proposer have a written conflict of interest policy? If so, please provide a copy and describe how Proposer implements that policy.
- Describe how Proposer deals with professional ethics in connection with its representation of clients. What does Proposer do to ensure there are no conflicts of interest? What process does Proposer maintain to provide a consistent, high standard of professional ethics?
- Describe any actual or potential conflict of interest that may arise if the Office selects Proposer to provide the services under this RFQ. Describe in detail the nature of the conflict and what consents would be required under the Rules of Professional Responsibility.
- Has Proposer ever represented investment management firms or real estate firms with whom SFERS might contract? If so, identify the name of each such client and the period of representation.
- Will the individuals assigned to the SFERS relationship agree to file an annual Form 700? (See Section VII.D of this RFQ.)

8. Litigation or Claims

- Describe all actual or pending litigation (including case name, court, case number, and date filed), grand jury inquiries, indictments, convictions, and state ethics board proceedings in the last ten years relating to the Proposer, or any attorney or employee with the Proposer, that arises from the Proposer's business, including the outcome. Describe all pending or threatened administrative proceedings or investigations by a federal, state or local agency.
- Describe in detail all malpractice and fee dispute claims made against Proposer in the last five (5) years, including disposition or current status.
- Identify every instance within the last five (5) years in which a client dismissed Proposer or terminated a contract with Proposer with respect to Proposer's services similar to those called for in this RFQ.

9. Miscellaneous

- Provide the limits of Proposer's workers' compensation, commercial liability, commercial automobile liability, professional liability, technology errors and omissions, and cyber and privacy insurance coverage, including insurance carriers. Identify whether the coverage is on a per client basis, or whether the dollar figure is applied to the firm as a whole. Identify all deductibles or self-insured retentions.
- Acknowledge that, by responding to this RFQ, Proposer and its attorneys and staff are "restricted sources" as that term is defined under the San Francisco ("S.F.") Campaign and Governmental Conduct Code under Section 3.216.
- Acknowledge that, by responding to this RFQ, Proposer has reviewed the form services contract attached to this RFQ. Identify any provisions to which Proposer will not agree or would request revision.

- Discuss any additional information that Proposer would like the Office to know about Proposer that may impact consideration of Proposer as a potential service provider to the Office or SFERS.

IV. EVALUATION AND SELECTION CRITERIA

A. Minimum Qualifications

Any proposal that does not demonstrate that the Proposer meets the minimum requirements described below by the deadline for submittal of Qualifications will be considered non-responsive and will not be eligible for award of a contract.

1. Proposer must have at least five (5) years of experience monitoring investment portfolios and monitoring, evaluating and reporting on U.S. and non-U.S. securities litigation.
2. The lead attorney(s) proposed to provide services to SFERS must have at least five (5) years of experience monitoring investment portfolios and monitoring, evaluating and reporting on securities litigation.
3. Proposer must currently provide portfolio monitoring and securities litigation monitoring, evaluating and reporting services to at least two (2) public pension plans, including at least one plan of comparable or larger fund size to SFERS.

B. Selection Criteria

A selection committee will evaluate the Qualifications generally in accordance with the criteria itemized below.

1. Firm Experience and Qualifications (25 Points)

- Specific experience providing services similar to the work in this RFQ to public pension plans of comparable or larger fund size.
- Experience with U.S. and international securities litigation.
- Litigation, investigations and claims involving Proposer.
- Fee disputes involving Proposer.
- Any dismissals or contract terminations of Proposer by a client.
- Conflict of interest issues.
- Insurance coverage and acknowledgements under Section III(B)(9) above.

2. Assigned Staff (25 Points)

- Staffing model for services under this RFQ.
- Experience in providing the services under this RFQ to public pension plans of similar or larger fund size.

- Relevant experience of lead attorney(s).
 - Professional and educational qualifications of assigned staff.
- 3. Approach to Portfolio Monitoring and Securities Litigation Monitoring, Evaluating and Reporting (35 Points)**
- Ability to effectively monitor SFERS portfolio for losses.
 - Security and use of data from custodian bank.
 - Ability to effectively monitor potential, new and pending securities and other litigation matters in which SFERS has a financial interest.
 - Ability to effectively and timely report on securities and other litigation matters.
 - Ability to effectively and timely advise the Office and SFERS on securities and other litigation matters.
 - Ability to provide interactive internet access to data, analysis and reports.
 - Any fees and costs associated with the services.
- 4. Oral Interviews (15 Points)**

Following the evaluation of the written Qualifications, the Office may invite up to eight (8) Proposers receiving the top eight scores to participate in oral interviews. In such cases, the Office will schedule interviews. Scoring for interviews will be on communication and presentation skills. Proposers shall ensure that all significant personnel who will be providing services to the Office are present during any interview. Interview scores will be combined with the results of the proposal evaluation, for a cumulative score. References will be contacted for those Proposers with top scores for elimination purposes only.

