

## Appendix C Investment Management Agreement

Agreement between THE SAN FRANCISCO DEFERRED COMPENSATION PLAN and  
\_\_\_\_\_

THIS Agreement is made this \_\_\_\_day of \_\_\_\_\_, 20\_\_ in the City and County of San Francisco, State of California, by and between: \_\_\_\_\_(hereinafter the “Contractor” or “Consultant”) and the City and County of San Francisco Deferred Compensation Plan (hereinafter the “Plan”) by and through the Retirement Board.

W I T N E S S E T H

WHEREAS, the Plan seeks to retain \_\_\_\_\_ to provide target date fund management services; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the target date fund management services required by the Plan under this Agreement;

Now, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Contractor and the Plan do hereby agree as follows:

1.Term of the Agreement. The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_ unless extended through a written amendment or terminated under provisions of Section 37 or any other terms of this Agreement.

2.Engagement. The Plan hereby engages and hereby appoints the Contractor, and the Contractor hereby accepts such engagement and appointment, to provide target date fund management services in the Scope of Services attached hereto as Exhibit A, as amended from time to time (the “Services”) to the Plan in accordance with the terms and conditions of this Agreement.

3.Services. The Plan and Contractor hereby acknowledge and agree that Contractor shall only provide the Plan the Services described in Exhibit A, as amended from time to time (the “Services”) and, in the event of a change in law or other change in circumstances that shall require additional services to be provided, the parties agree to work together in good faith to revise Schedule A to include such services. Otherwise, additional services will be provided only upon and in accordance with a written request by the Executive Director or designee acting on behalf of the Plan. Any such additional services must be agreed upon by the parties in writing.

4.Compensation. For the full performance and the completion of the Services described in Exhibit A, the Contractor shall be compensated as set forth in the Fee Schedule attached hereto as Exhibit B (the “Fee Schedule”). The fee includes the compensation for professional fees as well as all other fees and

expenses incurred by the Contractor or its employees, affiliates or agents in connection with performing the Services. Any additional fees and expenses must be approved by the Plan which approval the Plan may withhold in its sole discretion. The Contractor shall furnish an itemized statement of services at the end of each quarter. No charges shall be incurred under this Agreement nor shall any payments become due to the Contractor until reports, services, or both, required under this Agreement are received from the Contractor and approved by the Plan as being in accordance with this Agreement. The Plan may withhold payment to the Contractor in any instance in which it is believed the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

The Contractor represents and warrants that the Contractor shall receive no fees or other direct or indirect compensation for the Services other than those set forth in the Fee Schedule attached hereto.

5. Contractor's Responsibility. The Contractor represents and warrants that it is, and shall remain at all times that this Agreement is in effect, duly registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), it is in compliance with all of the applicable provisions of the Advisers Act, the rules of the Securities and Exchange Commission ("SEC") and the interpretations thereunder and it will remain in compliance with all applicable provisions of the Advisers Act and the SEC rules and regulations thereunder in respect of the Services.

The Contractor acknowledges that this Agreement places it in a fiduciary relationship with the Plan. The Plan hereby appoints the Contractor as a discretionary "investment manager," within the meaning of Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") as if ERISA and the regulations thereunder apply to the Plan (hereafter all references to ERISA or regulations issued thereunder shall be as if they apply to the Plan), with respect to the design of the glide path (the "Glide Path") for the custom target date fund series (the "Custom Target Date Funds") to be offered under the Plan as the default investment option. On that basis, the Contractor will be responsible for services with respect to the Glide Path described in Exhibit A.

The Contractor hereby accepts such appointment as investment manager pursuant to the terms of this Agreement and acknowledges that it is a "fiduciary," as defined in Section 3(38) of ERISA and applicable regulations thereunder with respect to all of the Services.

The Contractor hereby grants the Plan a fully paid-up, perpetual royalty-free, nonexclusive, worldwide license to use, copy, modify, create derivative works based on and distribute the Glide Path and all data, processes, software, documentation and other works of authorship and intellectual property incorporated into, or incorporating or relating to, the Glide Path solely in connection with the Custom Target Date Funds established for the benefit of the Plan's participants and for the purpose of communicating the Glide Path to Plan participants. The Plan may sublicense its rights to third parties who perform services relating to the Custom Target Date Funds for the Plan and to its participants, to the extent necessary or appropriate for such third parties to provide such services or for participants to invest in or otherwise use the Customer Target Date Funds. The Plan may transfer its rights to the Glide Path to a successor plan or successor trust.

As a fiduciary, the Contractor shall discharge its provision of the Services, including each of its duties, and exercise each of its powers and duties (as those duties and powers are defined herein) with the competence, care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the course of any enterprise of like character and with like aims, in conformance with the California Constitution, Article XVI, Section 17, with the customary standard of care of a professional Contractor providing services to a U.S. employee pension trust and with Section 404(a)(1)(B) of ERISA.

