



EXECUTIVE SUMMARY

MEETING DATE: September 13, 2024

HCR24-067

SUBJECT: Award of Legal Services Contracts

COUNCIL DISTRICT: Citywide

ORIGINATING DEPARTMENT: Procurement Operations

CONTACT/PHONE NUMBER: Suket Dayal (619) 578-7608

REQUESTED ACTION:

Approve the award of two two-year contracts, with three one-year renewal options—one contract with Christensen & Spath LLP and one contract with Aleshire & Wynder, LLP—for the provision of legal services, beginning September 30, 2024, for a total cost not to exceed \$2,000,000 per year for a total of \$10,000,000.

EXECUTIVE SUMMARY OF KEY FACTORS:

- The San Diego Housing Commission (Housing Commission) has an ongoing requirement for legal services.
- All renewal options under the existing contract have been exercised.
- A Request for Proposals (RFP) for legal services was issued on December 14, 2023.
- Ten proposal responses were received by the RFP closing date of February 28, 2024. All were deemed responsive.
- A source selection committee evaluated, scored and ranked the responses based on the following criteria: Qualifications & Experience, Proposed Approach, Customer Service & Coordination, Cost Proposal and Equity & Inclusion.
- The five-person source selection committee consisted of a member of the Housing Commission Board, a member of the Housing Commission's Executive Team, and representatives from the Housing Commission's Equity Assurance, Real Estate and Rental Assistance divisions.
- The selection committee interviewed the three vendors with the top scores.
- The committee's intent, subject to the results of the evaluation process, was to select at least two law firms to provide the Housing Commission additional options for legal services to address the Housing Commission's diverse, multifaceted responsibilities.
- The selection committee recommended the Housing Commission award one two-year contract to Christensen & Spath LLP and one two-year contract to Aleshire & Wynder LLP, with three one-year renewal options for each contract, as their proposals were unanimously rated and ranked as the most experienced, qualified and cost-effective responses to the RFP.
- The proposed contract with Christensen & Spath LLP is for an amount not to exceed \$1,300,000 per year, and the proposed contract with Aleshire & Wynder LLP is for an amount not to exceed \$700,000 per year.
- The proposed funding sources and uses approved by this action for the first year of the Legal Services contracts were included in the Housing Authority-approved Fiscal Year (FY) 2025 budget. Approving this action will not change the FY 2025 total budget.



REPORT

DATE ISSUED: September 5, 2024

REPORT NO: HCR24-067

ATTENTION: Chair and Members of the San Diego Housing Commission Board of Commissioners
For the Agenda of September 13, 2024

SUBJECT: Award of Legal Services Contracts

COUNCIL DISTRICT: Citywide

Advance notice of San Diego Housing Commission Board of Commissioners hearing of the following matter has been provided to the Housing Authority Members pursuant to the provisions of San Diego Municipal Code Section 98.0301(e)(4)(A)-(B).

REQUESTED ACTION:

Approve the award of two two-year contracts, with three one-year renewal options—one contract with Christensen & Spath LLP and one contract with Aleshire & Wynder, LLP—for the provision of legal services, beginning September 30, 2024, for a total cost not to exceed \$2,000,000 per year for a total of \$10,000,000, allocated as follows:

| Contract Term | Firm | Not-to-Exceed Amount |
|--|-------------------------|----------------------|
| Year 1 (Sept 30, 2024 - Sept 29, 2025) | Christensen & Spath LLP | \$1,300,000 |
| Year 2 (Sept 30, 2025 - Sept 29, 2026) | Christensen & Spath LLP | \$1,300,000 |
| 1 st Option (Sept 30, 2026 - Sept 29, 2027) | Christensen & Spath LLP | \$1,300,000 |
| 2 nd Option (Sept 30, 2027 - Sept 29, 2028) | Christensen & Spath LLP | \$1,300,000 |
| 3 rd Option (Sept 30, 2028 - Sept 29, 2029) | Christensen & Spath LLP | \$1,300,000 |
| Total Contract Cost | | \$6,500,000 |
| | | |
| Year 1 (Sept 30, 2024 - Sept 29, 2025) | Aleshire & Wynder LLP | \$700,000 |
| Year 2 (Sept 30, 2025 - Sept 29, 2026) | Aleshire & Wynder LLP | \$700,000 |
| 1 st Option (Sept 30, 2026 - Sept 29, 2027) | Aleshire & Wynder LLP | \$700,000 |
| 2 nd Option (Sept 30, 2027 - Sept 29, 2028) | Aleshire & Wynder LLP | \$700,000 |
| 3 rd Option (Sept 30, 2028 - Sept 29, 2029) | Aleshire & Wynder LLP | \$700,000 |
| Total Contract Cost | | \$3,500,000 |

STAFF RECOMMENDATIONS

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) take the following actions:

- 1) Approve the award of two two-year contracts, with three one-year renewal options—one contract with Christensen & Spath LLP in an amount not to exceed \$1,300,000 per year and one contract with Aleshire & Wynder LLP in an amount not to exceed \$700,000 per year—for the provision of legal services to the Housing Commission for a total annual cost not to exceed \$2,000,000.

- 2) Authorize the President and Chief Executive Officer (President and CEO), or designee, to execute the contracts and all documents necessary and/or appropriate to implement these approvals, provided that a copy of the documents is submitted to each Housing Commissioner.
- 3) Authorize the President and CEO, or designee, to substitute funding sources and/or increase compensation by not more than 20 percent of the total agreement amount for the proposed agreement, if necessary, without further action by the Housing Commission Board or the Housing Authority of the City of San Diego, but only if and to the extent that funds are determined to be available for such purposes.
- 4) Authorize the President and CEO, or designee, to perform such other acts that are necessary and/or appropriate to implement these approvals.