V. CONTRACT AWARD

The Office will select up to four (4) Proposers with which to commence contract negotiations. The selection of any proposal shall not imply acceptance by the Office of all terms of the proposal, which may be subject to further negotiations and approvals before the Office may be legally bound thereby. The selected Proposers must be willing to enter into a written agreement that is substantially in the form of the Agreement for Professional Legal Services attached as Appendix B. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. If a satisfactory contract cannot be negotiated in a reasonable time, the Office, in its sole discretion, may terminate negotiations and begin contract negotiations with another Proposer.

VI. TERMS AND CONDITIONS FOR RECEIPT OF QUALIFICATIONS

A. Errors and Omissions in RFQ

Proposers are responsible for reviewing all portions of this RFQ. Proposers are to promptly notify the Office, in writing, if Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to the Office promptly after discovery, but in no event later than five (5) days before the submission deadline. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and any request for written modification or clarification of the RFQ must be in writing and submitted by email not later than 4:30 p.m. PDT on October 3, 2024 to:

Cecilia Mangoba, cecilia.mangoba@sfcityatty.org

C. Objections to RFQ Terms

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFQ, the Proposer must, not later than 4:30 p.m. PDT on October 3, 2024, provide written notice to the Office setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Addenda

The Office may modify the RFQ, prior to the proposal due date, by issuing addenda to the RFQ, which will be posted on the website of SFERS (<http://www.sfers.org/>) and the Office (<http://www.sfcityattorney.org/>). The Proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the Office prior to the proposal due date regardless of when the proposal is submitted. Therefore, the Office recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all addenda.

E. Term of Proposal

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

F. Revision of Proposal

A Proposer may revise a proposal on the Proposer's own initiative at any time before the deadline for submission of Qualifications. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

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

G. Errors and Omissions in Proposal

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

H. Financial Responsibility

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

I. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Codes. If a Resulting Contract awarded to a Proposer from the Prequalified Pool has (A) a value of \$100,000 or more in a fiscal year and (B) requires the approval of an elected City official, Proposers are hereby advised:

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

This restriction applies to the party seeking the contract, the party's board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than ten percent (10%), and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the awarded contract or Proposal. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

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

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

J. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQs and all other records of communications between the Office and persons or

firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided that is covered by this paragraph will be made available to the public upon request.

K. Public Access to Meetings and Records

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

L. Reservations of Rights by the City

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

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all Qualifications;
3. Reissue a Request for Qualifications;
4. Prior to submission deadline for Qualifications, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFQ, or the requirements for contents or format of the Qualifications;
5. Procure any materials, equipment or services specified in this RFQ by any other means; or
6. Determine that no project will be pursued.

M. No Waiver

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

VII. CONTRACT REQUIREMENTS

A. Nondiscrimination in Contracts and Benefits

The successful Proposers will be required to agree to comply fully with and be bound by the provisions of Articles 131 and 132 of the S.F. Labor and Employment Code. Generally, Article 131 prohibits the City from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. Article 132 requires nondiscrimination in contracts in public accommodation. Additional information on Articles 131 and 132 is available on the Contract Monitoring Division's website at <https://www.sf.gov/departments/contract-monitoring-division>.

B. Minimum Compensation Ordinance (MCO)

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Labor and Employment Code Article 111. Generally, the MCO requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements.

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

C. Health Care Accountability Ordinance (HCAO)

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Labor and Employment Code Article 121. Contractors should consult the S.F. Labor and Employment Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

D. Conflicts of Interest

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

Individuals who will perform work for the Office on behalf of the successful Proposers might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political

Practices Commission Form 700, to the City within ten (10) calendar days of the City notifying successful Proposers that the City has selected the Proposers

Appendix A

Standard Forms

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

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

If a Proposer would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the Proposer should call the Contract Monitoring Division at (415) 581-2310.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification https://www.irs.gov/pub/irs-pdf/fw9.pdf	W-9	The City needs the Proposer's taxpayer ID number on this form. If a Proposer has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration https://sftreasurer.org/business/register-business	P-25	All Proposers must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits http://sfgsa.org/index.aspx?page=6058 In Vendor Profile Application	CMD-12B-101	Proposers tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the	Contract Monitoring Division 1155 Market Street 4th Floor San Francisco, CA 94102-6020 (415) 581-2310

Item	Form name and Internet location	Form	Description	Return the form to; For more info
			form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	
4	LBE Certification Application https://www.sf.gov/get-certified-lbe		Local businesses complete this form to be certified as LBEs. Certified LBEs receive a rating bonus pursuant to San Francisco Administrative Code Chapter 14B when bidding on City contracts. To receive the bid discount, the Proposer must be certified by the proposal date.	Contract Monitoring Division 1155 Market Street, 4th Floor San Francisco, CA 94103 (415) 581-2310

For more information, visit:

Office of Contract Administration

Homepage: www.sfgov.org/oca/
Contracting with the City: <https://www.sf.gov/topics/contracting-city-and-county-san-francisco>

Contract Monitoring Division

Homepage: <https://www.sf.gov/departments/contract-monitoring-division>

Appendix B

**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

[LAW FIRM]

For Professional Legal Services

This Agreement, dated for convenience of reference as of [Date], is by and between the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Office of the City Attorney (the “City Attorney”), and [LAW FIRM] (“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 portfolio monitoring and securities litigation monitoring, evaluation and reporting, and related legal services 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.