The Contractor acknowledges that, to comply with the above-described fiduciary duties, it must maintain independence from all interests other than the interests of, and act for the exclusive benefit of, the Plan members and beneficiaries, as those interests are expressed by the Retirement Board. The Contractor further acknowledges that the Plan staff acts as the agent for the Retirement Board in its relationship with the Contractor, but is subordinate to the Retirement Board and cannot direct the Contractor to consider interests contrary to those expressed by the Retirement Board.

The Contractor shall carry out its responsibilities with respect to the Plan in accordance with the Plan's Investment Policy Statement, as may be amended from time to time.

The Contractor warrants that it will not delegate its fiduciary responsibilities pursuant to this Agreement.

Within the context of providing the services described in Exhibit A, the Contractor's analysis may address tax, legal or other non-investment advisory considerations related to various investment strategies or investments. However, the Contractor shall not provide or otherwise be responsible for the provision of tax advice or legal counsel. The Contractor shall act in an advisory capacity only with respect to such tax, legal or other non-investment advisory considerations.

6. Information; Reports; Participant Communications. The Contractor will provide such reports as described in Exhibit A.

The Contractor shall also be responsible for providing content for, reviewing, correcting and updating, as and when necessary and appropriate, for each of the Custom Target Date Funds (a) a "fund fact sheet," (b) a "summary prospectus" or "Profile" as described in Department of Labor Advisory Opinion 2003-11A and (c) other participant communication materials as requested by the Plan and as described in Schedule A.

The Contractor shall cooperate with the Plan and its designees in complying with any reporting and disclosure requirements of San Francisco Administrative Code Section 16.301, ERISA, the Internal Revenue Code of 1986, as amended (the "Code") and other applicable law by supplying such additional information to the Plan or its designees as the Plan or its designees shall reasonably require.

In addition, to the fullest extent permitted by law, the Contractor covenants and agrees that it shall notify the Plan promptly, but within three business days of the occurrence:

- 1)of its failure to comply with any material term or provision of this Agreement;
- 2)of any significant changes in its ownership, its Form ADV-Part II, organizational structure, financial condition, investment policy or methodology, principal business activities, senior personnel with direct responsibility or oversight in respect to the Services, or other factors that would reasonably be expected to adversely affect its provision of the Services;
- 3)of any happening or event which is reasonably likely to or has caused any material breach of any representations, warranties or covenants made by the Contractor;
- 4)any and all final judgments, settlements or other material events involving the Contractor and the DOL, the SEC, the Internal Revenue Service or other governmental agency or regulatory or self-regulatory body or officer that would reasonably be expected to adversely affect its provision of the Services; and
- 5) of any material investigations of the Contractor by any federal or state regulatory, self-regulatory or judicial authorities that would reasonably be expected to adversely affect its provision of the Services.

Representatives of the Contractor shall meet with the Plan as set forth in the Scope of Services, at the expense of the Contractor.

7.Representations, Warranties and Covenants of the Contractor. The Contractor hereby represents, warrants and covenants to the Plan on each date that this Agreement is in effect that:

- (1)It is not subject to any of the disqualifications described in Section 411 of ERISA;
- (2)It shall promptly notify the Plan in writing if it ceases to be registered as an investment adviser under the Advisers Act;
- (3)It will exercise its responsibilities hereunder, including with respect to the Custom Target Date Funds, in keeping with the purposes of the Plan, which has been provided by the Contractor, the Investment Policy Statement and in accordance with applicable law and ERISA;
- (4)The execution delivery, and performance of this Agreement does not violate any law, agreement, or other obligation by which the Contractor is bound, whether arising by contract, operation of law or otherwise;
- (5)It will maintain and enforce a code of conduct for its employees during the term of this Agreement which will be furnished to the Plan upon request as well as any material changes therein;
- (6)The personnel of the Contractor who will be responsible for carrying out the terms of this Agreement are individuals experienced in providing services of the nature contemplated by this Agreement;

(7) It is duly organized and in good standing under the laws of the state of \_\_\_\_\_ and has received all authorizations needed to perform this Agreement;

(8) Each Target Date Fund Glide Path will be designed to qualify the fund as a "qualified default investment alternative" (or "QDIA") within the meaning of Section 404 of ERISA and the Glide Path for each Target Date Fund constructed by the Contractor is prudent for use within target date default investment options for Plan participants taking into account each Target Date Fund's ascribed target retirement date; for purposes of this provision, the Plan acknowledges that the Contractor does not have discretionary management authority over fund selection or to add additional Investment Funds representing investment strategies not otherwise available in the Plan's core investment line-up provided, to the extent the Contractor believes any such matter (outside of the Contractor's control) adversely impacts the ability of the Contractor to make this representation, warranty and covenant, the Contractor shall provide prompt written notice of such occurrence; and

(9) Notwithstanding any other provisions of this Agreement, all of the Contractor's statements made in its \_\_\_\_\_ response to the Plan's request for bids (the "Bid Response") relating to the services being provided by the Contractor under this Agreement are and remain true and correct and the Contractor shall give the Plan written notice of any changes in the statements made by the Contractor in the Bid Response.