SUMMARY

The Housing Commission has an ongoing requirement for legal services. All renewal options under the existing contract have been exercised; therefore, a Request for Proposals (RFP) for legal services was issued on December 14, 2023. The RFP was posted on both the Housing Commission's and City of San Diego's electronic bidding and notification system, PlanetBids. During the solicitation period, the RFP document was downloaded 25 times by interested companies.

Ten proposal responses were received by the RFP closing date of February 28, 2024. Proposals were submitted by the following firms:

- 1) Aleshire & Wynder
- 2) Atkinson, Andelson, Loya, Ruud & Romo
- 3) Ballard Spahr
- 4) Burke, Williams & Sorensen
- 5) Christensen & Spath
- 6) Collins + Collins
- 7) Kronick Moskowitz
- 8) Liebert Cassidy Whitmore
- 9) Nishioka Law
- 10) Richards, Watson & Gershon

Subsequent to the closing, a responsiveness review was conducted, with all proposals determined to be responsive. A source selection committee evaluated, scored and ranked the responses based on the following criteria: Qualifications & Experience, Proposed Approach, Customer Service & Coordination, Cost Proposal and Equity & Inclusion.

The five-person source selection committee consisted of a member of the Housing Commission Board, a member of the Housing Commission's Executive Team, and representatives from the Housing Commission's Equity Assurance, Real Estate and Rental Assistance divisions. This diverse panel convened three times. In their first meeting, they reviewed their scores, discussed the strengths and weaknesses of the proposals, and selected vendors for interviews. The second meeting was dedicated to conducting the three interviews with the finalists/top scorers. After completing the interviews, the panel met a final time to discuss and evaluate the outcomes and decide on a recommendation for the Housing

Commission Board.

The following table represents the committee's final ranking.

| PROPOSER | RANKING |
|-------------------------|---------|
| Christensen & Spath LLP | 1 |
| Aleshire & Wynder LLP | 2 |
| Collins + Collins LLP | 3 |

After a comprehensive review and consideration, the selection committee recommended the Housing Commission award one two-year contract to Christensen & Spath LLP and one two-year contract to Aleshire & Wynder LLP, with three one-year renewal options for each contract, as their proposals were unanimously rated and ranked as the most experienced, qualified and cost-effective responses to the RFP. The recommendation reflects the selection committee's conclusion that Christensen & Spath was the highest-ranked respondent and the committee's intent, subject to the results of the evaluation process, to select at least two law firms to provide the Housing Commission additional options for legal services to address the Housing Commission's diverse, multifaceted responsibilities.

The scope of services provided under the proposed contracts includes:

- The preparation of legal documentation; attendance at Housing Commission, Housing Authority of the City of San Diego (Housing Authority) and, if necessary, San Diego City Council/Committee meetings; preparation of resolutions and Memoranda of Understanding (MOU).
- All legal services related to affordable housing program restrictions and compliance; legal advice concerning planning, financing/development, management of affordable housing programs and real estate transactions, including but not limited to: a) Public Housing Program, b) Moving to Work Program, c) Section 8 Housing Choice Voucher and Section 3 Programs, d) Housing Commission owned or managed developments, including tax credit and financed developments, e) Landlord/tenant issues; f) Fair Housing, Americans with Disabilities Act and Section 504 or the Rehabilitation Act issues; and g) labor compliance issues.
- Drafting of contract templates for various types of procurements.
- Review and approval to form of contracts for procurement of goods, services and supplies.
- Advice on Brown Act issues, potential conflicts of interest, and public records requests.
- Drafting of density bonus agreements, terminations and documentation required by the City of San Diego's Inclusionary Housing ordinance.
- Drafting of documentation concerning condominium conversion, relocation agreements, and Accessory Dwelling Units (ADUs).
- Advice on loan portfolio administration and regulations for the federal HOME Investment Partnerships Program, Community Development Block Grants, Section 8 Housing Choice Vouchers, and the Sections 3 program.
- Routine litigation.

Additional details related to the scope of services can be found in the draft contracts, included as Attachment 1 and Attachment 2 to this report.

FISCAL CONSIDERATIONS

The proposed funding sources and uses approved by this action for the first year of the Legal Services contracts were included in the Housing Authority-approved Fiscal Year (FY) 2025 budget. Approving this action will not change the FY 2025 total budget. The proposed sources and uses for the second year and option years will be included in the budget for further approval in future fiscal years (2026-2029).

FY 2025 funding sources approved to be used by this action will be as follows:

- Housing Commission Revenue Sources (Local, State, and Federal) - up to \$2,000,000

FY 2025 funding uses approved in this action are allocated as follows:

- Legal Services- up to \$2,000,000

HOUSING COMMISSION STRATEGIC PLAN

This item relates to the Housing Commission Strategic Plan for Fiscal Year (FY) 2022-2024 Core Value: Believe in transparency and being good financial stewards. The Housing Commission is in the process of developing a new Strategic Plan.

EQUAL OPPORTUNITY CONTRACTING AND EQUITY ASSURANCE

The Housing Commission included a requirement in the RFP for prospective firms to include a description of their experience and commitment to equity. Christensen & Spath LLP and Aleshire & Wynder LLP are committed to equity and inclusion as both an employer and a service provider. Christensen & Spath LLP is certified as a Small Business (micro) by the State of California. A Certificate of Compliance and San Diego County Workforce report have been submitted and are on file. Analysis of the report indicates no issues with diversity.