[D. This Agreement creates an on-going attorney client relationship between Counsel and the City, including but not limited to SFERS. The attorney-client relationship shall remain in place at all times from the effective date of this Agreement until such time as either party provides written notice of its intent to terminate the attorney-client relationship. The attorney-client relationship will remain in place continuously under this Agreement until such notice is provided, regardless of whether Counsel is actively performing legal work for the City at any given time.]

Now, THEREFORE, the Parties agree as follows:

Article 1 Scope of Services

1.1 Scope.

1.1.1 Upon request of the City Attorney, Counsel shall advise and assist the City Attorney on matters concerning portfolio monitoring and securities litigation monitoring, evaluation and reporting, and related legal services on behalf of SFERS (“SFERS Services”). The scope of services is more fully described in Exhibit 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 SFERS Services.

1.1.3 City Attorney shall designate one or more deputies to monitor, review and participate in all aspects of the SFERS Services. Counsel is authorized to take appropriate legal steps to handle SFERS Services as it pertains to any and all claims made and relief for which Counsel has been asked to provide support. Counsel shall keep City Attorney’s designated staff updated on the SFERS Services.

1.1.4 Counsel shall handle any press contact it receives related to the SFERS Services 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 in writing 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 SFERS Services to City Attorney. Counsel shall consult in advance with, and obtain the prior approval of, City Attorney concerning all substantive aspects of the SFERS Services as it relates to City.

1.1.6 Counsel shall provide sufficient resources, including attorney time and competent personnel, to handle the SFERS Services through judgment after trial court proceedings or, subject to approval as provided herein, through settlement.

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.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement (the “Term”) shall be from _____ to _____, 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 four (4) years (two (2) options to extend for two (2) years each) 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.”

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 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.** There shall be no charge for services under this Agreement.

3.3 **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.

3.4 **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 City's 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 and Exhibit 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 and Exhibit 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:

[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

5.1.1 **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 City's 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 City's 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 City's 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.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing services under this Agreement, Counsel shall comply with the 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 the 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 the 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 the San Francisco 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, 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 the 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: [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: Cecilia Mangoba,
San Francisco City Attorney’s Office
1390 Market Street, 7th Floor
San Francisco, CA 94102
cecilia.mangoba@sfcityatty.org

To Counsel: [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 City’s 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 at all times during the Term 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 City’s 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: _____
Cecilia Mangoba
Deputy City Attorney

Exhibits:

- A: Scope of Work
- B: Fee and Expense Schedule
- C: SFERS Securities Litigation Policy

***Please note agreements for Professional Legal Services may only be signed by the City Attorney or Chief of Staff, Chief Counsel, or Chief of Litigation.**

Exhibit A Scope of Services

1. Description of Services

Counsel agrees to perform the following services, as more fully described in its “Response to Request for Proposals for Portfolio Monitoring and Securities Litigation Evaluation and Reporting,” dated [], which is incorporated by reference as if fully set forth herein.

A. Establish a secure data transfer with SFERS’s custodian bank, currently The Bank of New York Mellon, for regular access to SFERS’s securities holdings and trading data, and other investment transactional data necessary to perform the services under this Agreement. Maintain all data from the custodian bank in a secure database and maintain the confidentiality and protection of that data. Counsel shall use this data solely in connection with providing services under this Agreement.

B. Monitor SFERS’s investment portfolio to identify any losses that may have occurred as a result of a violation or potential violation of federal or state securities or other laws, or a potential breach of any duty owed SFERS, and notify the City Attorney, in a timely manner, of such cases where SFERS has a financial interest.

C. Using internal and external resources, identify, evaluate and monitor securities and other litigation in which SFERS has an interest.

D. Advise the City Attorney of situations where litigation or arbitration may be warranted in a matter, including an assessment of likely outcome, whether SFERS should remain in the plaintiff class or opt out, various deadlines that affect SFERS’s rights, and other factors, as appropriate, that enable the City Attorney and SFERS to make an informed decision on how to proceed.

E. Identify, monitor, evaluate and report to the City Attorney on U.S. and international litigation that impacts SFERS’s portfolio.