(10) The Glide Path and any data, processes, software, documentation and other works of authorship and intellectual property incorporated into, or incorporating or relating to, the Glide Path do not and will not infringe or otherwise violate any third party patent, trade secret, copyright or other intellectual property or proprietary rights.

8. Cooperation with Consultants. Upon request from the Plan, the Contractor shall reasonably cooperate with and provide reports and data concerning the Custom Target Date Funds to consulting, performance measurement and other firms selected and appointed by or on behalf of the Plan.

9. Key Personnel. \_\_\_\_\_ are hereby designated as the "key personnel" of the Contractor for purposes of this Agreement and the Plan and the Contractor may designate additional or other personnel of the Contractor as "key personnel" upon mutually agreement of the Plan and the Contractor. The Contractor shall immediately notify the Plan in writing of any changes in key personnel within their organization.

10. False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the Plan for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the Plan if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the Plan a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Plan; (c) conspires to defraud the Plan by getting a false claim

allowed or paid by the Plan; (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 Plan; or (e) is a beneficiary of an inadvertent submission of a false claim to the Plan, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Plan within a reasonable time after discovery of the false claim.

11. Taxes. To the extent applicable, payment of any payroll expense taxes levied on the Services delivered pursuant to this Agreement shall be the obligation of the Contractor.

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

13. Insurance. Without in any way limiting the Contractor’s liability pursuant to the “Indemnification” section of this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Worker’s Compensation, with Employers’ Liability Limits not less than \$1,000,000 each accident; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Professional or Fiduciary Indemnity (Error and Omissions) Insurance protecting against liability or loss for a breach of fiduciary duty under ERISA in the aggregate minimum of \$50,000,000.

(4) A bond as required by Section 412 of ERISA with respect to the Services.

Certificates of insurance evidencing all coverages above, in the form and with Insurers reasonably satisfactory to the Plan, will be furnished to the Plan before commencing any operations under this Agreement. Upon request, complete copies of these policies will be promptly furnished to the Plan. The Contractor shall notify the Plan promptly of any material reduction in coverage and any material claims made against the policies identified in (1) through (4) above.

14. Indemnification. The Contractor shall indemnify, protect, defend and hold harmless the Plan, the City and County of San Francisco Employees' Retirement System ("Retirement System"), the Retirement Board, and their respective officials, officers, members, employees and agents (each a "Covered Person") from and against all liabilities (legal, contractual, or otherwise), obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") and claims for damages of any nature whatsoever, arising from, in connection with or caused by:

- a) any violation of applicable law, bad faith, negligence, mistake or error, willful misconduct, breach of fiduciary duty, breach of confidentiality, and/or breach of contract by the Contractor or its agents, except to the extent such indemnity is void or otherwise unenforceable under applicable law in effect or validly retroactive to the date of this Agreement and except to the extent that any such Losses or claims are the result of the negligence, mistake or error, improper omissions or willful misconduct of the Plan, any Covered Person or any of its consulting, performance measurement or other firms or agents (other than the Contractor or any of its affiliates;
- b) any breach of any representation or warranty made by the Contractor in this Agreement;
- c) the breach of any covenant, agreement or obligation of the Contractor contained in this Agreement, including any claim to the Glide Path, or any data, processes, software, documentation or other works of authorship or intellectual property incorporated into, or incorporating or relating to, the Glide Path, as authorized under this Agreement infringes or otherwise violates any third party patent, trade secret, copyright or other intellectual property or proprietary rights, or breach of trust, breach of confidentiality;
- d) the injury or death of a person, including employees of the Contractor or loss of or damage to property, resulting directly from the Contractor's negligent acts or omission, mistake or error or willful misconduct in the course of the Contractor's performance of this Agreement, except to the extent such indemnity is void or otherwise unenforceable under applicable law in effect or validly retroactive to the date of this Agreement and except where any such Losses or claims are the result of the negligence, mistake or error, improper omissions or willful misconduct of the Plan,

any Covered Person or any of its consulting, performance measurement or other firms or agents (other than the Contractor or any of its affiliates).

In addition to the Contractor's obligation to indemnify the Plan, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Plan 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 the Contractor by the Plan and continues at all times thereafter.

For purposes of this Section 14, the phrase "mistake or error" is intended to refer to a clerical or trading mistake or error and not an error of judgment reflected in hindsight for an otherwise prudently established glide path.

15. Limitation on Liability of the Plan. The Plan's payment obligations hereunder shall be limited to the payments provided for under Section 4 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the Plan or Covered Person (as defined in Section 14) be liable, regardless of whether the 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.