PREVIOUS HOUSING COMMISSION BOARD and HOUSING AUTHORITY ACTION

On June 14, 2019, the Housing Commission Board approved the award of a two-year contract with three one-year renewal options to Christensen & Spath LLP in an amount not to exceed \$1,200,000 per year (Report No. HCR19-069). In addition, the Housing Commission's President and CEO was authorized to increase the base contract amount by \$250,000 per year without additional Housing Commission Board or Housing Authority action.

On May 9, 2014, the Housing Commission Board recommended that the Housing Authority approve the award of a two-year contract with three one-year renewal options to Christensen & Spath LLP in an amount not to exceed \$1,000,000 per year (Report No. HCR14-044). In addition, the President and CEO was authorized to increase the base contract amount by \$200,000 per year without additional Housing Commission Board or Housing Authority action. The Housing Commission Board also recommended that the Housing Authority authorize an amendment to the FY 2014 contract with Christensen & Spath LLP to increase the maximum compensation amount by \$50,000 to \$1,050,000 (Report No. HCR14-043).

On June 9, 2014, the Housing Authority approved the award of a two-year contract with three one-year renewal options to Christensen & Spath LLP in an amount not to exceed \$1,000,000 per year and authorized the President and CEO to increase the base contract amount by \$200,000 per year without additional Housing Commission Board or Housing Authority action (Report No. HAR14-019 and

Resolution No. HA-1619). The Housing Authority also authorized an amendment to the Housing Commission's FY 2014 contract with Christensen & Spath LLP to increase the maximum compensation amount by \$50,000 to \$1,050,000 (Report No. HAR14-018. Resolution No. HA-1620).

On March 18, 2011, and April 19, 2011, respectively, the Housing Commission Board and the Housing Authority approved a revision to the base contract for legal services to include a not-to-exceed amount of \$800,000 per year for the remaining years of this contract. In addition, the President and CEO was authorized to increase the base contract amount by \$200,000 per year without additional Housing Commission Board or Housing Authority action (Housing Commission Report No. HCR11-044. Housing Authority Report No. HAR11-015 and Resolution No. HA-1513).

On March 19, 2010, and April 6, 2010, respectively, the Housing Commission Board and the Housing Authority approved a request to increase the FY 2010 contract amount by \$200,000 (Housing Commission Report No. HCR10-027. Housing Authority Report No. HAR10-016 and Resolution No. HA-1455).

On May 15, 2009, the Housing Commission Board recommended that the Housing Authority approve a three-year contract with two one-year renewal options to Christensen & Spath LLP (Report No. HCR09-045) in an amount not to exceed \$1,800,000 for the first three years and authorize the President and CEO to modify the contract in an amount up to \$100,000 per incident to cover costs associated with non-routine litigation and special assignments at the Housing Commission Board's direction.

On June 16, 2009, the Housing Authority approved the award of a three-year contract with two one-year renewal options to Christensen & Spath LLP in an amount not to exceed \$1,800,000 for the initial three years and authorized the President and CEO to modify the agreement in an amount up to \$100,000 per incident for a maximum of \$200,000 total per year, as needed to cover costs associated with non-routine litigation and special assignments at the Housing Commission Board's direction (Report No. HAR09-020 and Resolution No. HA-1426).

ENVIRONMENTAL REVIEW

The activities described in the report are not a project as defined in California Environmental Quality Act (CEQA) Section 15378(b)(5) as they are administrative activities of government that will not result in direct or indirect physical changes in the environment and, therefore, are not subject to CEQA pursuant to Section 15060(c)(3) of the State CEQA Guidelines. This determination is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. A final reservation of federal funds shall occur only upon satisfactory completion of a National Environmental Policy Act (NEPA) review. A determination has defined the activities contemplated herein, to be categorically excluded from NEPA pursuant to Section 58.34(a)(3) and (4) of Title 24 of the Code of Federal Regulations which was approved by the City of San Diego Planning Department on August 21, 2024.

Respectfully submitted,

George Williams
George Williams
Director
Procurement Operations

Approved by,

Jeff Davis
Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

San Diego Housing Commission

Attachments: 1) Draft contract with Christensen & Spath LLP
2) Draft contract with Aleshire & Wynder, LLP

Hard copies are available for review during business hours at the information desk in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101. Docket materials are available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at www.sdhc.org

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR LEGAL SERVICES

WITH

CHRISTENSEN & SPATH LLP

(More than \$250,000 and Other than Construction or Development)

Contract No. BE-24-04A

This Agreement, entered into this _____ day of _____, 2024

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
Tel.: 619-231-9400

and the Consultant:

CHRISTENSEN & SPATH LLP
401 West A Street, Suite 2250
San Diego, California 92101
Tel.: 619-236-9343

is made in accordance with the following terms and conditions:

101. **Definitions.** When capitalized, the terms used in this Agreement shall have the meanings ascribed thereto by the “Schedule of Definitions,” attached hereto as Attachment A and incorporated herein in full by this reference, and as otherwise defined by this Agreement, unless the context clearly requires otherwise.

102. **Description of Work.** Consultant shall provide services, supplies, and/or materials to the Commission as specified in the Specifications/Scope of Work.

103. **Term of Agreement.** The term of this Agreement shall be September 30, 2024 through September 29, 2026 (the “Initial Term”), as extended pursuant to this Agreement from time to time.

(a) **Extensions.** Provided that Consultant is not in default under the terms of this Agreement, the Commission may extend the term for one or more periods (each such period, an “Extension Period”) totaling no more than ninety (90) days, in a writing signed by the CEO and delivered to Consultant. No single Extension Period shall be less than seven (7) days. The Commission may not extend the term for an Extension Period earlier than sixty (60) days before nor later than eighty-three (83) days after the then-applicable expiration date of the term.