F. Regularly report to the City Attorney on the following information:

- Newly filed securities or other litigation cases or arbitrations in which SFERS has losses or a financial interest, including the estimated value of the losses and a recommendation regarding proposed involvement by SFERS.
- Class action settlements and upcoming proof of claim deadlines for those cases in which SFERS has a financial interest.
- A legal analysis and a calculation of losses in cases where the loss or potential loss is significant enough that SFERS may consider taking an active role under its Securities Litigation Policy, of copy of which was provided to Counsel through the RFQ.
- Regulatory and legislative updates.

G. On an as needed basis, confer with and provide recommendations to the City Attorney on newly filed, pending, and recently settled securities litigation or other cases in which SFERS has a financial interest.

H. Make reports and other SFERS information available to the City Attorney through a secure online system.

I. Provide mutually agreed upon trainings to the City Attorney, SFERS staff or Retirement Board.

J. Counsel understands and agrees that if SFERS decides to pursue active involvement in a securities or other litigation action, the City Attorney will conduct a separate selection process for litigation counsel from its pool of qualified securities litigation counsel established through a Request for Qualifications process, and Counsel will not automatically be selected as litigation counsel.

K. Counsel understands and agrees that upon expiration or termination of this Agreement, upon request of the City Attorney, Counsel shall return or destroy all records, including electronic records, of SFERS's transactional data.

2. Reports

Counsel shall submit written reports as requested by the City Attorney's Office. The City Attorney's Office shall determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Counsel's liaison with the City Attorney's Office will be Cecilia Mangoba.

Appendix C
SFERS Securities Litigation Policy



SECURITIES LITIGATION POLICY

Background and Purpose

- 1) This Policy provides a framework for monitoring Securities Litigation that relates to assets of the San Francisco Employees' Retirement System ("SFERS") and for evaluating the alternatives available to SFERS when losses reach defined thresholds. The purpose of this Securities Litigation Policy is to assist the Retirement Board with its supervision and monitoring of litigation relating to SFERS' assets.
- 2) By establishing this Securities Litigation Policy, the Retirement Board recognizes that the enactment by Congress of the Private Securities Litigation Reform Act in 1995 encouraged institutional investors and other large shareholders to seek lead plaintiff status in securities class actions. In addition, the United States Securities and Exchange Commission, and leaders in the legal community, have commented that the governing board of a public pension system has a fiduciary duty to monitor securities class actions in which the system has an interest, and to participate as lead plaintiff where such participation is likely to enhance the recovery by members of the class.
- 3) These declarations must be balanced against other, equally compelling, fiduciary principles, including the principle to act solely in the interest of, and for the exclusive purpose of providing benefits to participants and their beneficiaries, minimizing contributions, and defraying reasonable expenses of administering the SFERS Defined Benefit Plan ("Plan"). The Retirement Board's duty to its participants and their beneficiaries shall take precedence over any other duty.
- 4) This Securities Litigation Policy is designed to balance these principles by ensuring that all actions relating to SFERS' monitoring of Securities Litigation, and any action taken as a result of losses to SFERS' assets, make prudent use of the plan's resources and are clearly designed to serve the interests of the Plan's participants.

Policy Objectives

- 5) The objectives of this Securities Litigation Policy are:
 - a) To establish protocols for monitoring the Custodian's activities that pertain to protecting SFERS' rights to recovery in all Securities Litigation that impacts SFERS' assets, and for ensuring that all distributions are received timely and credited to SFERS' account.
 - b) To identify circumstances where the best interests of the Plan's participants may be served by SFERS taking an active role in Securities Litigation.
 - c) To provide guidelines for determining the appropriate course of action when a more active role in Securities Litigation appears to serve the best interests of the Plan's participants.

- d) To establish guidelines for reporting Securities Litigation activities undertaken on behalf of the Plan.
- e) To make all decisions relating to this Securities Litigation Policy in compliance with fiduciary standards.

Definitions

- 6) The terms below as used in this Policy shall have the following meanings:
 - a) "Outside Securities Litigation Counsel" means any of the attorneys and/or law firms the City Attorney's Office retains to represent SFERS when the System takes an active role in Securities Litigation.
 - b) "Portfolio Monitoring and Securities Litigation Evaluation Counsel" means any of the attorneys and/or law firms the San Francisco City Attorney's Office retains to provide professional legal services for portfolio monitoring and Securities Litigation monitoring, evaluation and reporting, and related legal services, on behalf of SFERS.
 - c) "Securities Litigation" means any existing or potential case or legal action brought before a court, administrative agency, arbitrator, or similar authority, in which plaintiff(s) seek to recover damages for the diminution in value of a security caused by the defendant(s) or responding party(ies).

Roles and Responsibilities

- 7) The responsibilities of the SFERS Board include, but are not limited to, the following:
 - a) Setting the policy framework in which implementation of this Securities Litigation Policy will take place.
 - b) Providing oversight of the effectiveness of the implementation of this Securities Litigation Policy and monitoring SFERS staff's performance in carrying out their duties.
- 8) The responsibilities of the Executive Director include, but are not limited to, the following:
 - a) Assisting the City Attorney's Office in evaluating whether SFERS should take an active role in Securities Litigation.
 - b) When it is in SFERS' interests to take an active role in Securities Litigation, providing input regarding the retention of Outside Securities Litigation Counsel to assist the City Attorney's Office in representing SFERS in the litigation.
 - c) Requesting that the City Attorney's Office retain counsel to file any types of claims not covered by the Custodian, e.g. antitrust actions.