For the avoidance of doubt the Plan is, and the Retirement System is not, a party to this Agreement and the Retirement System shall have no obligations under this Agreement

16. Termination for Convenience.

a. The Plan 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 Plan shall exercise this option by giving the Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

Upon termination of this Agreement, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified in the termination notice and to minimize the liability of the Contractor and the Plan to third parties as a result of termination. All such actions shall be subject to the prior approval of the Plan. Such actions shall include, without limitation, the orderly liquidation of the portfolio, the cessation of trading, as applicable, or such other actions as reasonably directed by the Plan. The parties agree that, except as expressly set forth in this Agreement, following termination of this Agreement, \_\_\_\_\_ fiduciary responsibilities with respect to the Plan and contractual obligations and duties to maintain the Glide Path will cease.



1.1.1 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by SFDCP and to minimize the liability of Contractor and SFDCP to third parties as a result of termination. All such actions shall be subject to the prior approval of SFDCP. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFDCP.

(b) Completing performance of any Services that SFDCP designates to be completed prior to the date of termination specified by SFDCP.

(c) Taking such action as may be necessary, or as the SFDCP may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFDCP has or may acquire an interest.

1.1.2 In no event shall SFDCP be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFDCP, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

1.1.3 In arriving at the amount due to Contractor under this Section, SFDCP may deduct: (i) all payments previously made by SFDCP for Services covered by Contractor's final invoice; (ii) any claim which SFDCP may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFDCP, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFDCP's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

1.1.4 SFDCP's payment obligation under this Section shall survive termination of this Agreement.

17. Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

The Contractor further acknowledges that it is familiar with Section 3.216 of the San Francisco Campaign and Government Code which prohibits an officer or employee of the Plan from soliciting or accepting any gift in excess of \$100 in a calendar year from a person who the officer or employee knows or has reason to know is a restricted source. "Restricted source" is defined in this section to mean: a) a person doing business with or seeking to do business with the department of the officer or employee; or b) any person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.

18. Nondisclosure, Ownership and Warranties for Data.

a. Each party will protect and preserve the confidentiality of all information and know-how made available in connection with this Agreement or the parties' activities that is either designated as being confidential or which, by the nature of the circumstances surrounding the information, should reasonably be considered to be proprietary or confidential (the "Confidential Information"). Any use of the other party's Confidential Information will be solely as set forth in this Agreement and Exhibit A. Each party will take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information but in any event using a reasonable standard of care, to keep confidential the Confidential Information.

b. Neither party will disclose the Confidential Information except: (i) to its employees, consultants, legal advisors or auditors who need to know the Confidential Information (and the receiving party will require each such employee, consultant, legal advisor or auditor to protect and preserve the confidentiality of such Confidential Information: (ii) upon written authorization of the other party; (iii) when such disclosure is required by judicial or governmental order (provided that, except in the case of a routine regulatory examination or requests made by a regulator, prior to such disclosure the receiving party will provide the disclosing party with written notice and will, if applicable, comply with any protective order or equivalent); (iv) in accordance with applicable laws or regulations, including ERISA; and (v) as necessary by the Plan, the Retirement System, the Retirement Board or any of their respective officials, officers, members, employees and agents to satisfy their respective fiduciary duties or fiduciary best practices. For the avoidance of doubt, the Glide Path shall not be considered Confidential Information, but information supporting the Glide Path selections that the Contractor has reasonably identified to the Plan as confidential shall be considered "Confidential Information" for purposes of this Agreement.

c. The receiving party will have no obligation to maintain the confidentiality of information that: (i) it received rightfully from another party prior to its receipt from the disclosing party; (ii) the disclosing party discloses generally without any obligation of confidence; (iii) is, or subsequently becomes, publicly available without the receiving party's breach of any obligation owed the disclosing party; or (iv) is independently developed by the receiving party without reliance upon or use of any Confidential Information.

d. The Contractor acknowledges that specific data regarding holdings, transactions and performance of the Plan's investments (the "Data") is deemed to be the Plan's Confidential Information and the property of the Plan. If and to the extent the Contractor has access to such Data in connection with performing under this Agreement, the Plan grants to Contractor a perpetual royalty free license to (i) edit, reproduce, reformat and reconfigure (collectively "Process") the Data and/or combine it or portions of it with other data received from others to create universes, reports, analyses, or statistics designed or selected by Contractor ("Contractor Data"); (ii) reproduce, publish, transmit, broadcast, digitize, and distribute such Contractor Data to Contractor's consulting services customers in any form or media now known or hereafter developed; and (iii) use the Data solely for Contractor's own internal performance review consistent with the terms of this Agreement; provided however, that the Contractor represents, warrants and covenants that the Contractor Data and all such creation, use, distribution and sale of the Contractor

Data will comply with all applicable laws and will not infringe or otherwise violate any third-party intellectual property or proprietary rights, and that the Contractor shall (A) only use the Data in an aggregated, anonymous format that does not identify the Plan, any Plan participant, any party to any transaction, or any personally identifiable information of any of them; (B) process or combine the Data so that third parties will not be able to identify the Data in the Contractor Data as having been derived from the Plan or any Plan participant or party to any transaction; (C) not use the name of the Plan without the express written consent of the Plan in each instance. Any resulting fees, royalties, or other revenues will accrue solely to the benefit of the Contractor. The Contractor Data will be the proprietary and copyrighted material of the Contractor

(subject to the Plan's proprietary rights in the underlying Data). Each party's obligations under this section will survive the expiration or termination of this Agreement.

19. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax (provided, however, that receipt of any notice provided by e-mail or by fax must be confirmed orally by the party to whom the notice is provided or such party's delegate before becoming effective), and shall be addressed as follows:

To the Plan:

City and County of San Francisco Employees' Retirement System  
1145 Market Street, 7th Floor  
San Francisco, CA 94103

With a copy to:

City and County of San Francisco Deferred Compensation Plan  
1145 Market Street, 5th Floor  
San Francisco, CA 94103

To the Contractor:

20. Audit. The Contractor shall maintain accurate books and records relating to this Agreement and the Services, including accounting records and copies of all invoices. The Contractor agrees to retain such books and records for a period of not less than six (6) years after termination of this Agreement or such longer period as may be required by applicable law in a format and at a location that is readily accessible to the Plan. Without limiting the generality of the foregoing, the book and records required to be retained by the Contractor shall include historical Glide Path information in order to facilitate corrective transaction adjustments as necessary.

21.No Assignment or Subcontracting. The services are personal in nature and the Contractor 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 the Contractor without the prior written consent of the Plan.

22.Earned Income Credit Forms. Administrative Code Section 12O requires that employers who contract with the Plan provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a.The Contractor shall provide Earned Income Credit Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless the Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b.Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If within thirty (30) days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such thirty (30) days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Plan may pursue any rights or remedies available under this Agreement or under applicable law.

c.Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### 23.Local Business Enterprise Utilization

Consultant understands and agrees to comply fully with all the requirements of the Local Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase the Consultant’s obligations or liabilities, or materially diminish Consultant’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made part of this Agreement as though fully set forth in this section. Consultant’s willful failure to comply with any applicable provision of the LBE Ordinance is a material breach of Consultant’s obligations under this Agreement and shall entitle the Plan, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Consultant shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting.

Consultant agrees to maintain records necessary for monitoring its compliance with Chapter 14B for a period of three years following termination of this Agreement.

24. Nondiscrimination; Penalties. In the performance of this Agreement, the Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes or in retaliation for opposition to discrimination against such classes, against any employee of, any City employee working with, or applicant for employment with the Contractor, in any of the Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor.

The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Plan elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

As a condition to this Agreement, the Contractor shall execute the "Chapter 12B Declaration:

Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

25. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code Section 12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporation that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of the Contractor acknowledges and agrees that he or she has read and understood this section.

26. Tropical Hardwood and Virgin Redwood Ban. Pursuant to Section 814(b) of the San Francisco Environment Code, the City and County of San Francisco urges the Contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood wood product, virgin redwood or virgin redwood wood product.

27. Drug-Free Workplace. The Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Plan and Retirement System premises. The Contractor agrees to comply with such Act. Any violation of this Section shall be deemed a material breach of this Agreement.

28. Resource Conservation. The Contractor shall comply in good faith with Chapter 5 of the San Francisco Environment Code (Resource Conservation), which is hereby made a part of this Agreement as though fully set forth herein.

29. Sunshine Ordinance. The Contractor understands 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 Plan and persons or firms seeking contracts, must be open to public inspection immediately after a contract has been awarded. All information provided by the Contractor which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.

30. Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's 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 Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

31. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event the Contractor violates the provisions of this section, the City may, in addition to any other rights or

remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new City contract for a period of two (2) years.

32.Compliance with Americans with Disabilities Act. The Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

33.Requiring Minimum Compensation for Employees. The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://sfgov.org/olse/mco>.

34.Requiring Health Benefits for Covered Employees. Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at <http://sfgov.org/olse/hcao>.

35.No Waiver. Any failure to enforce any right or to require performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

36.Documents and Reports. The Contractor will furnish to the Plan and its authorized representatives, on reasonable notice (which in no event need ever be more than five (5) business days) and during ordinary business hours, full access (including useable electronic data format) to the records maintained by the Contractor with regard to this Agreement. Any interest of the Contractor in reports, memoranda, or other documents prepared by the Contractor in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the Plan in a useable format (including electronic date format) upon demand.

37.Modifications. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by each party hereto.

38.Administrative Remedy. All disputes, controversies or claims arising under or relating to this Agreement shall be settled by the Executive Director of the Retirement System. 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.