The Commission shall compensate Consultant during such Extension Period on a *pro rata* basis in accordance with Section 104 as in effect on the date of extension of the term in

accordance with this Subsection.

(b) Options. The Commission may also extend the term for three (3) additional one (1)-year periods (each such one-year period, an “Option Period”) by giving written notice thereof to Consultant prior to the expiration of the then-current term of this Agreement. Compensation to Consultant during any Option Period shall be in the amounts and on the same terms and conditions as provided pursuant to this Agreement during the Initial Term.

(c) Extensions and Options. Nothing contained in this Section shall require the Commission to extend the term of this Agreement. The options to extend the term granted in this Section exist in favor of and for the sole benefit of the Commission and may be exercised in the Commission’s sole and exclusive discretion. During any Extension Period or Option Period, all terms and conditions of the Agreement shall remain in full force and effect except as otherwise specified in this Section or any subsequently executed agreement between the Parties.

104. Compensation. The Commission shall compensate Consultant for all services performed and/or supplies and materials supplied pursuant to this Agreement in accordance with the Compensation Terms, which are attached hereto as Attachment D.

(a) Maximum Compensation. Notwithstanding anything in this Section or elsewhere in this Agreement to the contrary, Consultant acknowledges and understands that the Commission shall be under no obligation to compensate or reimburse Consultant for any amounts incurred in excess of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) (“Maximum Compensation”) per year during the Initial Term, or during any Option Period, unless Attachment D provides for greater compensation or reimbursement during such Option Period. Further, Consultant acknowledges and understands that it shall bear the sole responsibility for monitoring its expenditures and ensuring that any amounts incurred pursuant to this Agreement do not exceed the Maximum Compensation. In the event Consultant incurs amounts in excess of the Maximum Compensation, Consultant shall bear sole liability for such amounts. The Commission may authorize an increase in the contract base amount annually, if necessary, in accordance with the Housing Authority-approved delegation of authority level.

(b) Method of Payment. Except as may otherwise be provided by the Compensation Terms, the Commission will endeavor to pay any invoice within thirty (30) days of submission of such invoice, subject to the approval of all amounts therein by the Commission. At a minimum, each invoice shall (i) reference the Contract Number; (ii) reference any associated purchase order numbers; (iii) describe each service performed and/or supply or material supplied in detail and in accordance with the Specifications/Scope of Work; (iv) specify the amount charged for each such service, supply, or material; (v) be accompanied by a certification (on or attached to the invoice) that the payment requested is for work performed in accordance with this Agreement; and (vi) contain such other information or certifications as the Commission may specify in writing from time to time. The Commission, in its sole discretion, may elect not to pay any invoice that fails to comply with the requirements of this Subsection.

105. **Necessary Approvals.**

(a) In the event that the initial amount of this Contract exceeds, or a change order increases the amount of this Contract to an amount that exceeds, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), this Contract must be approved by the Board of Commissioners of the Commission in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract unless and until such approval, if required, is obtained.

(b) In the event that the initial amount of this Contract exceeds, or a change order increases the total amount of this Contract to an amount that exceeds, Five Hundred Thousand and No/100 Dollars (\$500,000.00), this Contract must be approved by the Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract unless and until such approval, if required, is obtained.

106. **Contract Documents.** In addition to this instrument, this Contract includes the Schedule of Definitions, the General Conditions, the Specifications/Scope of Work, the Compensation Terms, the Prevailing Wage Attachment, [and] the COVID-19 Protocols and Acknowledgement, [and] [Insert Other Conditions Attachments], all of which are incorporated herein by this reference, except as to the Prevailing Wage Attachment, which shall only be incorporated in accordance with Section 21 of the General Conditions.

107. **Counterparts; Electronic Execution.** This Agreement may be executed in one or more counterparts and, when and as so executed, all such counterparts taken together shall constitute one and the same agreement. This Agreement may be executed using any “electronic signature” in accordance with California Civil Code section 1633.2.

[Signature Page Follows]

Signature Page to Agreement for Legal Services with Christensen & Spath LLP (Contract No. BE-24-04A):

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written, effective as specified in Section 103.

Consultant:

Christensen & Spath LLP

By: _____
Name: Charles Christensen
Title: Senior Partner/Managing Partner

Date: _____

Commission:

San Diego Housing Commission

By: _____
Name: Jeff Davis
Title: Deputy Chief Executive Officer

Date: _____

By: _____
Name: Suket Dayal
Title: Executive Vice President of Business Administration
and Chief Financial Officer

Date: _____

By: _____
Name: George Williams
Title: Director of Procurement Operations

Date: _____

Attachment A Schedule of Definitions

1. “Agreement” or “Contract” means the main instrument to which this Attachment A is attached and all exhibits or attachments thereto to the extent the same have been incorporated and as the same may be amended from time to time.
2. “Applicable Law” means all applicable federal, state, and local constitutions, treaties, laws, statutes, ordinances, regulations, rules, orders, decrees, permits, resolutions, requirements, and policies of the United States of America, the State of California, the City, the Commission, or any other governmental authority of competent jurisdiction.
3. “Authority” means the Housing Authority of the City of San Diego.
4. “CEO” means the Chief Executive Officer of the Commission or the CEO’s lawful designee.
5. “City” means the City of San Diego.
6. “Claims” means damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (including Consultant’s employees, agents, and subConsultants) and damage to real or personal property, or any other losses, damages, or expenses.
7. “Commission” means the San Diego Housing Commission. When this Agreement specifies an action to be taken or withheld by the Commission, “Commission” shall include the authorized officers, employees, and agents of the Commission.
8. “Compensation Terms” means the terms and conditions specified in Attachment D to the Agreement.
9. “Conflict” means circumstances, known to the Consultant, that would conflict with Consultant’s performance of the terms of this Agreement or place the Commission and a prospective client of Consultant in adverse, hostile, or incompatible positions wherein the interests of the Commission, the Authority, or the City may be jeopardized.
10. “Contract Number” means the number specified next to the phrase “Contract No.” at the top of this Agreement.
11. “Consultant” means the Party other than the Commission identified above, and, unless the context requires otherwise, such Party’s officers, directors, members, managers, partners, limited partners, employees, agents, and subconsultants.
12. “COVID-19 Protocols and Acknowledge” means the terms and conditions specified in Attachment F to the Agreement.