- 9) The responsibilities of SFERS staff include, but are not limited to, the following:
- a) Managing and providing general oversight of this Securities Litigation Policy, in coordination with the City Attorney's Office.
 - b) With the City Attorney's Office where appropriate, implementing and administering Board policy decisions.
 - c) Monitoring the Custodian to ensure that it adheres to SFERS' policies and guidelines regarding the filing of appropriate and timely proofs of claim and prompt deposit of all distributions when Securities Litigation matters are settled.
 - d) Reviewing monitoring emails/reports from the Portfolio Monitoring and Securities Litigation Evaluation Counsel, which includes litigation claims due, on a regular basis.
 - e) Working with the City Attorney's Office to evaluate all potential claims that meet or exceed the threshold amounts set forth below.
 - f) Monitoring the City Attorney's Office activities relating to the evaluation of potential claims to ensure compliance with the Retirement Board's guidelines.
 - g) Offer recommendations for appropriate changes to this Policy.
 - h) Coordinating with the City Attorney's Office to ensure that the reporting requirements of the City Attorney's Office and Outside Securities Litigation Counsel are met.
- 10) The responsibilities of the Custodian include, but are not limited to, the following:
- a) Processing securities class action claims on behalf of SFERS.
 - b) Notifying SFERS, and the Portfolio Monitoring and Securities Litigation Evaluation Counsel as needed, of securities class action proceedings in which it is a member of the class.
 - c) Assembling and providing all necessary transaction data to ensure that appropriate claims can be assessed and that SFERS' ability to participate in a settlement of the claim is protected.
 - d) Properly and timely filing all proofs of claim where SFERS is a member of the class.
 - e) On a timely basis, receiving all settlements due to SFERS and crediting the settlements to the appropriate account.
 - f) Providing timely and accurate reports to SFERS staff.
 - g) Providing all information required by the Portfolio Monitoring and Securities Litigation Evaluation Counsel on a timely basis.

- 11) The responsibilities of the Portfolio Monitoring and Securities Litigation Evaluation Counsel include, but are not limited to, the following:
- a) Providing support services to SFERS staff and to the City Attorney's Office to enable them to monitor securities claims in which SFERS is a member of the class and to evaluate the appropriate course of action for SFERS to take in each such case.
 - b) Obtaining from the Custodian the data necessary to provide the support services.
 - c) Notifying SFERS staff and the City Attorney's Office when a securities class action case is initiated.
 - d) Providing SFERS staff and the City Attorney's Office with information relating to the case as the litigation progresses.
 - e) Calculating estimates of the potential loss, if any, to SFERS in a case.
 - f) Providing SFERS staff and the City Attorney's Office with data to assist them in identifying class action cases in which SFERS has an interest.
 - g) Notifying SFERS staff and the City Attorney's Office of a proposed settlement of any litigation in which SFERS has an interest, including the last date for filing a proof of claim.
 - h) Providing to SFERS an annual report of securities class actions in which SFERS has an interest.
 - i) Providing to the City Attorney's Office an independent evaluation of a claim that meets or exceeds designated threshold amounts. To ensure that the evaluation is free from any potential for bias, Portfolio Monitoring and Securities Litigation Evaluation Counsel is generally not eligible to become litigation counsel for any matter in which the law firm has provided Securities Litigation evaluation advice.
 - j) Investigating and analyzing the legal merits of a securities matter.
 - k) Identifying estimates of recovery potential and possible sources of recovery.
 - l) Analyzing, in conjunction with the City Attorney's Office, what, if anything, SFERS can bring to the Securities Litigation matter that could improve the outcome.
 - m) Preparing a written evaluation of the assigned matter and recommending appropriate courses of action based on the evaluation. When recommending a particular course of action, Portfolio Monitoring and Securities Litigation Evaluation Counsel shall discuss the potential benefit to SFERS in relation to the Staff time and expenses to the System by following the recommended course of action. All written evaluations and communications shall be directed to the City Attorney's Office.

