



SFERS

San Francisco Employees' Retirement System

**Request for Proposals for
Performance Reporting Services for the
Private Markets Portfolio of the City and
County of San Francisco
Employees' Retirement System**

Date Issued: August 14, 2020

Deadline for Submission: September 30, 2020

San Francisco Employees' Retirement System (SFERS)

Request for Proposals for Performance Reporting Services for the Private Markets Portfolio

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I. Introduction

The San Francisco City and County Employees' Retirement System ("SFERS" or the "Retirement System") administers a defined benefit pension fund (the "Fund") for City and County of San Francisco (the "City") employees. The Fund had a total market value of approximately \$26 billion and the private equity, real assets, and private credit portfolios had a combined market value of approximately \$11 billion as of June 30, 2020.

The seven-member San Francisco Retirement Board ("Board") has plenary authority and fiduciary responsibility for the investments and administration of the Retirement System. Generally, the Board meets once a month in a noticed public meeting to, among other things, set policy, review investment performance and consider new investment opportunities. The Board and Retirement System conduct all investment activities in accordance with applicable laws and investment policies and procedures adopted by the Board, and in the sole interest of members and their beneficiaries.

As described further in this Request for Proposal ("RFP"), SFERS is seeking a consultant to support Investment Staff ("Staff") team with portfolio monitoring, performance measurement, and reporting for its private equity, real assets, and private credit portfolios.

By this RFP, SFERS is soliciting proposals from qualified professional performance reporting firms to provide comprehensive portfolio monitoring and performance measurement services to SFERS. The selected firm will work closely with the SFERS' Chief Investment Officer, Managing Director of Private Markets, Managing Director of Public Markets, and other Staff members as needed. The selected firm must demonstrate extensive experience and superior capability for providing performance monitoring services to institutional investor clients of comparable complexity to SFERS. In addition to the specific matters noted above, the selected firm will be expected to help SFERS comply with all applicable laws and regulations as they relate to SFERS' private market portfolios (e.g., AB 2833.) The selected firm will serve in a fiduciary capacity and must acknowledge in writing the firm's fiduciary status, without qualification. In all cases, the firm and its employees must offer advice to SFERS solely in the interest of Retirement System members and their beneficiaries.

The contracts anticipated under this RFP will have an initial term of three (3) years. In addition, SFERS shall have four (4) options to extend the term of the agreements for a period of one (1) year which SFERS may exercise in its sole and absolute discretion.

II. Scope of Work

The general scope of work for this RFP is to provide portfolio monitoring, performance measurement, and reporting services. Specifically, the successful firm must demonstrate superior experience and capability in the areas described below. The monitoring and reporting services are expected to include all comingled funds, separate accounts, co-investments, and direct investments within SFERS' private equity, real assets, and private credit portfolios (including, but not limited to, private equity, venture capital, real estate, real assets, credit strategies, etc.) The following are examples of the duties that SFERS is seeking:

1) Portfolio Monitoring Duties:

- a) Review and analyze each private market investment capital call received by SFERS to ensure the accuracy and conformance thereof to the terms of the underlying investment agreement prior to SFERS' funding of such capital call;
- b) Review and analyze each distribution notice received by SFERS to ensure the accuracy and conformance thereof to the terms of the underlying investment agreement;

- c) Review, track and analyze all fees and expenses paid by SFERS to ensure the accuracy and conformance thereof to the terms of the underlying investment agreements;
- d) Report to SFERS once per year (or more often as necessary) to verify all capital calls, distributions, fees and expenses paid to or received by SFERS are accurate and in line with the underlying investment agreements;
- e) Provide a software system (or cloud-based equivalents) providing SFERS with access to information on SFERS' private investment portfolio, including: 1) transaction documents related to SFERS' investment in each of the Partnerships including any operating agreements or offering materials; 2) performance reports, financial statements and other related materials provided by investment managers which describe the investment activities and overall performance of their respective investments; 3) all cash flows to and from SFERS' private investments including, but not limited to, capital calls, management fees, expenses and cash and stock distributions; 4) underlying portfolio information including portfolio investments' respective cost, valuation, performance and classification (industry sector, geographic location, etc.);
- f) Reconcile all cash flows, net asset values, and portfolio investment information for private investments with SFERS' custodian bank and private market investment consultants quarterly or as necessary; such reconciliation will be furnished to SFERS within thirty days of completion;
- g) Provide ongoing monitoring, performance measurement, and cash flow analyses of the private markets portfolios; provide portfolio monitoring reports on portfolio investments as requested by SFERS;
- h) Assist SFERS with identifying and resolving performance-related issues at the portfolio level and with individual managers (e.g., tracking clawback);
- i) Assist SFERS with all performance-related tasks, as requested;
- j) Assist SFERS with cash flow forecasting and modelling, as needed;
- k) Assist SFERS with private markets data integrity across all tools and systems utilized by SFERS;
- l) Advise SFERS if requested on the structuring and negotiation of provisions to be incorporated in the terms of investment agreements that specifically relate to monitoring, including those provisions which govern the format, frequency, and scope of reports provided by investment managers to SFERS as an investor;
- m) Present portfolio updates and exposures to Staff quarterly and when requested, to include:
 - i) Geographic exposures,
 - ii) Sector exposures,
 - iii) Sub-sector exposures,
 - iv) Market cap exposures,
 - v) Duration exposures,
 - vi) Yield exposures, and
 - vii) Any other portfolio level exposures as required.

2) Performance Measurement Duties:

- a) Present investment performance results to Staff quarterly and when requested, to include:
 - i) Total portfolio relative to policy benchmark and peers,
 - ii) Each asset class relative to policy benchmark and peers,
 - iii) Each sub-asset class relative to policy benchmarks and peers, and
 - iv) Each investment relative to appropriate benchmarks and peers;
- b) Respond to questions from the external auditor and actuary as necessary;
- c) Provide benchmark evaluation, implementation, and analysis; and
Provide access to analytical software (or cloud-based equivalents).

Reporting Services:

- a) Provide comprehensive quarterly private investments portfolio reports that include information and analytics for each investment manager, investment, strategy and the total portfolio; information should include vintage year, SFERS commitment, total comingled fund commitments (where relevant), contributions, distributions, market values, and performance measures (IRR, DPI, TVPI, etc.); comparisons to relevant benchmark indices should be included;
- b) Prepare updates (data, analytics, commentary) regarding market conditions as well as industry trends and developments;
- c) Prepare and provide SFERS with one comprehensive private investments monitoring report per year for each private asset class. The report will be presented at a scheduled meeting of the Board and shall contain: 1) material portfolio developments; 2) private investments portfolio market value and funding status; 3) investment performance results and comparison versus relevant benchmarks and peers institutions; 4) portfolio composition / diversification by vintage year, investment sub-strategy, investment managers, industry sectors, and geography; and 5) other relevant information as the Board and Investment Team deem appropriate for monitoring of the private markets investment portfolios;
- d) Assist Staff with public disclosure requests related to private investments;
- e) Assist SFERS with compliance with all applicable laws and regulations as they relate to SFERS' private investments (e.g., AB 2833.)

3) Ad Hoc Duties:

- a) Attend regular monthly Board meetings and other special meetings as requested by Staff,
- b) Provide assistance on special projects, as needed;
- c) Participate in ad hoc workshops on specific issues designated by Staff;
- d) Respond to inquiries from Staff in an appropriate and timely manner;
- e) Report any significant changes in the firm's organizational structure and staffing in a timely manner;
- f) Make no changes in the assigned consultant team without SFERS' express approval; and
- g) Perform any and all other services which may be required by SFERS to ensure a successful investment program.

III. Submission Requirements

A. Blackout Period

For the duration of the RFP process, the SFERS Investment Board and certain Staff (William Coaker, Tanya Kemp, Kurt Braitberg, Justin Lo, Christopher Chow, Edward Comerford, Eunice McHugh, Alo Martins, Karen Perez, Christopher Terrazzano, Cynthia Wong, and Anna Langs, all "Assigned Staff") will enter into a "blackout" period during which communications and meetings between parties interested in or actually responding to the RFP ("Proposers") and Assigned Staff and Board members is prohibited. This blackout period is effective upon approval of this RFP by the Board, which occurred on August 12, 2020, and continues until either the review and evaluation process is completed and a contract executed with the selected Proposer or the search process is otherwise ended by the Board.