13. “Extension Period” shall have the meaning ascribed thereto by Section 103(a).
14. “General Conditions” means the terms and conditions contained in Attachment B to the Agreement.
15. “HUD” means the United States Department of Housing and Urban Development and any successor agency thereto.
16. “Indemnitee” means the Commission, the Authority, the City, or any commissioner, officer, employee, member, council member, or agent thereof.
17. “Inspecting Agency” means the Commission and any of its duly authorized representatives.
18. “Initial Term” shall have the meaning ascribed thereto by Section 103.
19. “Maximum Compensation” shall have the meaning ascribed thereto by Section 104.
20. “Option Period” shall have the meaning ascribed thereto by Section 103(b).
21. “Parties” means the Commission and Consultant, collectively, and “Party” means either of the Parties, individually.
22. “Project Records” means all administrative and financial records required to be prepared or gathered by Consultant pursuant to this Agreement, including, but not limited to, all books, papers, invoices, receipts, accounting records, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigations, videos, work product, and any other documents, data, and records pertaining to this Agreement.
23. “Specifications/Scope of Work” means the terms and conditions specified in Attachment C to the Agreement.

Attachment B
General Conditions

1. **Status of Consultant.** Consultant acknowledges that Consultant is an independent Consultant and is not an agent or employee of the Commission, the Housing Authority, the City, HUD, or any other governmental authority.

(a) Any term of this Agreement that could be construed to give the Commission a right to direct Consultant concerning the details of performing its obligations and duties hereunder or to exercise any control over such performance shall be construed to pertain only to the Commission's direction concerning the expected results of performance under this Agreement.

(b) Consultant shall have no authority to bind the Commission in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the Commission, whether by contract or otherwise, unless such authority is expressly granted pursuant to this Agreement or in a writing signed by the Commission.

2. **Designated Representative.** Consultant shall designate a representative with the authority to bind Consultant with respect to decisions to be made pursuant to this Agreement. Consultant may designate a new representative upon ten (10) days written notice to the Commission.

3. **Ownership of Materials and Documents.** Any and all sketches, drawings, and other materials or documents prepared by Consultant pursuant to or in connection with this Agreement shall be the property of the Commission from the moment of their preparation, and Consultant shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. Consultant shall have the right to make duplicate copies of such materials and documents for its own file or for other purposes in compliance with Section 4.

4. **Non-disclosure.** The designs, plans, reports, investigations, materials, and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate or electronic copies however and wherever stored) shall not be disclosed to any non-party, except as previously authorized by the Commission in writing. Furthermore, Consultant shall not disclose to any nonparty any information regarding the activities of the Commission during the term of this Agreement or at any time thereafter except as previously authorized by the Commission in writing. Consultant shall use reasonable care to prevent the unauthorized disclosure of information subject to this Section. If requested by the Commission, Consultant shall negotiate the terms of and enter into a formal non-disclosure agreement with the Commission in form and substance reasonably satisfactory to the Commission.

(a) **Exception.** Nothing in this Section shall apply to the disclosure of any information that:

(i) Was publicly known, or otherwise known to Consultant, at the time the information was first provided to Consultant by the Commission;

(ii) Subsequently becomes publicly known through no act or omission of Consultant;

(iii) becomes known to Consultant from a third party other than the Commission, provided Consultant has not induced such disclosure in violation of law or in breach of any agreement of such third party with the Commission if such agreement was known to Consultant or should have been known to Consultant through the exercise of due diligence;

(iv) is considered a public record pursuant to the California Public Records Act, codified at California Government Code sections 6250 et seq.; or

(v) is required to be disclosed pursuant to law or a court order, provided that Consultant gives notice of such requirement to the Commission prior to such disclosure, if permitted by law; such shall be reasonably calculated to allow the Commission to seek a protective order or other appropriate legal protection against disclosure prior to the disclosure.

5. **Consultant's Indemnification Liability.** Consultant agrees to and shall indemnify, hold harmless, and defend, with counsel of Indemnitees' choosing, at Consultant's sole cost and expense, Indemnitees from and against any and all Claims arising directly or indirectly out of the acts or omissions of Consultant (irrespective of culpability), all obligations of this Agreement, or out of the operations conducted by Contract pursuant to this Agreement, including, but not limited to, those in part due to the negligence of any of Indemnitees, except as to liabilities, claims, judgments or demands arising through the sole negligence or more culpable act or omission of any Indemnitee.

6. **Insurance Requirements.** Consultant shall not commence work until Consultant has obtained, at its sole cost and expense, all insurance required pursuant to this Section and comply with the other requirements of this Section.

(a) **Requirements for All Policies.** All commercial general liability, commercial automobile liability, and errors and omissions insurance policies required pursuant to this Section shall comply with the following:

(i) Each policy shall contain an endorsement stating that the policy may not be cancelled or materially altered or amended except upon written notice to the Commission via certified mail, deposited at least thirty (30) days prior to the effective date thereof.

