

**ATTACHMENT IV: CITY'S AGREEMENT
TERMS AND CONDITIONS
SF LAFCo #LAF2019-02**

Proposers, if selected for contract negotiations, will be required to enter into such contract(s) substantially in the form of the LAFCo Standard Professional Services Agreement, as attached. **There is no need to sign the signature page of these Terms and Conditions as part of your Proposal;** the signature process will occur after contract negotiations have concluded.

HOW TO RESPOND TO THIS ATTACHMENT

Please answer the following 2 questions and submit this page of this Attachment as part of your Proposal Submission.

1. Proposer accepts the LAFCo's terms and conditions?

Yes If Yes, please complete statement below.
No

"Firm, _____, accepts all of the LAFCo's terms and conditions."

2. Proposer wishes to negotiate modification of other terms and conditions?

Yes If Yes, attach modifications.
No

Proposers wishing to negotiate modification of other terms and conditions must attach a copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a strikethrough and added sections in boldface type).

The LAFCo's selection of any Proposer who proposes changes to the LAFCo's Agreement terms shall not be deemed as acceptance of the Proposer's proposed changes.

Failure to timely execute the contract(s), or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of applicable conflict of interest laws (§10.2 in the Agreement), Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits (§10.5 in the Agreement), the Minimum Compensation Ordinance (§10.7 in the Agreement), the Health Care Accountability Ordinance (§10.8 in the Agreement), the First Source Hiring Program (§10.9 in the Agreement), and Administrative Code Chapter 12T, Consideration of Criminal History in Hiring and Employment Decisions (§10.14 in the Agreement) as set forth herein.

The following document is a sample contract template to be used as an introduction to common terms found in the LAFCo Professional Services template. The actual contract between the LAFCo and Contractor will differ and be tailored to fit the circumstances.

**San Francisco Local Agency Formation Commission
City Hall, Room 409
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the San Francisco Local Agency Formation Commission
and**

Insert name of Contractor

This Agreement is made this _____ of _____, 20___, in the City and County of San Francisco (“City”), State of California, by and between [Insert name and address of Contractor] (“Contractor”) and San Francisco Local Agency Formation Commission (“LAFCo”).

Recitals

WHEREAS, LAFCo wishes to ...; and,

WHEREAS, [describe contracting process]; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by LAFCo as set forth under this Agreement; and

WHEREAS, this Agreement is subject to approval by LAFCo by majority vote at a public meeting [change as appropriate].

Now, THEREFORE, the Parties agree as follows:

1. Definitions

The following definitions apply to this Agreement:

1. "Agreement" means this contract document, including all attached appendices and any City ordinance or requirement made applicable by LAFCo to this Agreement.
2. "City" or "the City" means the City and County of San Francisco, a municipal corporation.
3. "LAFCo" or "the LAFCo" means the San Francisco Local Agency Formation Commission.
4. "Contractor" or "Consultant" means Richards, Watson & Gershon, 44 Montgomery Street, San Francisco, California, 94104.
5. "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to LAFCo during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

6. "Effective Date" means the date upon which LAFCo approved this Agreement.
7. "Party" and "Parties" mean the LAFCo and Contractor either collectively or individually.
8. "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

2. Term of Agreement

9. The term of this Agreement shall commence on the later of: (i) [Insert start date]; or (ii) the Effective Date, and shall expire on [Insert expiration date], unless earlier terminated as otherwise provided herein.

10. The Parties may extend this Agreement beyond the expiration date by mutual agreement by modifying this Agreement as provided in Section 12.5, "Modification of this Agreement." [You can also provide for options to renew in this section.]

3. Financial Matters

11. **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the LAFCo's budget and the amount of LAFCo's obligation hereunder shall not at any time exceed the amount stated in this Agreement, as may be amended by the Parties as provided in Section 12.5, "Modification of Agreement." This Agreement will terminate without penalty, liability or expense of any kind to LAFCo 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. LAFCo has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. LAFCo budget decisions are subject to the discretion of the LAFCo. Contractor'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.

12. **Guaranteed Maximum Costs.** LAFCo's payment obligation to Contractor cannot exceed the amount of [Insert not-to-exceed amount] over the [Insert length of term] term of the Agreement. No City or LAFCO representative is authorized to offer or promise, nor is the LAFCO required to honor, any offered or promised payments to Contractor under this Agreement in excess of this amount without the Parties having modified this Agreement as provided in Section 12.5, "Modification of this Agreement."