This blackout period will enable the Board and Assigned Staff to treat all Proposers fairly during the RFP selection process and permit the review and evaluation of the responses to be fair and unbiased.

Blackout conditions are outlined below:

1. Proposers are to refrain from communications with the Board and Assigned Staff. Communications include meetings, telephone conversations, letters, and email.
2. The following communications are permitted during the blackout period: written inquiries submitted as provided in Section V(B)(3) of this RFP; interviews scheduled by SFERS as part of the RFP evaluation process; and presentations scheduled before the Board for interviewing one or more Proposers as part of the RFP evaluation and selection process.
3. Proposers may meet with Assigned Staff only if (a) the meeting is limited to (i) discussions that are unrelated to this RFP, (ii) the Proposer's services that are covered by this RFP, or (iii) the Proposer's response to the RFP, and (b) both the employee member and the Proposer provide advance written notice of the meeting and the subject of the meeting to the SFERS Executive Director. The Executive Director will retain the written notices regarding any such meetings and may request written confirmation after the meeting regarding the subjects discussed.
4. Nothing in this blackout period shall limit a Proposer who is currently engaged by SFERS as a service provider from participating in meetings and communications with Staff, including Assigned Staff, and Board members required to effectively conduct the business and services under the existing engagement.

If you have any questions regarding the blackout period, please submit your question in writing as provided by Section V(B)(3) of this RFP.

B. Time and Place for Submission of Proposals

The deadline for submission of responses is September 30, 2020 at 5:00 p.m. Pacific Time. Proposals must be submitted by the deadline date and time either as PDF electronic copy via email or a "thumb" drive to:

Tanya Kemp
Managing Director, Private Markets
San Francisco Employees' Retirement System
1145 Market Street, 5th Floor
San Francisco, CA 94103-1561
alternative.investments@sfgov.org

Late submissions will not be considered. Postmarks will not be considered in judging the timeliness of submissions. Proposals that are submitted by fax will not be considered.

C. Transmittal Letter

An individual who is authorized to bind the Proposer contractually must sign a transmittal letter, which is an integral part of the response. This transmittal letter must indicate the signer is so authorized. **A submission with an unsigned cover letter will be rejected.** This letter must include the following:

1. The Proposer's name, address, telephone, and website address;
2. The Proposer's Federal Employer Identification Number and Corporate Identification Number, if applicable;

3. The name, title or position, and telephone number of the individual signing the transmittal letter;
4. The name, title or position, and telephone number of Proposer's primary contact for the RFP, if different from the individual signing the transmittal letter;
5. A statement expressing the Proposer's willingness to perform the services as described in this RFP, and an acknowledgement that Proposer agrees to be a fiduciary to the Board, SFERS, and the SFERS' members and their survivors and beneficiaries;
6. A statement expressing the Proposer's availability of staff and other required resources for performing all services and providing all deliverables;
7. A certification that all fees and conditions stated in the proposal are firm for a period of 180 days from the deadline for submission of proposals and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity;
8. A statement that Proposer has reviewed the RFP schedule in Section V(A) of this RFP and will ensure that all of Proposer's key personnel are available for interviews, site visits, and Board meetings;
9. A certification that no officer, employee, or agent of SFERS and no Board member has any known personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof;
10. A statement that identifies any personal, professional, or financial relationships between Proposer and its officers and employees and any Board member or Staff;
11. A statement that Proposer acknowledges that materials submitted pursuant to this RFP are public records. See Section VI(J) of this RFP; and
12. A description of Proposer's professional relationships involving SFERS, **the State of California and any of its political subdivisions** for the past five (5) years from the date of the RFP response, together with a statement explaining why such relationships do not constitute a conflict of interest.

D. Format and Content of Proposals

Proposer's response to this RFP must be organized in the format listed below:

1. Transmittal Letter;
2. Statement demonstrating that the Proposer satisfies the minimum qualifications under Section IV(A) of this RFP and a brief description regarding whether Proposer possesses the desired qualifications under Section IV(B);
3. Response to RFP questions detailed in Appendix A; and
4. Additional information or attachments.

Completeness, brevity, and clarity are important. Proposers should submit all information requested in this RFP and do so in the specified format. Responses not meeting format requirements or that are incomplete may be rejected. Providing incomplete or misleading data may lead to disqualification of the response.

Please do not change the format of this document and provide your responses in Calibri 11 font and text in blue. Sample text below:

Firm XYZ was founded in ###...

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

A Proposer must meet all the following minimum qualifications, to SFERS' satisfaction:

1. As of June 30, 2020, the firm must have been in business at least five (5) years providing services similar to those described in the Scope of Services section and have at least two (2) pension fund or other major institutional fund clients with a minimum of \$1 billion in total assets, including a minimum of \$500 million in private market investments.
2. At least one key professional member of the firm assigned to SFERS' account must have a minimum of ten years analyzing and monitoring private equity partnerships for institutional clients.
3. The firm must maintain, or have unrestricted access to, a database of sufficient size and scope to complete the analysis of the returns of a significant number of private market investment funds by strategy, structure, size, geography, and type.
4. The firm must have the demonstrated ability to provide Staff with timely and accurate reports, preferably with information updated in real time (e.g. as soon as capital calls, distributions, quarterly statements, etc. are received from investment managers).
5. The firm must carry errors and omissions insurance coverage or must have applied for such coverage by the submission date of the Request for Proposals. Errors and omissions insurance will be required throughout the duration of the contract.

The determinations of whether a Proposer satisfies the minimum qualifications is solely and exclusively within the judgment of Assigned Staff. Any proposal that does not demonstrate that the Proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

B. Selection Criteria

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

1. Personnel and Organization (25%):
 - Experience of the reporting team
 - Depth of the reporting team
 - Ownership structure
 - Conflict of interest issues
 - Client service
 - Alignment
2. Performance Reporting (45%):
 - Ability to provide timely and accurate reports
 - Quality, customizability, and ease of use of the database and its interface
 - Experience comparing capital call and distribution notices to negotiated investment terms to verify accuracy
 - Speed at which capital calls, distributions, and valuations are posted in the database
 - Familiarity with SFERS' public disclosure requirements
3. Fee Proposal (25%):
 - Cost on absolute basis

4. Other (5%):
 - Warranties
 - Insurance, legal, and contracting issues

Following the evaluation of the written proposals, SFERS may invite the most highly qualified Proposer(s) to an oral interview with Assigned Staff. The interview will consist of standard questions asked of each Proposer as well as specific questions regarding each individual proposal. Assigned Staff may conduct site visits to the semi-finalist Proposers' offices. **Proposers should review the schedule in Section V(A) below and ensure that all of Proposer's key personnel will be available for interviews, site visits, and Board meetings.** The recommended Proposer is expected to attend the public SFERS meeting when Assigned Staff present that Proposer as the recommended finalist for the RFP. However, given the current uncertainty around in-person meetings and travel due to COVID-19, alternate arrangements may be made as deemed necessary by SFERS.

Fees and any other charges or costs are an important factor in the evaluation of the proposals. However, the Board is not required to choose the lowest cost bidder. The Board will select the Proposer that, in the Board's sole discretion, best serves the total needs of SFERS, its members, and their beneficiaries.