(ii) Each policy shall contain an endorsement adding the Commission, the Authority, and the City, and their respective elected and appointed officials, officers, agents, employees, and representatives as additional insureds.

(iii) Each policy shall contain an endorsement stating it is primary and non-contributory to any insurance that may be carried by the Commission, the Authority, or the City.

(iv) Each policy shall contain an endorsement waiving subrogation against the Commission, the Authority, and the City, and each of their respective elected or appointed commissioners, officers, employees, members, council members, or agents for losses paid by Consultant's insurers that arise out of or in relation with Consultant's performance under this Agreement.

(v) No policy may contain an endorsement or other language limiting liability in scenarios in which an insured has a dispute with another insured or limiting contractual liability.

(b) Commercial General Liability Insurance. At all times during the term of this Agreement, Consultant shall maintain commercial general liability insurance, written on an ISO occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of at least \$1,000,000 per occurrence, subject to an annual aggregate of at least \$2,000,000. In addition to the endorsements required by Subsection (a), the policy shall contain an endorsement excluding all costs of defense from the policy limits.

(c) Commercial Automobile Liability Insurance. At all times during the term of this Agreement, Consultant shall maintain commercial automobile liability insurance for all of Consultant's automobiles (including owned, hired, and non-owned automobiles) that will be used in the performance of Consultant's duties and obligations pursuant to this Contract, written on an ISO form CA 00 01 12 90 or later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage, with a combined single limit of at least \$1,000,000 per occurrence. The insurance policy shall reflect coverage for any automobile ("any auto").

(d) Errors and Omissions Insurance. At all times during the term of this Agreement, Consultant shall maintain errors and omissions liability insurance in the amount of at least \$1,000,000 per occurrence.

(e) Workers' Compensation Insurance. At all times during the term of this Agreement, Consultant shall maintain workers' compensation insurance for Consultant's employees who perform Consultant's duties and obligations under this Agreement, to the extent and in the minimum amount required by the California law, with a minimum of \$1,000,000 of employer's liability coverage.

(f) Additional Requirements. In addition to the foregoing requirements, Consultant shall comply with the following requirements:

(i) Carriers. All carriers shall have a rating of "A-" or better as determined by A.M. Best Company, Inc.'s Financial Strength Ratings, shall be licensed to do business in the State of California, and shall be subject to the approval of the Commission. The Commission will accept non-admitted "surplus lines" carriers only if licensed to do business in the State of California and listed on the current "List of Approved Surplus Lines Insurers" maintained by the California Department of Insurance.

(ii) Certificate Holders. The Commission, the Authority, and the City shall be named as certificate holders on all insurance policies.

(iii) Timing. All insurance required by this Section must be bound and evidenced by certificates of insurance delivered to the Commission prior to the commencement of the Initial Term and shall remain in full force and effect during the entire term of the Agreement, as extended from time to time, and for such term thereafter as the Commission may reasonably specify.

(iv) Deductibles. All deductibles and retentions shall be Consultant's sole responsibility.

(v) No Limitation on Liability. Consultant's liability shall not be limited in any way as a result of the insurance policies required by this Section.

(vi) No Increased Exposure. Consultant shall not modify any policy or endorsement required by this Section if doing so would increase the Commission's exposure to loss during the term of this Agreement.

(vii) Additional Insurance. Consultant may obtain additional insurance not required by this Agreement.

(viii) Expiration. Prior to the expiration of an insurance policy required by this Section, Consultant shall provide the Commission with certificates evidencing that new or extended policies have been obtained that continue to meet the requirements of this Section. Consultant shall provide all endorsements for any new or extended policy within fifteen (15) days of the expiration date of such policy's predecessor.

(g) Commission Review of Policies. Upon the Commission's request, Consultant shall promptly submit to the Commission a copy of any policy required by this Section. If the Commission determines that any such policy is insufficient in light of the risk posed by Consultant's performance under the Agreement and in consideration of any change in relevant circumstances, the Commission may unilaterally amend this Agreement to add new coverages, increase coverage limits, reduce deductibles and retentions, or add or remove endorsements, as determined in the Commission's reasonable discretion, and Consultant shall comply with any the Agreement as amended.

7. **Insurance Proceeds**. If Consultant receives insurance proceeds when property owned or provided by the Commission, or procured using funds provided pursuant to this Agreement, has been lost or damaged by fire, casualty, or natural disaster, Consultant agrees to apply those proceeds to the cost of replacing such property.

8. **Casualty, Fire, Natural Disaster, and Misused Property**. When property owned or provided by the Commission, or property procured using funds provided pursuant to this Agreement, is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of such property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. If any damage to such property results from Consultant's acts or omissions, Consultant agrees to restore such property to its original condition.

9. **Correction of Work.** Performance of the terms of this Contract shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the Commission, provided such work is due to the acts or omissions of Consultant and has not been accepted in writing by an authorized representative of the Commission.

10. **Compliance with Laws and Policies.** Consultant shall comply with Applicable Law. In addition, Consultant shall immediately comply with all directives issued by the Commission or the City, or their duly authorized representatives, under authority of any Applicable Law. Failure by Consultant to comply with Applicable Law shall be deemed a material breach of this Agreement and shall be grounds for the Commission to terminate this Agreement immediately upon written notice to Consultant.