## 1.1 Dispute Resolution Procedure.

1.1.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

1.1.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

## Article 2 Data and Security

### 2.1 Nondisclosure of Private, Proprietary or Confidential Information.

2.1.1 **Protection of Private Information.** If this Agreement requires the Plan to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

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

### 2.2 Management of the Plan's Data and Confidential Information.

2.2.1 **Use of Plan Data and Confidential Information.** Contractor agrees to hold the Plan's Data received from, or collected on behalf of, the Plan, in strictest confidence. Contractor shall not use or disclose the Plan's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the Plan. Any work using, or sharing or storage of, The Plan's Data outside the United States is subject to prior written authorization by the Plan. Access to the Plan's Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the Plan Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the Plan Data or Confidential Information, by implication,



estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of Plan Data by Contractor, 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.

**2.2.2 Disposition of Confidential Information.** Upon request of the Plan or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on the Plan’s behalf, which includes all original media. Once Contractor has received written confirmation from the Plan that the Plan’s Data has been successfully transferred to the Plan, Contractor shall within ten (10) business days clear or purge all Plan Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide the Plan with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**2.3 Ownership of Plan Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the Plan Data and any derivative works of the Plan Data is the exclusive property of the Plan.

39. California Law; Venue. This Agreement shall be governed by the laws of California. The venue for all litigation or other disputes relative to this Agreement shall be San Francisco, California.

40. Construction. Section headings are for reference only and shall not be used to interpret 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 Plan shall refer to the sole judgment of the Plan.

41. Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions. The attached Appendices A and B and C are a part of this Agreement.

42. Compliance with Laws. The Contractor shall comply with the City and County of San Francisco Charter, codes, ordinances and regulations and with applicable state and federal laws and regulations (including the Americans with Disabilities Act), as they may be amended from time to time.

43. 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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.

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

45.Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

46.Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

47.Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including without limitation, as subcontractors of the Contractor, will be paid unless the provider received advance written approval from the City Attorney.

48.Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution

and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) - discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

49. No Partnership, Franchise, Joint Venture, Agency of Employment Relationship. Neither this Agreement or attached Schedules, nor any terms and conditions contained in this Agreement or attached Schedules will be construed as creating a partnership, franchise, joint venture, agency or employment relationship between the parties.

[Remainder of page intentionally left blank.]

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

CITY AND COUNTY OF SAN FRANCISCO  
DEFERRED COMPENSATION PLAN

By: \_\_\_\_\_ Date: \_\_\_\_\_

City and County of San Francisco Retirement System

(Contractor)

By: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit A

### SFDCP Custom Target Date Funds Scope of Services

In addition to those services described in the Agreement between The San Francisco Deferred Compensation Plan (the “Plan”) and \_\_\_\_\_, \_\_\_\_\_ shall provide the following services (all such services, the “Services”):

#### Overview

1. \_\_\_\_\_ will assign a designated client services team (“Service Team”) to provide the Services, including a Senior Investment Professional with overall responsibility for the delivery of the Services for the Custom Target Date Funds.
2. \_\_\_\_\_ will assume responsibility as a fiduciary and “investment manager” within the meaning of Section 3(38) of ERISA, as though ERISA and the regulations thereunder apply to the Plan (hereafter all references to ERISA or regulations issued thereunder shall be as if they apply to the Plan), with respect to all of the Services provided pursuant to the Agreement and this Exhibit A.

#### Selection of Investment Funds to Comprise the Custom Target Date Funds

3. \_\_\_\_\_ will meet with the Plan and the Plan’s investment consultant (the “Investment Consultant”) to determine the number and type of investment funds (the “Investment Funds”) to comprise each of the Custom Target Date Funds (which number of Funds shall be specified by the Plan). More specifically \_\_\_\_\_ will be responsible for making recommendations as to the number and type of strategies and Investment Funds for each Custom Target Date Fund based on the Investment Funds offered in the Plan’s current fund lineup (the “Plan Funds”). \_\_\_\_\_ will also be responsible for making recommendations initially and otherwise as appropriate as to any additional strategies or Investment Funds it believes are necessary or appropriate for the Custom Target Date Funds.
4. The Investment Consultant and the Plan will concur with these recommendations or specify exceptions to \_\_\_\_\_ recommendations and thus designate the Investment Funds to be used in the Custom Target Date Funds.

#### Glide Path

5. The Plan has provided or will provide \_\_\_\_\_ with information and assumptions reasonably requested by \_\_\_\_\_ for development of the Glide Path, such as information and assumptions

regarding (i) the characteristics of each of the Plan Funds, including each Plan Fund's asset class, investment objectives and guidelines, risk and return targets and benchmarks and (ii) such other information as \_\_\_\_\_ may reasonably request, including specific Plan participant demographic information.

6. \_\_\_\_\_ will be appointed as a discretionary “investment manager,” within the meaning of Section 3(38) of ERISA. On this basis, \_\_\_\_\_ will be responsible for designing the Glide Path for the Custom Target Date Funds based on the Investment Funds designated for inclusion in the Custom Target Date Funds and for determining the percentage allocation to each Investment Fund based on the methodology \_\_\_\_\_deems appropriate in light of its fiduciary obligations to the Plan and based on information provided by the Plan and the Investment Consultant as described herein. Without limiting the generality of the preceding sentence, it is agreed that \_\_\_\_\_shall design the Glide Path for each Custom Target Date Fund by designing the Glide Path to be “through” (and not “to”) for target retirement date.