V. Schedule (All Respondents)

A. Schedule of Events (all dates subject to change)

Action	Responsibility	Date (subject to change)
RFP is issued and advertised	Staff	August 14, 2020
Deadlines for Proposers to submit written questions	Proposers	August 31, 2020
Post responses to any written questions on SFERS website	Staff	September 7, 2020
Deadline to submit RFP responses	Proposers	September 30, 2020
Review of RFP responses	Staff	October, 2020
Due diligence of selected Proposers	Staff and semi-finalists	October-November, 2020
Assigned SFERS Staff recommendation to the Board	Staff	December 9, 2020
Board approval of a successful Proposer	Board	December 9, 2020
Contract negotiations completed	Staff	December, 2020
Consultant begins services to SFERS		January, 2021

B. Explanation of Schedule of Events

1. The RFP will be posted on SFERS website at <https://mysfers.org/about-sfers/request-for-proposal/>
2. In addition, the RFP will be released to a list of potentially qualified firms as determined by SFERS. All firms meeting the minimum qualifications, as stated in Section IV(A) of this RFP, are welcome to participate.
3. Any requests for information, modification, or clarification of the RFP must be emailed to Tanya Kemp (alternative.investments@sfgov.org) by not later than 5:00 p.m. Pacific Time on August 31, 2020. SFERS' responses to any inquiries will be available to all Proposers on SFERS' website by September 7, 2020.
4. SFERS may modify the RFP, prior to the submission deadline, by issuing addenda, which will be posted on SFERS' website. Each Proposer is responsible for ensuring that its proposal reflects all addenda issued by SFERS prior to the submission deadline regardless of when the proposal is submitted. Therefore, SFERS recommends that each Proposer consult the website frequently, including shortly before the submission deadline, to determine if the Proposer has downloaded all addenda.
5. In preparing their responses, Proposers should rely only on written material concerning this RFP issued by SFERS.
6. Deadline for submission of RFP responses is 5:00 PM, Pacific Time, September 30, 2020.

No exceptions to this deadline will be granted.

7. Oral interviews, if necessary, of the semi-finalist Proposers as determined by SFERS will be scheduled at the SFERS office at 1145 Market Street, San Francisco, California, or conducted via video conferencing services. SFERS expects that Proposer's personnel who would be assigned to SFERS' account will attend. SFERS reserves the right to change the date for these interviews at any time for any reason.
8. Submissions will be public documents, as described in Section VI(J) of this RFP. Any material that the Proposer considers "Business-Confidential" should be so marked.

C. Contract Award

After Board approval, Assigned Staff will commence contract negotiations with the selected Proposer. The selection of any proposal shall not imply acceptance by SFERS of all terms of the proposal, which may be subject to further negotiations and approvals before SFERS may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, SFERS, in its sole discretion, may terminate negotiations with the initially selected Proposer and begin contract negotiations with the next highest ranked Proposer.

VI. Terms and Conditions for Receipt of Proposals (All Respondents)

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to notify SFERS promptly, by email to alternative.investments@sfgov.org if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to SFERS promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all requests for written modification or clarification of the RFP must be submitted via email to:

Tanya Kemp
Managing Director, Private Markets
alternative.investments@sfgov.org

C. Objections to RFP Terms

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued, provide written notice to SFERS 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 to RFP

SFERS may modify the RFP, prior to the submission deadline, by issuing written addenda. Addenda will be posted on SFERS' website. Each Proposer is responsible for ensuring that its proposal reflects all addenda issued by SFERS prior to the submission deadline regardless of when the proposal is submitted. Therefore, SFERS recommends that a Proposer consult the website frequently, including shortly before the submission deadline, to determine if the Proposer has received all addenda.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 180 calendar days from the submission deadline 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 proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the submission deadline.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the submission deadline for any Proposer.

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

G. Errors and Omissions in Proposal

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

H. Financial Responsibility

SFERS accepts no financial responsibility for any costs incurred by a Proposer in responding to this RFP. Submissions of the RFP and associated materials will become the property of SFERS and may be used by SFERS 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 Code, which states: No person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract, the Proposer is prohibited from making contributions to:

- the officer's re-election campaign;
- a candidate for that officer's office; and
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Proposer approaches any City officer or employee about a particular contract, or a City officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (i) a vendor contacts a City officer or employee to promote himself or herself as a candidate for a contract; and (ii) a City officer or employee contacts a potential Proposer to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposals, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 for each violation or a jail term of not more than six months, or both.

- b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the City Attorney for an amount up to \$5,000 for each violation.
- c) Administrative. Any person who violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals, and all other records of communications between the City, which includes SFERS, 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 which 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 San Francisco Administrative Code, the Proposer must comply with the reporting requirements of that Chapter. 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 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 SFERS

The issuance of this RFP does not constitute an agreement by SFERS or the Board that any contract will actually be entered into by SFERS. SFERS 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 proposals;
3. Cancel the pending RFP at any point in the process;
4. Reissue a Request for Proposals;
5. Prior to submission deadline for proposals, 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 RFP, or the requirements for contents or format of the proposals;

6. Procure any materials, equipment or services specified in this RFP by any other means; or
7. Determine that no project or consultant retention will be pursued.

M. No Waiver

No waiver by SFERS of any provision of this RFP shall be implied from any failure by SFERS to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

N. Local Business Enterprise Participation

SFERS strongly encourages proposals from qualified Local Business Enterprises (each an “LBE”) as defined in Chapter 14B of the San Francisco Administrative Code. If a Proposer desires to participate in the City’s LBE Program, which helps certain financially disadvantaged businesses increase their ability to compete effectively for City contracts, go to the “How to Qualify to Do Business with the City” tab on the Office of Contract Administration website at www.sfgsa.org for details and required forms.

O. Chapters 12B and 12C: Nondiscrimination in Employment and Benefits

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference as though fully set forth herein. Those provisions prohibit discrimination by City contractors in employment, the use of property, the provision of public accommodations and in the provision of benefits to employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees.

Please refer to Appendix B regarding the requirements of San Francisco Administrative Code Chapters 12B and 12C.

VII. Contract Requirements (All Respondents)

A. Standard Contract Provisions

The successful Proposer will be required to enter into a contract substantially in the form of the Consulting Agreement, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. SFERS, in its sole discretion, may select another Proposer or take other action regarding the RFP and contract, and may proceed against the original selectee for damages. Full text of all referenced San Francisco municipal codes can be viewed on-line at www.sfgov.org at the *San Francisco Municipal Codes* link under the “Government” section of the San Francisco homepage.

B. Required Vendor Forms

Before the City can award any contract to Proposer, the Proposer must become a “Registered Bidder” with the City and then complete certain forms online at the SF City Partner website to become an “Approved Supplier”:

1. Business Registration Certificate;
2. Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits; and
3. IRS Form W-9 – Request for Taxpayer Identification Number and Certification.

Complete descriptions of these required forms are available at the Office of Contract Administration website at <https://sfgov.org/oca/qualify-do-business> or in Appendix C of this RFP.

If a Proposer has previously completed and submitted the required forms to SFERS, the Proposer should not do so again unless the Proposer's answers have changed. Please indicate this in your RFP response.

APPENDIX A

RFP QUESTIONS

Personnel and Organization

1. Personnel and Organization

- a. Please provide an overview of the firm, including its history and any special expertise or experience that would be relevant to SFERS. Please include any current or prior working relationship your firm, parent company, or affiliate has/ had with SFERS or any other department with the City.
- b. Please summarize the firm's qualifications and years of experience in private markets performance reporting.
- c. Please provide a description of the ownership structure of the firm, including the parent company and any affiliated companies, joint ventures, and strategic alliances. Please also provide a list of firm owners with their ownership percentages. If any near-term changes to the firm's corporate or ownership structure are anticipated, please note them.
- d. Please provide a description of the firm's organization structure, including all operating divisions and functional areas, and the number of employees within each area. If any near-term changes to the firm's organizational structure are anticipated, please note them.
- e. Please list all office locations and the number of reporting professionals and support staff working in each office. Who are the key people in your organization? Why are they key? How long have they worked together? For key professionals, please indicate how long they have worked with your firm and how long they have worked in the investment industry.
- f. Please describe your hiring process and the key characteristics that new hires would possess.
- g. Please identify the individual(s) who would perform the requested services for SFERS. Please be sure to identify the back-up consultant (in instances when the proposed lead is unavailable) and all individuals who would be involved with the SFERS account. Please describe your vision as to how the team dedicated to SFERS account would function. For each person on the dedicated SFERS team, please provide a full résumé as well as the following information (in the specified format):
 - i. Name:
 - ii. Title:
 - iii. Expected role:
 - iv. Percent of time spent on performance reporting:
 - v. Office location:
 - vi. Years of performance reporting experience:
 - vii. Years of private market, real assets, or private credit reporting experience:
 - viii. Tenure with the firm:

- ix. Total current number of assigned accounts:
 - x. Name, plan type, length of relationship, and size of each assigned client account:
 - xi. Other firm duties (e.g., research/due diligence) and percent of time spent on such duties: and
 - xii. Percentage of time expected to be dedicated to SFERS.
- h. Please describe the firm's procedures in the event that key personnel assigned to this account leave the firm, are unable to serve, or are able to serve in only a reduced capacity. Is your firm willing to tie the key individuals in a Key Person clause in the contract? If not, why?
 - i. Please describe the team's experience orally presenting investment results and portfolio composition to governmental boards of trustees or similar bodies. What other types of public speaking engagements and experiences do individuals possess?
 - j. Have there been any material organizational developments at your firm – such as changes in ownership, personnel, business – over the past five years? Please describe such developments and emphasize the impact the changes on the services requested. Please specify any turnover of performance reporting staff from January 1, 2015 to the date of submission of the RFP. State the professional's name, position at termination/ departure, years with the firm, date of departure, and the reasons for leaving.
 - k. Please discuss any prospective changes in ownership, personnel, or the business scheduled or anticipated over the next 12 months.
 - l. Please describe how the Firm quantitatively and qualitatively measures its effectiveness in attracting and retaining its ideal workforce. Please summarize the Firm's performance on these measures for each of the past three years.
 - m. If we were to spend a week at your Firm, what are three things we would notice about your Firm's culture? How do you assess and monitor employee engagement and firm culture?
 - n. Does your firm warrant that it has sent an Equal Employment Opportunity Employer Information Report Form EEO-1 on Workforce Composition (Section D) to SFERS at (alternative.investments@sfgov.org) by the submission deadline of the RFP? (<https://www.eeoc.gov/employers/eo1survey/upload/eo1-2-2.pdf>).

2. Clients, Products, and Business Plans

- a. Please describe the business objectives of your firm with respect to future growth, including the services requested. Comment on any present or planned area of emphasis expected in the future.
- b. Please provide the following client information, by account size and type, of those clients for which the firm currently provides reporting services. Please list the client by total size.

	Less than \$100 Million	\$100 Million to \$1 Billion	\$1 Billion to \$5 Billion	\$5 Billion to \$15 Billion	\$15 Billion to \$50 Billion	Over \$50 Billion	Total
Public Employees Retirement							
Union/Taft-Hartley							
Corporate (defined benefit only)							
Corporate (hybrid or defined contribution only)							
Endowment							
Foundation							
Hospital							
Insurance							
High Net Worth							
Other							
Total:							

- c. As of December 31, 2019, please list the dollar revenues received by the firm for each of the past five (5) years, grouped by a) reporting/ back office/ operations services, b) investment consulting/ asset management, and c) other sources of revenue. If the firm has an ultimate parent company, please list the percentage of total income that the firm's consulting services represent to the ultimate parent company for each of those years.
- d. Does your firm have a formalized process of collecting feedback on customer satisfaction? If so, what metrics are captured? What have been the results for the past three years? What changes have been implemented as a result of feedback?
- e. Please list any client accounts that have been lost from January 1, 2015 to the date of submission of the RFP. State the name or type of account, the size of the account at termination, and the reasons for the loss. If any clients were lost due to a conflict of interest, please explain.
- f. Please suggest a methodology for measuring your firm's performance as a reporting consultant.
- g. Please describe the firm's investment in performance reporting resources (personnel, technology, etc.).
- h. Please state any relevant performance measurement, risk or portfolio management qualifications held by all firm professional and by the proposed SFERS client team.
- i. Please describe processes the firm takes to stay current on performance reporting best practices and trends. Please describe the evolution of the firm's performance reporting techniques and processes.

3. Alignment

- a. Does your firm, parent company, or affiliated entities offer any investment products (such as funds of funds), provide investment consultant advice, or have discretion over some client investments? If so, respond to the following questions:
 - i. Describe such strategies that are offered by your firm, the number of discretionary client accounts, and tenure of each account.
 - ii. If your firm sponsors funds of funds, describe these funds by year raised, size of fund, and focus of fund.
 - iii. Which investment professionals are involved in the management of such products?
 - iv. Describe any and all current and potential revenue streams generated from investment products and discretionary client relationships. Comment on your fee structure for managing funds of funds or other investment funds for clients.
 - v. What procedures and policies are in place to ensure the inherent conflicts of interest between the products and needs of non-discretionary consulting clients are avoided? What conflicts cannot be avoided and how are these managed?
- b. Please provide the dollar amounts and nature of all material beneficial relationships that the firm, or any affiliate of the firm, engages in with investment manager clients or general partner relationships.
- c. Describe all relationships with investment managers where your firm, parent company, or an affiliate receives revenues, non-cash, or in-kind benefits.
- d. Describe any real or potential conflict arising from any business arrangement by your firm or an affiliate that competes with the interests of SFERS in a specific transaction it is considering and how your firm will manage them. Please specifically indicate any circumstance where you, an affiliate, or a parent organization will receive revenues, non-cash, or in-kind benefits in connection with an investment by SFERS.
- e. Please explain in detail any potential conflicts of interest that would be created by the firm's representation of SFERS. Please include any activities of affiliated or parent organizations as well as other client relationships that may affect services to SFERS.
- f. Please describe the firm's conflicts of interest policy. Please include an explanation of how this policy, and any other measures taken by the firm, limits the likelihood that the client could receive investment advice that is not completely objective. Please provide the firm's code of ethics.

Performance Reporting

4. Performance Reporting

- a. What system do you use for performance monitoring and reporting? Please describe in detail its capabilities and functions available to clients.
- b. Please describe dedicated resources to data input, management and quality assurance.
- c. What fund-level information is tracked and available for your clients? Please provide a listing of tracked characteristics. (Identify as Exhibit # 1.)

- d. What underlying investment-level information is tracked and available for your clients? Please describe, in detail, what information is tracked and available for private equity, real assets, and private credit investments. (Identify as Exhibit # 2.)
- e. How often are capital calls and distributions uploaded into your system?
- f. How often do you reconcile commitments (funded/unfunded), performance and cash flows with General Partners and Client Custodian?
- g. Please indicate how soon after quarter end each preliminary and final performance report is available. Please provide an example of a quarterly report you would send to a client. (Identify as Exhibit # 3.)
- h. Can published reports be tailored to meet individualized client needs? What level of customization is possible?
- i. Are there any limitations (e.g., length of time or amounts) on historical performance data maintained for clients? Can data be easily downloaded?
- j. What is your firm's typical process for addressing situations where a manager's reported returns vary materially from the returns calculated by you or your clients? What thresholds does your team use to determine acceptable variances? How often do you compare manager reported performance against actual client performance?
- k. Describe the process your firm uses to verify that fees and carry paid by your clients equal the amounts that should be paid per the investment agreements? How often do you verify? How do you communicate your findings with your clients?
- l. Discuss the process of transitioning a new client to your platform and the steps you take to ensure the continuity of historical data.
- m. Discuss your firm's experience with public disclosure requirements that may be necessary for a governmental organization like SFERS. Please elaborate how you help your clients comply with the requirements in AB 2833.
- n. Describe your firm's competitive advantage relative to other performance reporting services.

5. Portfolio Analytics

- a. Describe your benchmark capabilities. Are clients able to create custom benchmarks at the portfolio-, investment-, and underlying investment-level?
- b. Describe comparison and analysis capabilities for peer groups and public market equivalents.
- c. Describe your commitment pacing modeling capabilities. Describe your stress testing modeling capabilities.
- d. Describe your approach to cash flows forecasting.
- e. Do clients have access to online reports and analytic functions? How do these reports differ from the reports your team might generate upon client request? Please list the types of reports and functions available to clients and provide samples. (Identify as Exhibit # 4.)

- f. Please describe the firm’s technological capabilities. How have they improved over the last five years? What are the firm’s plans for future enhancements on reporting services or products?
- g. Do you provide any custom computer-based analytical tools to the firm’s clients (for example, Excel plug-in)? Provide an example. (Identify as Exhibit # 5.)
- h. Include a description of other research and other technical resources that you make available for your clients.