13. Compensation.

i. **Payment.** Contractor shall provide an invoice to LAFCo on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Executive Officer of the LAFCo in his or her reasonable discretion, concludes has been satisfactorily performed. Payment shall be made within 45 calendar days of receipt of the invoice, unless the LAFCo notifies the Contractor that a dispute as to the invoice exists. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall LAFCo be liable for interest or late charges for any late payments.

ii. **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from LAFCo until the Executive Officer of the LAFCo approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement.

iii. **Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the LAFCo may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of LAFCo's withholding of payments as provided herein.

iv. **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to LAFCo, and must include a unique invoice number. Payment shall be made by LAFCo as specified in 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

v. ~~Reserved. (LBE Payment and Utilization Tracking System.)~~

vi. **Getting paid for goods and/or services from the LAFCO.**

- (a) Payment for LAFCo approved agreements are processed through the City's electronic payment process. All LAFCo vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.
- (b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

14. **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the LAFCo, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit LAFCo to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor 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. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

15. **Submitting False Claims.** Contractor shall comply with the same requirements Section 21.35 of the San Francisco Administrative Code imposes on those who enter into contracts with the City. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the LAFCo for the penalties set forth in San Francisco Administrative Code section 21.35. A contractor or subcontractor will be deemed to have submitted a false claim to the LAFCo if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the LAFCo or the City a false claim or request for payment or approval for services performed on behalf of LAFCo; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the LAFCo or the City for services performed on behalf of LAFCo; (c) conspires to defraud the LAFCo by getting a false claim allowed or paid by the LAFCo or the City for services performed on behalf of LAFCo; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the LAFCo or the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the LAFCo or the City for services performed on behalf of LAFCo, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the LAFCo within a reasonable time after discovery of the false claim.

4. Services and Resources

16. **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers, employees or agents of the LAFCo are not authorized to request, and the LAFCo is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 12.5, "Modification of this Agreement."

17. **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with LAFCo's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at LAFCo's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

18. **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of LAFCo. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable.

Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. [You have the option to list and allow specified subcontractors here.]

19. **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

i. **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by LAFCo under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the LAFCo at any time. Contractor or any agent or employee of Contractor shall not have employee status with LAFCo, nor be entitled to participate in any plans, arrangements, or distributions by LAFCo pertaining to or in connection with any retirement, health or other benefits that LAFCo may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor 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 Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between LAFCo and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from LAFCo shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. LAFCo does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to LAFCo, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should LAFCo determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, LAFCo shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding the foregoing, if LAFCo believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, LAFCo shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

ii. **Payment of Employment Taxes and Other Expenses.** Should LAFCo, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). LAFCo shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for LAFCo, upon notification of such fact by LAFCo, Contractor shall promptly remit such amount due or arrange with LAFCo to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding paragraph shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of LAFCo. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless LAFCo 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.

20. **Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by LAFCo by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

21. **Warranty.** Contractor warrants to LAFCo that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

~~22. Reserved. [Liquidated Damages.]~~

~~23. Reserved. [Bonding Requirements.]~~

5. Insurance and Indemnity

24. **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$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, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.
- (e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence 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 contract and shall also provide coverage for the following risks:
 1. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
 2. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$1,000,000 per occurrence. 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.

i. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(b) Name as Additional Insureds the San Francisco Local Agency Formation Commission and its Officers, Agents, Employees and volunteers, and the City and County of San Francisco and its Officers, Agents, Employees and volunteers.

(c) 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.

i. All policies shall be endorsed to provide thirty (30) days' advance written notice to the LAFCo of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the LAFCo address set forth in Section 12.1, entitled "Notices to the Parties."

ii. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

iii. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

iv. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the LAFCo receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the LAFCo may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

v. Before commencing any Services, Contractor shall furnish to LAFCo certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to LAFCo, in form evidencing all coverages set forth above. Approval of the insurance by LAFCo shall not relieve or decrease Contractor's liability hereunder.

vi. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the LAFCo and the City for all work performed by the Contractor, its employees, agents and subcontractors.

vii. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents, employees and volunteers, the LAFCo, its officers agents, employees and volunteers, and the Contractor as additional insureds.

2. **Indemnification.** Contractor shall indemnify and hold harmless LAFCo and its officers, agents, employees and volunteers, and the City and its officers, agents, employees and volunteers from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from Contractor's performance of this Agreement except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability, or claim is the result of the sole active negligence or willful misconduct of LAFCo or City. In addition to Contractor's obligation to indemnify LAFCo and the City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend LAFCo and the 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 Contractor by LAFCo or the City and continues at all times thereafter.