- 12) The responsibilities of the City Attorney's Office include, but are not limited to, the following:
- a) Monitoring class actions that relate to the Plan's assets, including through Portfolio Monitoring and Securities Litigation Evaluation Counsel's tracking system, to identify potential claims that meet the thresholds for evaluating whether it may be in SFERS' interests to take an active role, as opposed to passively following the progression of the litigation and filing a claim following settlement.
 - b) Conducting a detailed evaluation of all claims where, based on rough calculations by Portfolio Monitoring and Securities Litigation Evaluation Counsel, the estimated loss to the Plan exceeds the threshold amount for domestic or foreign litigation stated below. Whenever necessary, the City Attorney's Office shall seek the assistance of Portfolio Monitoring and Securities Litigation Evaluation Counsel in conducting this evaluation.
 - c) Recommending one or more alternatives for taking an active role in a Securities Litigation matter in appropriate circumstances and where such action is in the Plan participants' interests.
 - d) Responding to all solicitations by potential outside counsel, and all suggestions from any source that the Plan consider an active role in a case, whether received by the Retirement Board or by SFERS staff.
 - e) Monitoring the activities of outside counsel (Portfolio Monitoring and Securities Litigation Evaluation Counsel and Outside Securities Litigation Counsel) to ensure that the interests of the Plan's participants are protected.
 - f) Reviewing and approving all bills for fees and expenses submitted by Outside Securities Litigation Counsel.
 - g) Reporting to the Retirement Board whenever significant activity takes place in Securities Litigation.
 - h) Providing input to SFERS staff when it prepares a performance report for the Retirement Board regarding Securities Litigation.
 - i) Offering recommendations changes to this Policy when appropriate.
- 13) The responsibilities of Outside Securities Litigation Counsel include, but are not limited to, the following (after a decision has been made that it is in SFERS' interests to take an active role in a particular Securities Litigation matter or to file a separate Securities Litigation lawsuit):
- a) Providing the Retirement System with a projected litigation strategy, time line and budget.

- b) Filing a timely motion or claim to establish SFERS' status as plaintiff or lead plaintiff where appropriate.
- c) Working with the City Attorney's Office to undertake all steps necessary to accomplish SFERS' objectives for taking an active role in a particular litigation matter.
- d) Providing the City Attorney's Office and the Executive Director with reports when significant activities occur.

Guidelines

- 14) While SFERS may have a fiduciary duty to pursue legal action to recover on a claim when circumstances justify it, SFERS must also take into consideration that for most (if not all) cases brought in the United States for securities purchased on the U.S. market ("domestic litigation"), SFERS will recover whether or not SFERS takes an active role. Consequently, SFERS should focus primarily on identifying those cases where active involvement could add value, either in the specific case, or on a longer term, portfolio-wide basis. Such considerations may include, but are not limited to, maximizing claim recovery and reducing fees paid to obtain recoveries and deterring future fraud and corporate malfeasance to better protect fund assets. For cases brought overseas based on the purchase of securities on foreign markets, SFERS must take into consideration that joining as a plaintiff is generally required to recover damages.

Monitoring Activities of the Custodian

- 15) SFERS has a fiduciary obligation to take all reasonable, efficient, and appropriate steps to protect and increase the value of the Plan assets and to make sure that the Plan receives all money or assets due to it when Securities Litigation is resolved.
- 16) Where SFERS is an absent class member in domestic Securities Litigation, in order to ensure that the Plan receives all distributions to which it is entitled, SFERS staff must monitor the Custodian's activities to confirm that all appropriate and valid proofs of claim are timely filed (including the necessary supporting documentations and information) to realize recoveries and that all settlement distributions are received timely and credited properly to SFERS' account.
- 17) SFERS staff will compare the reports that it receives from the Custodian that identify proofs of claim filed on behalf of SFERS as well as recoveries received, with the information provided by Portfolio Monitoring and Securities Litigation Evaluation Counsel. In the event that the information from the Custodian and Portfolio Monitoring and Securities Litigation Evaluation Counsel is not consistent, SFERS staff will investigate to determine the reasons for the discrepancy, and if necessary and appropriate, to take all such steps to protect the interests of the Plan.
- 18) SFERS staff may report to the Retirement Board any instance where a proof of claim deadline is missed or any instance where a settlement distribution is not timely received and credited to SFERS' account.