Fee Proposal

6. Fee Proposal

- a. Please provide a fee quote, in hard dollars, for the services requested in the Scope of Services. Please indicate whether this fee includes travel and other out-of-pocket expenses. The actual fee paid by SFERS will not exceed the amount proposed in your response. Use the following format:

<u>Period</u>	<u>Proposed Fee</u>
1/1/2021 – 12/31/2021	\$ _____
1/1/2022 – 12/31/2022	\$ _____
1/1/2023 – 12/31/2023	\$ _____
1/1/2024 – 12/31/2024	\$ _____
1/1/2025 – 12/31/2025	\$ _____
1/1/2026 – 12/31/2026	\$ _____
1/1/2027 – 12/31/2027	\$ _____

Total for seven years	\$ _____
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The proposed fee should be a total firm fixed fee per year.

- b. Provide quotes for any additional services (e.g., hourly billing rates, by position classification, for special projects or services).
- c. Will the firm confirm that it will not propose increases in the proposed fee structure for the next seven years?

Other

7. Warranties

- a. Does your firm warrant that it maintains, or has applied for by the deadline for RFP responses, an Errors and Omissions (“E&O”) insurance policy providing prudent coverage for negligent acts or omissions and will that coverage remain in place for the duration of your firm’s services under the anticipated contract? E&O insurance is required throughout the duration of the assignment. Please specify the types and amounts of insurance coverage your firm maintains.
- b. Does your firm warrant that all the information and statements provided in response to this RFP are complete and true? Any statement or claim found to be incomplete,

misleading or false will be grounds for immediate disqualification or dismissal and may be subject to legal action.

- c. Does your firm warrant that it is compliant with the Global Investment Performance Standards (GIPS)? If not, please explain.
- d. Does your firm warrant that it is an SEC-registered investment advisor or exempt from registration? If registered, please provide copies of the firm's Form ADV. If exempt, please explain the nature of the exemption.
- e. Does your firm warrant that it will be directly responsible for the management of the account and services provided under the anticipated contract and that all personnel responsible for the account will be employees of the firm?
- f. Is your firm a fiduciary as described by ERISA? Is your firm willing to commit to serving in a fiduciary capacity?
- g. Does your firm warrant that it has reviewed the sample Consulting Agreement, attached as Appendix C, and that the firm's counsel has reviewed that agreement? Please identify any changes you would request to the sample Consulting Agreement, either by providing a marked revised copy of the Consulting Agreement with your requested changes or by identifying each sections of the Agreement where you would request changes and specifying the changes requested. Please warrant that the marked-up copy of the sample Consulting Agreement or list with Agreement sections and the specific changes requested to those sections represents your full list of requested changes.

8. Legal and Regulatory

- a. Has your firm or any officer or employee at your firm, parent company, or affiliate (or ex-officer or employee while employed at your firm, parent company, or affiliate) ever been involved in litigation or an administrative proceeding including but not limited to an arbitration where an allegation of a breach of fiduciary responsibility was made. If yes, for each litigation matter, please provide the following information:
 - i. Full name of the case;
 - ii. Court where the case was filed;
 - iii. Case number;
 - iv. Date the case was filed;
 - v. Summary of the allegations, including the names of all officers or employees referenced in the allegations or involved in the alleged conduct; and
 - vi. Procedural posture (if the case is pending) or outcome of the case (if the case is resolved).
- b. Identify any demands or claims asserted against your firm, parent company, or affiliate or any officer or employee at your firm, parent company, or affiliate (or ex-officer or employee while employed at your firm, parent company, or affiliate) alleging a breach of fiduciary duty that did not proceed to litigation or an administrative proceeding. For each such demand or claim, please provide the following information:
 - i. The name of the person asserting the demand or claim;
 - ii. The date the person asserted the demand or claim;
 - iii. The person's relationship to the firm, officer or employee;

- iv. A summary of the allegations, including the names of all officers or employees referenced in the allegations or involved in the alleged conduct; and
 - v. How the demand or claim was resolved.
- c. Identify all lawsuits and administrative proceedings filed against your firm, parent company, or affiliate or any officer or employee at your firm, parent company, or affiliate (or ex-officer or employee while employed at your firm, parent company, or affiliate) in the past five (5) years, and please provide the following information for each lawsuit:
- i. Full name of the case;
 - ii. Court where the case was filed;
 - iii. Case number;
 - iv. Date the case was filed;
 - v. Summary of the allegations, including the names of all officers or employees referenced in the allegations or involved in the alleged conduct; and
 - vi. Procedural posture (if the case is pending) or outcome of the case (if the case is resolved).
- d. Has your firm, parent company, or affiliate been involved in an investigation or enforcement action by a regulatory agency? If yes, please explain and provide the following information:
- i. The regulatory agency or agencies involved;
 - ii. The dates of the investigation or enforcement action;
 - iii. The nature of the investigation or enforcement; and
 - iv. Procedural posture (if the investigation or enforcement is pending) or outcome of the proceeding (if the investigation or enforcement is resolved).
- e. Have any officers or employees of your firm, parent company, or affiliate; or ex-officers or employees while employed at your firm, parent company, or affiliate; been involved in litigation, investigation, or enforcement action by a regulatory agency or other legal proceedings related to investment activities. If yes, please explain.
- f. Does your firm provide health and other employment benefits to domestic partners of employees? If yes, describe. If no, indicate whether your firm would adopt such benefits if it were selected for this assignment.

Requested Materials and Additional Information

In addition to any materials requested in the questions listed above, please send the following documents electronically with your response.

1. A corporate organization chart (showing the consulting firm, parent and all affiliates and subsidiaries),
2. The biographies of the firm's professional staff, including education, investment reporting and monitoring experience, and the year they joined the firm,
3. A current company Annual Report,
4. A copy of the firm's mission statement, statement of values, and code of ethics,
5. Current firm policies related to conflicts-of-interest,

6. Most recently filed SEC Form ADV, Parts I and II;
7. A copy of the firm's standard marketing brochure that describes the firm's processes and services; and
8. Any other information you feel would be necessary to gain a complete understanding of the firm or the services it provides.

A. References

1. Provide the organization name, address, contact name and title, contact telephone number and email address for at least five existing clients for whom your firm has provided private market, real assets, or private credit reporting services. Indicate the length of your relationship, nature of the services provided, and asset size for each reference. An omission of references will be considered non-responsive.
2. Provide the organization name, address, contact name and title, contact telephone number and email address for three former clients. Indicate the length of your relationship, nature of the services provided, and asset size for each former client listed. An omission of references will be considered non-responsive. If three accounts are not available, please explain why.

APPENDIX B

REQUIRED VENDOR FORMS

All vendors must register with the City and complete at least three forms before the City can do business with them:

1. IRS Form W-9: Request for Taxpayer Identification Number used to become a “Registered Bidder”
2. San Francisco Business Registration: San Francisco’s Business and Tax Regulations Code requires that every person engaging in business within the City must register within 15 days after commencing business. A “Registered Bidder” must complete this form to become an “Approved Supplier”.
3. 12B Equal Benefits Declaration: Chapter 12B of the Administrative Code requires that all Suppliers to the City and County of San Francisco administer benefits equally to employees with domestic partners and employees with spouses.

Information for City Suppliers and Bidders may be found here: <https://sfcitypartner.sfgov.org/>

Self-service training may be found here:

<https://sfcitypartnersupport.sfgov.org/support/solutions>

Information about business registration can be found here:

<https://newbusiness.sfgov.org/vendor/>

For help and support:

<https://sfcitypartnersupport.sfgov.org/support/home>

or call (415) 944-2442.

Approved suppliers who are not yet using the supplier portal should email

sfcitypartnersupport@sfgov.org or call (415)-944-2442 to get your username and password to the supplier portal.

APPENDIX C

FORM OF CONSULTING AGREEMENT

**GENERAL INVESTMENT CONSULTING AGREEMENT
BETWEEN
SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM
AND
[_____]**

THIS General Investment Consulting Agreement (this "Agreement") is made this ____ day of _____, 2020 in the City and County of San Francisco (the "City"), State of California, by and between: [_____] ("Consultant") and the San Francisco City and County Employees' Retirement System (the "Retirement System").