11. **California Equal Opportunity Requirements.** During the performance of this Contract, Consultant agrees as follows:

(a) Consultant and its subconsultants shall not deny this Contract's benefits to any person on the basis of race (such as hair texture and protective hairstyles, including braids, locks, and twists), religious creed (including religious belief, observance, and practice, and dress or grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (including pregnancy, childbirth, breast feeding, and related medical conditions), gender (including sex stereotyping), gender identity, gender expression, age (40 or older), sexual orientation, or military and veteran status, reproductive health decision making (including a decision to use or access a particular drug, device, product, or medical service for reproductive health), reproductive loss, use of cannabis off the job and away from the workplace, or any other characteristic protected under applicable federal, state, or local law; nor shall they discriminate unlawfully against any employee or applicant for employment based on the protected characteristics outlined above. Consultant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) Consultant shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code § 12900 et seq.), the regulations promulgated thereunder (2 C.C.R. §§ 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the California Government Code (Gov. Code, §§ 11135-11139.5), and any regulations or standards adopted by the Commission to implement such article.

(c) Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the Commission upon reasonable notice at any time during normal business hours, but in no case upon less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as either shall require ascertaining compliance with this clause.

(d) Consultant and its subconsultants shall give written notice of their obligations under this Section 11 to labor organizations with which they have a collective bargaining or other agreement.

(e) Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

12. **Records.** Consultant shall take reasonable measures to maintain the integrity and accuracy of Project Records and shall comply with the terms of this Section.

(a) Accounting Records. In accordance with generally accepted accounting principles maintained on a consistent basis, Consultant shall maintain full and complete records of the cost of services performed pursuant to this Agreement, utilizing internal controls and maintaining appropriate source documentation for all costs incurred.

(b) Inspection and Photocopying. At any time during normal business hours and as often as requested, during the term of this Agreement for so long as storage is required pursuant to Subsection (d) below, Consultant shall permit any Inspecting Agency to inspect and photocopy, at Consultant's offices or such other reasonable location requested by any of the foregoing, all Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and evaluating Consultant's performance of its obligations and duties under this Agreement. An Inspecting Agency may retain copies of Project Records if the Inspecting Agency deems such retention necessary in its sole discretion.

(c) Copies of Records. Upon any request by an Inspecting Party for copies of Project Records, Consultant shall submit exact duplicates of the originals of the requested Project Records to such Inspecting Party for the purposes described above in Subsection (b).

(d) Storage. Consultant shall store all Project Records for a period of not less than five (5) years after the Consultant's final submission of all required reports under this Agreement, or five (5) years after the Commission and Consultant make all final payments, or until all pending matters including audits and litigation have been finally resolved, whichever period is longest. All Project Records shall be kept at the Consultant's regular place of business. After the storage period has expired, Consultant shall provide each Inspecting Agency with thirty (30) calendar days written notice of Consultant's intent to dispose of any Project Records. During such 30-day period, Consultant shall provide any and all Project Records to any Inspecting Agency upon such Agency's request, and Consultant shall refrain from disposing of specified Project Records if requested by any Inspecting Agency.

(e) Flow Down. Consultant shall include the terms of this Section, including the terms of this Subsection, in each of its subcontracts and shall cause each of its subconsultants to do the same.

13. **Subcontracting.** No performance required of Consultant by this Agreement may be subcontracted without the prior written approval of the Commission, which it may withhold in its sole and absolute discretion. Any putative subcontracting of Consultant's rights, obligations, and/or duties under this Agreement shall not create a contractual relationship between the Commission and any putative subconsultant, and any such subcontracting shall be null and void. Any subcontracting in violation of this Section shall be grounds for immediate termination of this Agreement upon written notice to Consultant, at the sole discretion of the Commission.

(a) Requesting Consent. In order to obtain consent to subcontract, Consultant shall submit to the Commission a list of all potential subconsultants and a description of work to be performed by each subconsultant. Once this list has been approved, no changes to the list will be allowed except upon written approval of the Commission.

(b) Consultant's Liability. Consultant shall be fully liable for the acts and omissions of its subconsultants, and their employees, agents, and Consultants, as though such acts and omissions were those of Consultant itself.

14. Assignment. Consultant shall not assign or transfer any interest in this Agreement (whether by assignment or novation) without the express prior written consent of the Commission. Notwithstanding the foregoing, no such approval shall be required for the assignment of claims for money due or to become due to Consultant from the Commission to a bank, trust company, or other financial institution, or to a receiver or trustee in bankruptcy, but Consultant shall promptly provide written notice thereof to the Commission.

15. Preference for Domestic Materials. Except as otherwise provided by California Government Code sections 4300 et seq., wherever possible in the performance of this Agreement, only unmanufactured materials produced in the United States, and only manufactured materials manufactured in the United States, substantially all from materials produced in the United States, shall be used in the performance of the Agreement.

16. Preparation of Written Reports or Documents. Provided that the total cost for work performed by Consultant pursuant to this Agreement exceeds \$5,000, any document or written report prepared in whole or in part by Consultant for or under the direction of the Commission shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

17. Termination. The Commission may terminate this Agreement, in whole or in part, effective thirty (30) days after delivering written notice to Consultant, if the Commission determines such termination is in the Commission's interest. If this Agreement is terminated, the Commission shall be liable only for amounts due for services, supplies, and/or materials rendered and/or supplied before the effective date of such termination. Additionally, the Commission may terminate this Agreement immediately upon written notice to Consultant as a result of cessation of funding of or lack of adequate appropriations for any federal, state, or local program that provides funds used by this Agreement. The termination rights in this Section are in addition to and cumulative with any other rights of termination located elsewhere in this Agreement.

18. Patents and Copyrights. The Commission hereby reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for government purposes, any patents and copyrights in any work developed under this Agreement.