Domestic Litigation

- 19) The Retirement Board recognizes that, as a practical matter, the securities class action bar will typically prosecute securities claims regardless of whether SFERS takes an active role. For domestic litigation, SFERS may choose, in certain situations, to participate actively as a lead plaintiff, or continue in a more passive plaintiff role. Paragraphs 20–23 of this Policy sets guidelines for domestic litigation.
- 20) Identifying Potential Claims That May Justify Taking A More Active Role Than Passive Monitoring
- a) The decision about what claims should be managed actively should focus on identifying those circumstances where SFERS' active involvement could add value. While this decision, in most cases, shall be based primarily on monetary bases (e.g., likelihood of maximizing claim recovery for the Plan is high while reducing fees paid to obtain such recovery), the Retirement Board recognizes that there may be the occasional situation where other bases may justify SFERS' active involvement in Securities Litigation (e.g., deterring future fraud and corporate malfeasance to better protect Fund assets).
 - b) When the estimated loss to the Plan, as determined by the initial calculations performed by Portfolio Monitoring and Securities Litigation Evaluation Counsel is less than \$5 million, SFERS staff and the City Attorney's Office shall passively monitor the case unless there are compelling reasons for recommending a more active role.
 - c) Where the estimated loss to the Plan, as determined by the initial calculations performed by Portfolio Monitoring and Securities Litigation Evaluation Counsel meets or exceeds \$5 million, the claim shall be evaluated by the City Attorney's Office and SFERS staff to determine whether SFERS should consider taking a more active role.
- 21) Claims Evaluation and the Decision Process
- a) Claims where the estimated loss to the Plan meets or exceeds \$5 million shall be evaluated by the City Attorney's Office and SFERS staff to determine whether SFERS should consider taking a more active role. The Retirement Board recognizes that there may be instances where specialized expertise is required to effectively evaluate a claim. In those cases, the City Attorney's Office, in consultation with the Executive Director, will consult with Portfolio Monitoring and Securities Litigation Evaluation Counsel.
 - b) The same general process and standards should be used to evaluate each claim. The evaluation process shall include review of all pleadings filed, relevant SEC filings and company disclosures, examination of relevant SFERS files, and interviews as appropriate. In deciding whether SFERS should take an active role when the Domestic Threshold is met, the City Attorney's Office, SFERS staff and Portfolio Monitoring and Securities Litigation Evaluation Counsel should consider, at a minimum, the following factors:

- i. Size of SFERS's loss
 - ii. The merits of the case
 - iii. Whether SFERS's active participation in litigation will improve the case outcome
 - iv. Sources of recovery to satisfy a judgement or settlement if plaintiffs prevail
 - v. Identity of lead plaintiff and other parties (along with their counsel), if known
 - vi. Availability of SFERS's internal resources to participate in discovery and active litigation
- c) Alternative courses of action that are available to SFERS, when appropriate, shall be identified, including:
- i. Monitoring the course of a class action suit and filing a timely claim(s) to participate in a class payment.
 - ii. Monitoring the course of a class action suit and reviewing the settlement stipulation and fee request at the end of the case to determine whether an objection is warranted.
 - iii. Seeking to control a class action by pursuing designation as lead plaintiff, either unilaterally or with other public funds/institutional investors.
 - iv. Opting out of a class action suit and filing a separate suit, either unilaterally or with other public funds/institutional investors.
 - v. Asking the Attorney General to pursue an appropriate criminal action.
 - vi. Supporting another lead plaintiff.
 - vii. Negotiating a monitoring agreement with the likely lead plaintiff/lead counsel that allows the fund access to discovery materials, privileged updates on the status of the case, the option to participate in settlement discussions, and a right to obtain full information on legal fees and costs.
 - viii. Filing a notice of appearance in the case, monitoring it and perhaps appearing at significant hearings.
- d) When the City Attorney and SFERS staff recommends to the Retirement Board that SFERS take an active role, the City Attorney's Office or Portfolio Monitoring and Securities Litigation Evaluation Counsel shall prepare a report that summarizes the allegations in the complaint, SFERS' potential and current losses, the merits of the claim, the status of the litigation,

including actions taken by other holders, and analyzes the impact of active claim management on SFERS and whether an active role will increase recovery to SFERS, and recommends action, including the reasons for the recommendation.

- e) The report shall be presented to the Retirement Board for consideration. When the Retirement Board agrees that a recommended strategy should be implemented, it will direct SFERS staff and the City Attorney's Office to take all necessary actions.
- f) If the Executive Director agrees that the recommended strategy should be followed, and immediate approval is necessary to implement the strategy to preserve SFERS' rights and/or interests, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Retirement Board, the Executive Director is authorized, after consultation with the City Attorney and President or acting President of the Retirement Board, to make the decision to adopt and implement the strategy, including filing of any claims, and shall notify the Retirement Board at its next regularly scheduled meeting.

22) Filing to Become Lead Plaintiff

- a) The Retirement Board recognizes that, in most instances, it will not likely approve filing to become lead plaintiff. However, where SFERS' claim is large enough and the cost/benefit analysis results in a decision to seek appointment as lead plaintiff, SFERS shall take all actions and make all decisions regarding its role as lead plaintiff based on its status as a fiduciary to the class, and shall appropriately document its basis for all decisions and actions. The potential for differing interests among class members shall be considered.
- b) All written fee agreements with Outside Securities Litigation Counsel shall be negotiated before counsel submits a motion for designation as lead plaintiff. Unless otherwise clearly and specifically justified by the circumstances, no contingency fee percentage shall exceed 20%. Outside Securities Litigation Counsel shall be required to provide to the City Attorney's Office and the Executive Director reports of all significant activity concerning the Securities Litigation matter where counsel represents SFERS.
- c) Outside Securities Litigation Counsel shall provide the Retirement System with a projected litigation strategy, time line and budget. The City Attorney's Office will review and approve all bills for fees and expenses submitted by Outside Securities Litigation Counsel.