RECITALS

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

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

WHEREAS, the Retirement Board, through the Retirement System, seeks to retain non-discretionary general investment consulting services for the Retirement System's investment portfolio (the "Proposed Services");

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

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

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

- 1. Term of the Agreement.** Subject to Section 8 of this Agreement, the term of this Agreement shall be from [_____, 2020 to _____, 20__]; *provided, however*, that the Retirement System shall have four (4) options to extend the term of the Agreement for a period of one (1) year each option, which the Retirement System may exercise in its sole, absolute discretion.

2. **Engagement.** The Retirement System hereby engages Consultant, and Consultant hereby accepts such engagement, to provide non-discretionary investment consulting services to the Retirement System for its investment portfolio in accordance with the terms and conditions of this Agreement, the Investment Policy, Objectives and Guidelines for the Retirement System attached hereto as Exhibit A (the “Investment Policy Statement”), and applicable federal, state and local laws.
3. **Services.** Consultant agrees to perform the non-discretionary investment consulting services for the Retirement System’s investment portfolio as described in the Schedule of Services attached hereto as Exhibit B and incorporated by reference as though fully set forth herein (the “Described Services”). Additional services will be provided only upon and in accordance with a written request by the Executive Director of the Retirement System (the “Executive Director”) or designee acting on behalf of the Retirement System (the “Additional Services,” together with the Described Services, the “Services”).
4. **Compensation.**
 - (a) **Fees.** For the full performance and the completion of the Services, Consultant shall be compensated as set forth in the Fee Schedule attached hereto as Exhibit C and incorporated by reference as though fully set forth herein (the “Fees”). The Fees include the compensation for professional services as well as travel and other out-of-pocket expenses, printing, delivery, secretarial and clerical support services and any other costs incurred as may be necessary to perform the Services in a professional manner. No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until reports, services, or both, required under this Agreement are received from Consultant and approved by the Retirement System as being in accordance with this Agreement. The Retirement System may withhold payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall the Retirement System be liable for interest or late charges for any late payments.
 - (b) **Fee Ceiling.** In no event shall the annual compensation amount under this Agreement exceed _____ Dollars [\$ _____].
 - (c) **Payment Does Not Imply Acceptance of Services.** The granting of any payment by the Retirement System, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory Services, although the unsatisfactory character of such Services may not have been apparent or detected at the time such payment was made. Services that do not conform to the requirements of this Agreement may be rejected by the Retirement System and in such case must be replaced by Consultant without delay.
5. **Fiduciary Responsibility.** Consultant represents and warrants that it is duly registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), and will be registered as an investment adviser under the Advisers Act at all times while the Retirement System receives the Services. Consultant represents and warrants that it has delivered to the Retirement System, at least five (5) business days prior to the date of this Agreement, Parts 1A and 2 of Consultant’s Form ADV (the “Disclosure”).

Statement”). Consultant further represents and warrants that it will deliver to the Retirement System: (a) a copy of the Disclosure Statement it files with the Securities and Exchange Commission annually, within thirty (30) days of filing and (b) copies of any amendments to the Disclosure Statement it files with the Securities and Exchange Commission, within thirty (30) days of filing. Consultant acknowledges that this Agreement places it in a fiduciary relationship with the Retirement System and the Board. As a fiduciary, Consultant shall discharge each of its duties and exercise each of its powers (as those duties and powers are set forth herein) with respect to the Retirement System and the Board with the competence, care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in conformance with the Article XVI, Section 17 of the California Constitution, as amended, and Section 12.100 of the Charter and with the customary standard of care of a professional investment consultant providing services to a public pension plan (collectively, the “Standard of Care”). Consultant shall cause any and all of its employees, agents and representatives providing services in connection with this Agreement to exercise the same Standard of Care. Consultant shall be liable to the Retirement System and the Board for any claim which arises from or relates to any failure by Consultant or any of its Agents to exercise the Standard of Care or any other duty (contractual or otherwise) owed by Consultant to the Retirement System and the Board.

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

Within the context of providing the Services, Consultant’s analysis may address tax, legal or other considerations related to various investment strategies or investments; *provided, however*, that Consultant shall not provide or otherwise be responsible for the provision of tax advice or legal counsel. Consultant shall act in an investment advisor capacity only.

6. Disclosures.

- (a) **RFP.** Consultant represents and warrants that its statements, dated [_____], in its response to the RFP, are true and correct.

- (b) **Disclosure of Interest.** Consultant shall fully and promptly disclose to the Retirement System: (i) its direct or indirect financial interests in any investment opportunity that it may recommend to the Retirement System in providing the Services; (ii) with respect to any investment opportunity that Consultant recommends to the Retirement System, including any potentially oversubscribed opportunity, whether Consultant is also recommending such investment opportunity to other clients of Consultant (and the amounts thereof) or otherwise assisting other clients of Consultant in such investment opportunity, regardless of whether such other clients proceed with the investment opportunity; and (iii) any

other fact or relationship which would compromise or materially affect its ability to faithfully perform its duties under this Agreement.

- (c) **Intellectual Property.** The Services and deliverables that Consultant provides under this Agreement shall not infringe upon any patent rights, copyright, trade secret or any other proprietary right or trademark, or any other intellectual property rights of any other third party.

7. Personnel.

- (a) **Qualified Personnel.** Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant. Consultant will comply with the Retirement System's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the Retirement System's request, must be supervised by Consultant. Consultant shall commit adequate resources to complete the services within the schedule specified in this Agreement.
- (b) **Key Personnel.** The Retirement System may designate in writing, from time to time, that certain personnel of Consultant are "key personnel." Consultant shall immediately notify the Retirement System in writing of any changes in key personnel within its organization.
- (c) **Disclosures.** Consultant acknowledges and agrees that certain key personnel of Consultant, as designated solely by the Retirement System, shall file certain disclosures concerning economic interests at the determination of the Retirement System under Section 3.1-108 of the San Francisco Campaign and Governmental Conduct Code.

- 8. **Budget Authorization.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City Controller, and any amount of the Retirement System's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the Retirement System at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The Retirement System has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the City Mayor and the City Board of Supervisors. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

Tanya Kemp
Managing Director, Private Markets
San Francisco Employees' Retirement System
1145 Market Street, 5th Floor
San Francisco, CA 94103-1561
tanya.kemp@sfgov.org

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

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

- 10. False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35 (the "False Claims Ordinance"), including the enforcement and penalty provisions, is incorporated into this Agreement. Consultant acknowledges that Consultant is subject to the False Claims Ordinance, which provides that any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in the False Claims Ordinance. Under the False Claims Ordinance, a contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Retirement System a false claim or request for payment or approval; (b) knowingly makes or uses or causes to be made or used a false record or statement to get a false claim paid or approved by the Retirement System; (c) conspires to defraud the Retirement System by getting a false claim allowed or paid by the Retirement System; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Retirement System; or (e) is a beneficiary of an inadvertent submission of a false claim to the Retirement System, subsequently discovers the falsity of the claim and fails to disclose the false claim to the Retirement System within a reasonable time after discovery of the false claim.
- 11. Taxes.** Consultant shall have the sole obligation to pay any taxes, including without limitation payroll taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant under this Agreement.
- 12. Independent Contractor.**
- (a) **Independent Contractor Status.** In performing the Services, Consultant or any agent or employee of Consultant shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work under this Agreement. Consultant, its agents and its employees shall not represent or hold themselves out to be employees of the Retirement System at any time. Consultant or any agent or employee of Consultant shall not have employee status with the Retirement System, nor be entitled to participate in any plans, arrangements, or distributions by the Retirement System pertaining to or in connection with any retirement, health or other benefits that the Retirement System may offer its employees. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees and its agents. Consultant shall be responsible for all obligations and payments, whether imposed by federal,

state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Retirement System and Consultant or any agent or employee of Consultant.

- (b) **Payment of Taxes.** If any governmental authority should, nevertheless, determine that Consultant is an employee for purposes of collection of any employment taxes, then the Retirement System's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to the Consultant and to the applicable governmental authority does not exceed the maximum amount specified in Section 4 of this Agreement. Consultant shall refund any amounts necessary to affect that reduction.