Contractor shall indemnify and hold LAFCo and the 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 arising directly or indirectly from the receipt by LAFCo, or any of its officers or agents, of Contractor's Services.

3. **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

4. **Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

6. Liability of the Parties

5. **Liability of LAFCo.** LAFCo'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. 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.

6. **Liability for Use of Equipment.** Neither LAFCo nor the City shall be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City or LAFCo.

7. **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

7. Payment of Taxes

8. Except for any applicable California sales and use taxes charged by Contractor to LAFCo, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of the Services delivered by Contractor pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by LAFCo to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the LAFCo to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by LAFCo under this Agreement.

8. Termination and Default

9. Termination for Convenience

i. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. LAFCo shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

ii. Upon receipt of the notice of termination from LAFCo or upon Contractor providing written notice of termination to LAFCo, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified in the notice and to minimize the liability of Contractor and LAFCo to third parties as a result of termination. All such actions shall be subject to the prior approval of LAFCo. Such actions shall include, without limitation:

- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified in the notice.
- (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c) At LAFCo's direction, assigning to LAFCo any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, LAFCo shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d) Subject to LAFCo's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

- (e) Completing performance of any Services that LAFCo designates to be completed prior to the date of termination specified by LAFCo.
- (f) Taking such action as may be necessary, or as the LAFCo may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which LAFCo has or may acquire an interest.

iii. Within 30 days after the specified termination date, Contractor shall submit to LAFCo an invoice, which shall set forth the hours billed and fees incurred by the Contractor prior to date of termination. In no event shall LAFCo be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by LAFCo, except for those costs specifically enumerated and described in Section 8.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.2.

iv. In arriving at the amount due to Contractor under this Section, LAFCo may deduct: (i) all payments previously made by LAFCo for Services covered by Contractor's final invoice; (ii) any claim which LAFCo may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.3; and (iv) in instances in which, in the opinion of the LAFCo, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and LAFCo's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

v. LAFCo's payment obligation under this Section shall survive termination of this Agreement.

vi. Contractor may terminate this Agreement at any time for convenience upon no less than 60 days' notice delivered to LAFCo as provided herein. Contractor's final payment shall be calculated pursuant to the above.

10. Termination for Default; Remedies.

i. Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

- (a) Contractor 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.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity		
Article 7	Payment of Taxes	12.1	Nondisclosure of Information

- (b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from LAFCo to Contractor.
- (c) Contractor (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 Contractor or of any substantial part of Contractor'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 Contractor or with respect to any substantial part of Contractor's 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 Contractor.

ii. On and after any Event of Default, LAFCo 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, where applicable, LAFCo shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to LAFCo on demand all costs and expenses incurred by LAFCo in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. LAFCo shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between LAFCo and Contractor: (i) all damages, losses, costs or expenses incurred by LAFCo as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the LAFCo. 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that LAFCo may have under applicable law.

iii. Any notice of default must be sent by registered mail to the address set forth in Article 12.

11. **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.

12. **Rights and Duties upon Termination or Expiration.**

i. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services		9.1	Ownership of Results
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims			
Article 5	Insurance and Indemnity		11.8	Construction
6.1	Liability of LAFCo		11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages		11.10	Compliance with Lawst
Article 7	Payment of Taxes		11.11	Severability
8.1.5	Payment Obligation		12.1	Nondisclosure of Information

ii. Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to LAFCo, and deliver in the manner, at the times, and to the extent, if any, directed by LAFCo, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to LAFCo.

9. Rights In Deliverables

13. **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to LAFCo. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

10. Additional Requirements Incorporated by Reference

14. **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10 and Article 12, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement are available at http://www.amlegal.com/codes/client/san-francisco_ca/

15. **Statements of Economic Interests.** The LAFCo will require that all attorneys or paralegals working for Contractor to provide Services under this Agreement provide a Statement of Economic Interests (available at <http://www.fppc.ca.gov/index.html?id=234#sei>)

16. **Conflict of Interest.** Contractor shall comply with the same requirements the City's Charter and Article III, Chapter 2 of City's Campaign and Governmental Conduct Code imposes on those who contract with the City. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; 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 LAFCo if it becomes aware of any such fact during the term of this Agreement.