23) Action other than as Lead Plaintiff

When the Retirement Board approves action other than as lead plaintiff, such decisions shall be based upon considerations of the fiduciary duties of SFERS to Plan participants, the efficient and effective use of SFERS' resources, and the potential benefits to SFERS. Approval of all such actions shall be documented.

Foreign Litigation

24) Based on the Supreme Court decision in *Morrison v. National Australia Bank*, 561 U.S. 247 (2010), an investor may not bring or participate in a U.S. securities class action if its claims are based on securities purchased outside the United States. Most countries do not have a class action procedure, but, instead have a form of collective litigation that requires investors to affirmatively join the action to recover. Therefore, to recover damages based on securities purchased on a foreign exchange or other non-domestic means, SFERS is generally required to join in a foreign securities action with other investors, or file an independent foreign securities action (“foreign litigation”). Generally, SFERS may not recover if it elects not to participate. Paragraphs 25-27 of this Policy sets guidelines for foreign litigation.

25) Identifying Potential Claims That May Justify Taking A More Active Role Than Passive Monitoring

Where the estimated loss to the Plan, as determined by the initial calculations performed by Portfolio Monitoring and Securities Litigation Evaluation Counsel meets or exceeds \$1 million, the claim shall be evaluated by the City Attorney's Office and SFERS staff to determine whether SFERS should consider taking a more active role.

26) Claims Evaluation and Decision Process

Before deciding to participate in a foreign litigation, in addition to a general evaluation of the merits of its claim, SFERS, in consultation with the City Attorney, and with assistance from Portfolio Monitoring and Securities Litigation Evaluation Counsel a, as necessary, shall consider additional issues, including the following:

- i. The jurisdictional, and the related legal and procedural issues particular to the jurisdiction, and whether the laws make recovery risky or difficult.
- ii. The foreign counsel and how foreign counsel will be paid.
- iii. The funding and reliability of funders for the litigation.
- iv. The expense to SFERS of joining and participating in the litigation, or filing litigation.
- v. The laws governing the relationship between the funders and SFERS.
- vi. The risks to joining or filing, including exposure to paying the adverse party's fees and cost.
- vii. The decision-making process for the litigation, including whether SFERS will have any authority.
- viii. The administrative burden imposed by participation; for example, the time and resources SFERS will have to devote to the litigation.

ix. SFERS' ability to comply with the deadlines of the litigation.

27) Strategy Implementation

- a) Where following the evaluation of a claim by SFERS staff and the City Attorney leads to a recommendation to the Retirement Board that SFERS join the litigation or file litigation, the City Attorney's Office or Portfolio Monitoring and Securities Litigation Evaluation Counsel shall prepare a report that includes all of the information enumerated in Paragraph 21(d) of this Policy.
- b) When the Retirement Board agrees that a recommended strategy should be implemented, it will direct SFERS staff and the City Attorney's Office to take all necessary actions, including entering into any agreements with foreign counsel and the funder, and execution of any related documents.
- c) If Outside Securities Litigation Counsel is required in addition to, or in lieu of foreign counsel, to implement the strategy, the counsel shall, whenever possible, be selected from a list of law firms approved by the City Attorney's Office on the basis of their experience, expertise, and fee proposals. An appropriate budget shall be established with the Outside Securities Litigation Counsel prior to engagement.
- d) If the Executive Director determines that joining or filing litigation is recommended and immediate approval to file a claim is required to preserve SFERS' rights and/or interests, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Retirement Board, the Executive Director is authorized, after consultation with the City Attorney and President or acting President of the Retirement Board, to make the decision and shall notify the Retirement Board at its next regularly scheduled meeting.
- e) Certain foreign jurisdictions permit collective litigation with features of U.S. class actions, including the ability to bind all affected investors regardless of their participation in the litigation. To recover in these actions, SFERS may need to register or otherwise identify itself as an affected investor. When Portfolio Monitoring and Securities Litigation Evaluation Counsel identifies foreign actions in which SFERS may be bound by the outcome and must register or take related actions to receive its share of a potential recovery, the City Attorney's Office, regardless of the value of the estimated loss, shall evaluate whether SFERS should take the necessary actions to potentially recover. The City Attorney's Office shall communicate its recommendation to the Executive Director, who shall determine whether SFERS will register or take related actions to receive its share of a potential recovery. In the event that the Executive Director determines SFERS will register, the City Attorney may obtain assistance from Portfolio Monitoring and Securities Litigation Evaluation Counsel. The process described in this paragraph only applies to foreign actions where SFERS will be bound by the outcome of the litigation, it may not recover without registering or taking similar

actions to identify itself as an affected investor, and its participation in the litigation is limited to that registration or similar action.

Policy Review

28) The Retirement Board shall evaluate this Policy every three years.

Policy History

29) Adopted by the Retirement Board October 11, 2005 and amended by the Retirement Board on September 12, 2018 and August 14, 2024.