- (c) **Assignment.** The Services to be performed by Consultant are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Consultant (collectively, an "Assignment") without prior written consent of the Retirement System. A change of ownership or control of Consultant or a sale or transfer of substantially all of the assets of Consultant shall be deemed an Assignment for purposes of this Agreement. Consultant shall immediately notify the Retirement System about any Assignment. Any purported Assignment made in violation of this Section 12 shall be null and void

13. Insurance.

- (a) Without in any way limiting Consultant's liability pursuant to Section 14 of this Agreement, Consultant must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
 - (1) worker's compensation, in statutory amounts, with employers' liability limits not less than \$[_____] each accident;

 - (2) commercial general liability insurance with limits not less than \$[_____] each occurrence, including without limitation combined single limit for bodily injury and property damage, including contractual liability, personal injury, products, completed operations and hired and non-owned automobiles;

 - (3) professional or fiduciary indemnity (errors and omissions) insurance in the aggregate minimum of \$[_____]; and

 - (4) technology errors and omissions liability with limits of not less than \$[_____] each claim with respect to failure against programming errors, software performance, failure to perform work as agreed, and errors and omissions in connection with the products and services provided.

- (b) Commercial general liability insurance policy must be endorsed to: (i) name as additional insured the Retirement System and its officers, agents, and employees; and (ii) provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- (c) All policies shall be endorsed to provide thirty (30) days' advance written notice to the Retirement System of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the Retirement System in accordance with Section 21 hereof.
- (d) Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of five (5) years beyond the expiration or earlier termination of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration or earlier termination of the Agreement, such claims shall be covered by such claims-made policies.
- (e) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified in this section.
- (f) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Retirement System receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Retirement System may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- (g) Before commencing any services under this Agreement, Consultant shall furnish to the Retirement System certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to the Retirement System, in form evidencing all coverages set forth herein. Consultant shall also furnish to the Retirement System such certificates and endorsements on an annual basis.
- (h) If Consultant will use any subcontractor(s) to provide services under this Agreement, Consultant shall require the subcontractor(s) to provide all necessary insurance and to name the Retirement System, its officers, agents and employees and the Consultant as additional insureds.
- (i) Approval of the insurance by the Retirement System shall not relieve or decrease the liability of Consultant hereunder.

- 14. Indemnification.** Consultant shall indemnify and save harmless the Retirement System and its officers, agents and employees from, and, if requested, shall defend them against any and all demands, loss, cost, damage, injury, liability, and claims thereof (a) arising directly or indirectly from any breach of any representation or warranty made by Consultant in this Agreement, (b) arising directly or indirectly from any breach of any covenant, agreement or obligation of Consultant contained in this Agreement, including without limitation breach of fiduciary duty, breach of the Standard of Care, breach of trust or breach of confidentiality, (c) arising directly or indirectly from any (i) bad faith, (ii) negligence, (iii) willful misconduct or (iv) improper or unethical practice in violation of law by Consultant or its agents or (d) for injury to or death of a person, including employees of Consultant or loss of or damage to property, arising directly or indirectly from Consultant's performance of this Agreement, including, but not limited to, Consultant's use of facilities or equipment provided by the Retirement System or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the Retirement System, except, in the case of each of subsection (c) and subsection (d) of this Section 14, to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except, in the case of subsection (d) of this Section 14, where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the Retirement System and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Consultant, its subcontractors or either's agent or employee. The foregoing indemnities shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the Retirement System's costs of investigating any claims against the Retirement System. In addition to Consultant's obligation to indemnify the Retirement System, Consultant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Retirement System from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Consultant by the Retirement System and continues at all times thereafter. Consultant shall indemnify and hold the Retirement System harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the Retirement System, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.
- 15. Limitation on Liability of the Retirement System.** The Retirement System's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in Section 4 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the Retirement System be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

16. Default; Remedies.

- (a) Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
- (1) Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following sections of this Agreement:
 - (A) Section 10 (False Claims);
 - (B) Section 11 (Taxes);
 - (C) Section 13 (Insurance);
 - (D) Section 20 (Proprietary or Confidential Information);
 - (E) Section 25 (No Assignment or Subcontracting);
 - (F) Section 31 (Alcohol and Drug-Free Workplace); and
 - (G) Section 44 (Compliance with Laws).
 - (2) Consultant fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from the Retirement System to the Consultant;
 - (3) Consultant (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property or (E) takes action for the purpose of any of the foregoing; or
 - (4) a court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Consultant.
- (b) On and after any Event of Default, the Retirement System shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, the Retirement System shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Consultant any Event of Default; Consultant shall pay to the Retirement System on demand all costs and expenses incurred by the Retirement System in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The Retirement System shall have the right to offset from any amounts due to

Consultant under this Agreement or any other agreement between the Retirement System and Consultant all damages, losses, costs or expenses incurred by the Retirement System as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement.

- (c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

- 17. Termination for Convenience.** The Retirement System shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Retirement System shall exercise this option by giving Consultant written notice of termination (the "Termination Notice"). The Termination Notice shall specify the date on which termination shall become effective.

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

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

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

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

- (n) Section 41 (California Law; Venue);
- (o) Section 42 (Construction);
- (p) Section 43 (Entire Agreement); and
- (q) Section 46 (Severability).

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

19. Prohibited Activities.

- (a) Consultant represents and warrants that it does not and shall not knowingly employ, retain or compensate in any capacity: any employee, fiduciary, agent, consultant or other service provider of the Retirement System, or any member of the Retirement Board, who either could influence the award of this Agreement or any competing agreement, or who does or will have any direct or indirect financial interest in this Agreement (“Interested Person”), and any spouse or economic dependent of any Interested Person.
- (b) By executing this Agreement, Consultant certifies that it does not know of any fact which constitutes a violation of: (i) Section 15.103 of the Charter, (ii) Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, as amended, (iii) Section 87100 et seq. of the Government Code or (iv) Section 1090 et seq. of the Government Code, and further agrees promptly to notify the Retirement System if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that individuals who will provide services under this Agreement may be deemed consultants under state and local conflict of interest laws. Consultant agrees to use its best efforts to require that such individuals submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the Retirement System within ten (10) calendar days of the Retirement System’s written request.
- (c) Consultant further acknowledges that it is familiar with Section 3.216 of the San Francisco Campaign and Governmental Conduct Code, as amended (the “Gifts Ordinance”), which prohibits an officer or employee of the Retirement System from soliciting or accepting any gift from a person who the officer or employee knows or has reason to know is a restricted source. The Gifts Ordinance defines “restricted source” to mean: (i) a person doing business with or seeking to do business with the department of the officer or employee; or (ii) any person who during the prior twelve (12) months knowingly attempted to influence the officer or employee in any legislative or administrative action. Consultant certifies that it does not know of any facts that constitute a violation of those provisions and agrees that it will immediately notify the Retirement System if it becomes aware of any such fact during the term of this Agreement.

- (d) Consultant shall comply with San Francisco Administrative Code Chapter 12K. Consultant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Consultant is subject to the enforcement and penalty provisions in Chapter 12K. Consultant is required to comply with all of the applicable provisions of Chapter 12K, irrespective of the listing of obligations in this Section 25.

20. Proprietary or Confidential Information.

- (a) Consultant understands and agrees that, in the performance of the work or services under this agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the Retirement System and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Retirement System. Consultant agrees that all information disclosed by the Retirement System to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the Standard of Care as defined herein to protect such information. Consultant shall retain as strictly confidential and shall not disclose any information about the Retirement System, its account, its managed assets and financial transactions regarding the managed assets received in performing services under this agreement ("Confidential Information"); provided, however, that such restrictions shall not apply to any disclosure required by regulatory authorities, applicable law or the rules of any securities exchange that may be applicable. Consultant shall inform all of its agents of the confidentiality provisions of this agreement. Consultant may not use Confidential Information for any purpose other than to provide services to the Retirement System under this agreement.
- (b) Consultant shall immediately notify the Retirement System upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Consultant by the Retirement System in the performance of this agreement ("Retirement System Data"), or which in any way might reasonably require access to Retirement System Data, and in no event later than 24 hours after it receives the request. Consultant shall not respond to Legal Requests related to the Retirement System without first notifying the Retirement System other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Consultant shall retain and preserve the Retirement System Data in accordance with the Retirement System's instructions and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the Retirement System to Consultant, independent of where the Retirement System Data is stored.