7. \_\_\_\_\_ will be responsible for designing the Glide Paths to be risk constrained to meet a targeted percentage of income replacement with a high degree of confidence. The Plan will promptly notify \_\_\_\_\_ of any known material changes in the foregoing demographic and other information that is expected to materially impact the information previously provided.

8. \_\_\_\_\_ will work the Plan to ensure that the Plan's Custom Target Date Funds are in full compliance with all applicable laws and regulations. \_\_\_\_\_ will be responsible for designing the Glide Path so that each Custom Target Date Fund qualifies as a “qualified default investment alternative” (or “QDIA”) within the meaning of Section 404 of ERISA and the Glide Paths for each Custom Target Date Fund are prudent for use with target date default investment options for Plan participants taking into account each Custom Target Date Fund's ascribed target retirement date.

9. \_\_\_\_\_ will be responsible for developing the initial and ongoing asset allocation strategy, methodology and instructions for each of the Custom Target Date Funds. \_\_\_\_\_ will request Plan demographic data and review the Glide Path with the Plan as least annually and discuss recommended changes based on changes in capital markets, Investment Funds available, and/or demographics. In addition, \_\_\_\_\_ will also review the Glide Path, and report to the Plan as appropriate the result of such review, as soon as practicable following: (i) changes in \_\_\_\_\_ Glide Path methodology or in industry trends in target date funds; (ii) \_\_\_\_\_ receipt of material changes to information provided by the Plan; (iii) information otherwise acquired by \_\_\_\_\_ on the Plan or the Custom Target Date Funds that it deems material and (iv) upon request of the Plan.

10. The Plan acknowledges that \_\_\_\_\_ may, within the asset allocation strategies and target bands agreed by the Plan, exercise discretion to purchase and/or sell interests in the underlying funds.

Implementation and Mapping

11. \_\_\_\_\_ will be responsible for coordinating with the Plan's third party administrator (the "TPA") and Custodian (the "Custodian") to supervise the implementation of the Plan's Custom Target Date Funds.

12. \_\_\_\_\_ will work with the Plan and the TPA to implement the Glide Path asset allocation rebalancing strategy. This strategy will be based on instructions provided by \_\_\_\_\_ to the Plan and the TPA. The strategy will be in compliance with procedures mutually agreed to by \_\_\_\_\_, the Plan and the TPA.

13. The Custom Target Date Funds will be automatically rebalanced by the TPA at least quarterly or as mutually agreed upon with the TPA, including any ad hoc rebalance requests made by \_\_\_\_\_. Rebalancing is defined as the process required to maintain a predetermined allocation among the Investment Funds in each Custom Target Date Fund. During the quarter, Investment Funds may perform differently and participant cash flows could impact the strategic asset allocations prescribed by the Glide Path. Such rebalancing will be accomplished by the sale and purchase of the appropriate Investment Funds. Participant positive cashflows will be applied using the targeted percentage allocation methodology. Participant negative cashflows will be applied using the proportionate market value percentage methodology. The automatic rebalancing will be effected at least each calendar quarter on or about the first business day of each quarter. The TPA will provide \_\_\_\_\_ with a summary position report as mutually agreed. \_\_\_\_\_ will be responsible for setting the strategic asset allocation used in the rebalancing process. The processes or methodologies described in this paragraph may be changed by mutual agreement among the Plan, the TPA and \_\_\_\_\_.

#### Participant Communications

14. \_\_\_\_\_ shall be responsible for contributing content to, reviewing, correcting and updating, as and when necessary and appropriate, for each of the Custom Target Date Funds (a) a "fund fact sheet," (b) a "summary prospectus" or "Profile," as described in Department of Labor Advisory Opinion 2003-11A and (c) such other participant communication materials as reasonably requested by the Plan for each of the Custom Target Date Funds. \_\_\_\_\_ will coordinate with the TPA to provide this material in the TPA's standard format or other format as mutually agreed to by \_\_\_\_\_, the Plan and the TPA.

15. \_\_\_\_\_ acknowledges that the Plan shall use the fund fact sheets and the summary prospectuses or Profiles as participant disclosures and \_\_\_\_\_ agrees that it shall review each such disclosure to ensure it contains all information necessary in order for the Plan to rely on the safe harbors provided for under Section 404(c)(1) and 404(c)(5) of ERISA (and related Department of Labor ("DOL") regulations). \_\_\_\_\_ shall also be responsible for providing such reporting and disclosure as is necessary with respect to the Custom Target Date Funds to comply with the DOL's participant disclosure regulations at 29 C.F.R. 2550.404a-5 et seq. promulgated under Section 404(a) of ERISA and, in respect of any direct or indirect compensation paid to \_\_\_\_\_, such reporting and disclosure to the Plan as is required by the DOL's regulations at 29 C.F.R. 2550.404b-2 et seq. promulgated under Section 408(b)(2) of ERISA.