17. **Prohibition on Use of Public Funds for Political Activity.** Contractor shall comply with the same requirements that Chapter 12G of the San Francisco Administrative Code imposes on those who contract with the City. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which, when applied to LAFCo, prohibits funds appropriated by LAFCo 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. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

18. **Reserved.**

19. **Nondiscrimination Requirements.**

i. **Non Discrimination in Contracts.** Contractor shall comply with the same requirements Chapters 12B and 12C of the San Francisco Administrative Code imposes on those who enter into contracts with the City. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

ii. **Nondiscrimination in the Provision of Employee Benefits.** Contractor shall comply with the same requirements the Chapter 12B.2 of the San Francisco Administrative Code imposes on those who contract with the City. Contractor 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 work is being performed for LAFCo elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

20. **Reserved.**

21. **Minimum Compensation Ordinance.** Contractor shall comply with the same requirements Chapter 12P of the San Francisco Administrative Code imposes on those who contract with the City. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and

penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with the minimum compensation requirements set forth in Chapter 12P.

22. **Health Care Accountability Ordinance.** Contractor shall comply same requirements San Francisco Administrative Code Chapter 12Q imposes on entities that contract with the City. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

23. **Alcohol and Drug-Free Workplace.** LAFCo reserves the right to deny access to, or require Contractor to remove from, LAFCo facilities personnel of any Contractor or subcontractor who LAFCo has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs LAFCo's ability to maintain safe work facilities or to protect the health and well-being of LAFCo employees, officials, agents, or the general public. LAFCo shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, LAFCo facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

24. **Limitations on Contributions.** Contractor shall comply with the same requirements Section 1.126 of the San Francisco Campaign and Governmental Conduct Code imposes on those who enter into contracts with the City. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, and Contractor agrees to comply with Section 1.126 as if LAFCo were a City agency. Accordingly, Contractor agrees that the following restriction will apply to Contractor, each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. None of these individuals or entities will make any campaign contribution to a member of the LAFCo, a candidate for the City elective office held by such individual, or a committee controlled by such individual, until 12 months after the date the LAFCo approves this Agreement. Contractor must inform each person listed above of the limitation on contributions imposed by this paragraph and provide the names of the persons required to be informed to the LAFCo.

25. **Reserved.**

26. **Consideration of Criminal History in Hiring and Employment Decisions**

i. Contractor shall comply with the same requirements Chapter 12T of the San Francisco Administrative Code imposes on those who contract with the City. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein.

ii. The requirements of Chapter 12T shall only apply to Contractor's or any subcontractor's operations to the extent those operations are in furtherance of the performance of this

Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

11. General Provisions

27. Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To LAFCo: San Francisco Local Agency Formation Commission
City Hall, Room 409
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
lafco@sfgov.org

To Contractor: Richards, Watson & Gershon
44 Montgomery Street, Suite 3800
San Francisco, CA 94104
ikhalsa@rwglaw.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

28. **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

29. Reserved.

30. **Sunshine Ordinance and Public Records Act.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and LAFCo's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67), which LAFCo follows. Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

31. **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 12.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

32. **Government Code Claim Requirement.** No suit for money or damages may be brought against the LAFCo until a written claim therefor has been presented to and rejected by the LAFCo in conformity with the provisions of California Government Code Section 900, et seq. Nothing set forth in

this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in California Government Code Section 900, et seq.

33. **Agreement Made in California; 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.

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

35. **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 12.5, "Modification of this Agreement."

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

37. **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.

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

39. **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP and Contractor's proposal dated [REDACTED]. The RFQ and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFQ and the Contractor's proposal

12. Data and Security

40. Nondisclosure of Private, Proprietary or Confidential Information.

i. LAFCo requires Contractor to comply with the same requirements San Francisco Administrative Code Chapter 12M imposes on entities that contract with the City. If this Agreement requires LAFCo to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and any subcontractors 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. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

ii. In the performance of Services, Contractor may have access to LAFCo's proprietary or confidential information, the disclosure of which to third parties may damage LAFCo. If LAFCo discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

41. **Reserved.**

42. **Reserved.**

13. **MacBride And Signature**

43. MacBride Principles -Northern Ireland. LAFCo requires Contractor to comply with the same requirements San Francisco Administrative Code Chapter 12F imposes on entities that contract with the City. The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that LAFCO 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.

LAFCO

CONTRACTOR

Bryan Goebel
Executive Officer, LAFCo

Approved as to Form:

By: _____
Inder Khalsa
General Counsel, LAFCO

14. Appendices

- A: Scope of Services
- B: Calculation of Charges

Appendix A
Scope of Services

Appendix B
Calculation of Charges