- (c) The Retirement System shall at all times have access to and control of all Retirement System Data provided to Consultant by the Retirement System in the performance of this agreement, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.
- (d) Consultant shall not use or disclose Retirement System Data or Confidential Information except as permitted or required by the agreement or as otherwise authorized in writing by the Retirement System. Any work using, sharing or storage of Confidential Information outside the United States is subject to prior written authorization by the Retirement System. Access to the Confidential Information must be strictly controlled and limited to Consultant's staff assigned to perform services under this agreement on a need-to-know basis only. Consultant is provided a limited non-exclusive license to use the Retirement System Data or Confidential Information solely for performing its obligations under the agreement and not for Consultant's own purposes or later use. Nothing herein shall be construed to confer any license or right to the Retirement System Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Retirement System Data or Confidential Information by Consultant, 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 by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.
- (e) Upon termination of agreement or request of the Retirement System, Consultant shall within forty-eight (48) hours return to the Retirement System all Confidential Information which includes all original media. Once Consultant has received written confirmation from the Retirement System that Confidential Information has been successfully transferred to the Retirement System, Consultant shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Consultant has used in performance of this agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Consultant in whatever medium. Consultant shall provide the Retirement System with written certification that such purge occurred within five (5) business days of the purge.

21. Public Disclosure.

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

- (b) Consultant shall not make any claim against the Retirement System if the Retirement System makes available to the public or otherwise discloses any report, notice or other information the Retirement System received from Consultant or its Agents which was required to be made public or is disclosed by the Retirement System pursuant to the Public Records Act, the Open Meetings Act or the Sunshine Ordinance or as required by a governmental authority or otherwise required by law and that the Retirement System determines in good faith is not exempt from disclosure.
- (c) Consultant acknowledges that under Section 67.24(e) of the San Francisco Administrative Code, as amended, contracts, contractors' bids, responses to requests for proposals and all other records of communications between the Retirement System and persons or firms seeking contracts, shall be open to public inspection immediately after a contract has been awarded. All information provided by Consultant that is covered by that ordinance (as it may be amended) will be made available to the public upon request.

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

To the Retirement System:

Tanya Kemp
 Managing Director, Private Markets
 San Francisco Employees' Retirement System
 1145 Market Street, 5th Floor
 San Francisco, CA 94103-1561
tanya.kemp@sfgov.org

To Consultant: [_____]

23. Ownership of Results. Any interest of Consultant or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the Retirement System in a useable format (including electronic format) upon demand by the Retirement System; *provided, however*, Consultant may retain and use copies for reference and as documentation of its experience and capabilities. The Retirement System shall have the unrestricted authority to publish, disclose, distribute or otherwise use in whole or in part any reports, data or other materials prepared under this Agreement, crediting Consultant as the source.

24. Works for Hire. If, in connection with services performed under this Agreement, Consultant or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the

property of the Retirement System. If it is ever determined that any works created by Consultant or its subcontractors under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to the Retirement System, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the prior written approval of the Retirement System, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

25. **Audit and Inspection of Records.** Consultant agrees to maintain and make available to the Retirement System, during regular business hours, accurate books and accounting records relating to its work under this Agreement, including copies of all invoices. Consultant will permit the Retirement System to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the Retirement System by this Section 24.
26. **No Assignment or Subcontracting.** The services to be performed by Consultant under this Agreement are personal in character and Consultant shall perform the work contemplated with resources available within its own organization. Neither this Agreement nor any duties or obligations hereunder may be assigned, subcontracted or delegated by Consultant without prior written consent of the Retirement System.
27. **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.
28. **Local Business Enterprise Utilization.** Consultant shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B. Consultant is subject to the enforcement and penalty provisions in San Francisco Administrative Code Chapter 14B.
29. **Nondiscrimination; Penalties.**
 - (d) **Non Discrimination in Contracts.** Consultant shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code, as amended, which are incorporated herein by reference. Consultant shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Consultant is subject to the enforcement and penalty provisions in such chapters.
 - (e) **Nondiscrimination in the Provision of Employee Benefits.** Consultant shall comply with the provisions of San Francisco Administrative Code Section 12B.2. Consultant

does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by the City, or where work is being performed for the Retirement System elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

- (f) **Condition to Agreement.** As a condition to this Agreement, Consultant shall execute and submit the “S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits” form (form CMD-12B-101) with supporting documentation to the Retirement System.
- 30. MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F, as amended, are incorporated herein by this reference and made part of this Agreement. By executing this Agreement, Consultant confirms that Consultant has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.
- 31. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), as amended, the City urges Consultant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.
- 32. Alcohol and Drug-Free Workplace.** The Retirement System reserves the right to deny access to, or require Consultant to remove from, the Retirement System’s or the City’s facilities agents of Consultant who the Retirement System has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs the Retirement System’s ability to maintain safe work facilities or to protect the health and well-being of the Retirement System’s employees and the general public. The Retirement System shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, the Retirement System’s or the City’s facilities. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription.
- 33. Compliance with Americans with Disabilities Act.** Consultant shall provide the services under this Agreement in a manner that complies with the Americans with Disabilities Act of 1990, as amended, including but not limited to Title II’s program access requirements, and all other applicable federal, state and local disability rights legislation.
- 34. Sunshine Ordinance.** Consultant acknowledges that under Section 67.24(e) of San Francisco Administrative Code, contracts, contractors’ bids, responses to requests for proposals and all other records of communications between the Retirement System and persons or firms seeking contracts, shall be open to public inspection immediately after a contract has been awarded. All information provided by Consultant that is covered by that ordinance (as it may be amended) will be made available to the public upon request.

- 35. Limitations on Contributions.** By executing this Agreement, Consultant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Consultant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Consultant certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 of the San Francisco Campaign and Governmental Conduct Code by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the Retirement System.
- 36. Minimum Compensation Ordinance.** If applicable, Consultant shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Consultant is subject to the enforcement and penalty provisions in San Francisco Administrative Code Chapter 12P. By signing and executing this Agreement, Consultant certifies that it is in compliance with San Francisco Administrative Code Chapter 12P.
- 37. Health Care Accountability Ordinance.** If applicable, Consultant shall comply with San Francisco Administrative Code Chapter 12Q. Consultant shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Consultant is subject to the enforcement and penalty provisions in Chapter 12Q.
- 38. Prohibition on Use of Public Funds for Political Activity.** In performing the services under this Agreement, Consultant shall comply with San Francisco Administrative Code Chapter 12G, as amended, which prohibits funds appropriated for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Consultant is subject to the enforcement and penalty provisions in such chapter.
- 39. First Source Hiring Program.** Consultant must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Consultant is subject to the enforcement and penalty provisions in Chapter 83 of the San Francisco Administrative Code.

- 40. Modifications.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
- 41. Administrative Remedy.** All disputes, controversies or claims arising under or relating to this Agreement shall be settled by the Executive Director. The Executive Director's decision shall be deemed an exhaustion of all administrative remedies. However, the Executive Director's decision shall not preclude resorting to judicial remedy.
- 42. California Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- 43. Construction.** All section headings in this Agreement are for reference only and shall not be considered in construing this Agreement. Terms such as "hereunder" or "herein" refer to this Agreement as a whole. Terms such as "include" or "including" shall be deemed followed by the words "without limitation." References to consents, approvals, determinations or other decisions of the Retirement System shall refer to the sole judgment of the Retirement System.
- 44. Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions. The attached Exhibits A, B and C are a part of this Agreement.
- 45. Compliance with Laws.** Consultant shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
- 46. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney on behalf of the Retirement System must be reviewed and approved in writing in advance by the Office of the City Attorney of the City (the "City Attorney"). No invoices for services provided by law firms or attorneys, including without limitation, as subcontractors of Consultant, will be paid unless the provider received advance written approval from the City Attorney.
- 47. 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.
- 48. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement,

and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

[Signature Page Follows]

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

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

[_____]

By: _____
JAY HUISH
Executive Director

By: _____
Name: _____
Title: _____

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By: _____
Robert Bryan
Deputy City Attorney