16. \_\_\_\_\_ will, upon request, assist and participate in meetings with participants to review the Custom Target Date Funds to aid with the transition.

17. \_\_\_\_\_ and the Investment Consultant will each be responsible to jointly define and recommend in writing appropriate Custom Target Date Fund benchmark(s) to the Plan and for use in the participant communications. The benchmarks selected for participant communications shall meet the requirements for benchmarks in the DOL's participant disclosure regulations at 29 C.F.R. 2550.404a-5 et seq.

#### Review and Monitoring

18. \_\_\_\_\_ will coordinate with the TPA to reconcile, within three (3) business days after the receipt of rebalancing activity provided by the TPA whether any rebalancing activity was appropriately implemented. If the rebalancing instructions were not appropriately implemented, \_\_\_\_\_ will promptly notify the Plan, coordinate with the TPA to complete the reconciliation, and report results and issues back to the Plans

19. The TPA shall calculate the performance of each of the Custom Target Date Funds and provide those performance results, and the underlying asset balances, to \_\_\_\_\_ on a periodic basis, as mutually agreed by \_\_\_\_\_, the Plan and the TPA. \_\_\_\_\_ will be responsible for promptly confirming these performance calculations and reporting this performance to the Plan on a summary basis via periodic electronic reports, and on a detailed basis to the Plan via the quarterly, in-person presentations described in item 20 below. If \_\_\_\_\_ determines performance was not calculated correctly, \_\_\_\_\_ will immediately notify the Plan, coordinate with the TPA to complete a reconciliation, and report results and issues back to the Plan.

20. A senior member of the Service Team will attend Plan committee meetings and deliver quarterly reporting on the Custom Target Date Funds' performance, benchmarking, methodology updates, and capital markets assumptions. \_\_\_\_\_ will coordinate delivery of these reports with the Plans, and, upon request, will provide content for inclusion in the Investment Consultant's semi-annual investment review report.

21. \_\_\_\_\_ will attend additional meetings as reasonably requested (at no additional charge), at the Plan's offices in San Francisco or other mutually agreed places as needed to carry out necessary work under this scope of services.

#### Review and Monitoring

22. \_\_\_\_\_ authority and obligations as "Investment Manager" under the Agreement are limited to the design and management of the Glide Path as outlined in this Schedule. In particular, \_\_\_\_\_ does not assume responsibility as an "Investment Manager" within the meaning of Section 3(38) of ERISA for (i) evaluating, managing, or overseeing Investment Funds; (ii) evaluating, selecting, or, except as expressly provided herein, overseeing investment managers, trustees, custodians or other vendors and



service providers to the Plan: or (iii) evaluating, selecting, or overseeing the management of any other securities or funds in which Plan assets are invested.

Exhibit B

Fee Schedule

The Contractor shall be entitled to a fee based on a structure as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For purposes of determining the amount of the fee, the assets in the Custom Target Date Funds shall be counted in the aggregate and an aggregate annual blended basis point charge (the “Applicable Basis Point Charge”) shall be determined that will be applicable to each Custom Target Date Fund regardless of the level of assets in that particular Custom Target Date Fund.

The fees shall be calculated for each Custom Target Date Fund quarterly in arrears at one-quarter of the Applicable Basis Point Charge on the average total assets in that Custom Target Date Fund for the calendar quarter (and prorated for any period of less than a quarter) and shall be deducted from each Custom Target Date Fund and paid to the Contractor as described in the Agreement for Recordkeeping and Communication Services (the “Recordkeeping Agreement”) between The San Francisco Employees’ Retirement System and the recordkeeper, as amended from time to time and including all schedules, exhibits and other documents attached to the Recordkeeping Agreement.

The Contractor shall maintain a minimum annual fee of \$\_\_\_\_\_ for the Services from the effective date of this Agreement, prorated for any period of less than a year (the “Minimum Fee”). The Contractor agrees that any fees incurred prior to the actual mapping of assets into the Custom Target Date Funds shall be payable only after such mapping occurs (promptly following the funding of the Custom Target Date Funds).

Over the course of the relationship, a minimum lifetime fee equal to 3 times the Minimum Fee (i.e., \$\_\_\_\_\_), calculated on an aggregate basis based on assets in all the Custom Target Date Funds, will apply. The minimum lifetime fee shall only be payable upon termination of the Agreement and then only to the extent the aggregate fees paid to the Contractor pursuant to this Agreement (or otherwise paid by the Plan) do not exceed \$\_\_\_\_\_; provided that the Plan shall not be required to pay the minimum lifetime fee if (a) the Plan terminates this Agreement due to a material breach of this Agreement by the Contractor, (b) an individual designated by the Plan as a key personnel resigns, or (c) the Contractor elects to terminate this Agreement.