19. Drug-free Workplace. Consultant certifies to the Commission that it will provide a drug-free workplace and will:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance as defined in schedules I-V of section 202 of the federal Controlled Substance Act is prohibited in Consultant's workplace; such statement shall specify the actions that will be taken against employees for violation of such prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace.
- (ii) Consultant's policy of maintaining a drug-free workplace.
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs.
- (iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) Post the statement required by Subsection (a) in a prominent place at Consultant's main office and at any job site large enough to necessitate an on-site office.

20. **Plan of Operations.** Consultant shall submit to the Commission a complete plan of operations. Consultant shall promptly notify the Commission of any changes to the plan of operations.

21. **Labor Law.** Consultant shall be fully aware of and shall comply with each and every requirement of federal, state, and local law regarding the provision of labor concerning this Agreement, including but not limited to, the payment of applicable prevailing wages, if either or both boxes are checked below. In the event both boxes are checked below, Consultant acknowledges that it is solely responsible for determining which prevailing wage terms apply to the work performed under this Agreement.

If checked, additional state prevailing wage terms are contained in Attachment E, which is hereby incorporated in this Agreement in full by this reference.

If checked, additional federal prevailing wage terms are contained in Attachment E, which is hereby incorporated in this Agreement in full by this reference.

22. **Entire Agreement.** This Agreement represents the sole and entire Agreement between the Commission and Consultant and supersedes all prior and contemporaneous negotiations, representations, agreements, arrangements, or understandings, either oral or written, between or among the Parties, relating to the subject matter of this Agreement, except as expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party.

23. **Waiver.** No failure of a Party to insist upon the strict performance by the other Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy

consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement.

24. **Successors in Interest.** The rights, duties, and obligations of this Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns.

25. **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiation of the terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each Party participated in the negotiation or drafting of the Agreement.

26. **Signing Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that such individual is authorized to execute and deliver this Agreement on behalf of such entity in accordance with duly adopted resolutions or other authorizing actions that are necessary and proper under such entity's governing documents, and that this Agreement is binding upon such entity in accordance with its terms. Upon request, Consultant shall provide the Commission with evidence, satisfactory to the Commission, that such individual's authority is valid and that such entity has been duly formed and is in good standing in the jurisdiction of its formation, and that such entity is authorized to do business in the State of California.

27. **Conflict Between Agreement and Attachments.** To the extent that the terms of the Agreement and the attachments conflict, the construction most favorable to the Commission shall apply.

28. **Partial Invalidity.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

29. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its principles regarding the conflict of laws. The courts of the State of California shall have exclusive jurisdiction over any dispute, claim, or matter arising out of or related to this Agreement, and venue shall lie exclusively in the Central Division of the Superior Court of the County of San Diego, California.

30. **Headings.** All headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

31. **Attorney's Fees and Costs.** In any action involving breach, interpretation, and/or enforcement of the terms of this Agreement, the prevailing party shall be entitled to its costs, expert witness fees, if any, and reasonable attorneys' fees.

32. **Remedies Upon Default.** The failure of Consultant to perform each and every covenant of

Consultant in a timely manner, and in a good and workmanlike manner, and in strict compliance with the requirements of the Specifications/Scope of Work (which, in the case of goals and outcomes shall be construed to require good-faith efforts to meet such goals and outcomes), shall constitute a breach under the terms of the Agreement. For any breach that does not jeopardize the health, safety, or general welfare of Consultant's clients or members of the public, the Commission shall give seven (7) days written notice to Consultant, detailing the nature of such breach and requiring Consultant to cure such breach within such seven-day period. In the event that such a breach is not timely cured, the Commission shall have all remedies available at law or in equity, including, without limitation, the right to terminate the Contract, the right to cause another Consultant or the Commission to take over the duties under the terms of the Contract, the right to sue for damages, specific performance or injunctive relief, and any other remedies available at law or in equity. In the event that the health, safety, or general welfare of Consultant's clients members of the public is jeopardized, the Commission shall have the right to terminate the Agreement immediately upon written notice to Contract. In addition, in the event of an uncured breach or a breach without the right to cure, the Commission shall have the right to recoup any and all funds that may have been advanced to the Consultant and that have not been earned.

The failure of the Commission to make a timely payment to Consultant under this Agreement shall constitute a breach under the terms of the Agreement. Consultant shall give seven (7) days written notice to cure any such breach to the Commission. In the event that the breach is not cured, Consultant shall have the right to terminate this Agreement.

33. **Notices.** All notices required or permitted to be given by a Party pursuant to this Agreement shall be deemed delivered (i) immediately upon receipt if delivered personally, (i) the next business day if delivered to a nationally recognized overnight carrier with charges prepaid prior to the cutoff for next-day delivery specified by such carrier, or (ii) three (3) business days the date of deposit with the United States Postal Service for delivery via certified mail, postage prepaid, return receipt requested, and in all cases addressed to the other Party at such Party's addresses as set forth at the beginning of this Agreement, or at such other address as such Party shall designate in writing to the other Party by written notice given as specified in this Section from time to time.

34. **Audit Requirements.** Consultant shall comply with the audit requirements of 2 C.F.R. pt. 200, as amended, if no audit requirements are specified in the award of the Contract. Otherwise, Consultant shall comply with the audit requirements specified in the award of the Contract.

35. **Consultant Evaluation Program.** An essential component of public works contract administration is the regular evaluation and documentation of Consultant performance. During the course of the Agreement, the Commission shall conduct performance evaluations to document Consultant's record of complying with the terms of the Agreement. The Commission shall proactively monitor and manage the performance of Consultant during the term of the Agreement and shall create an objective record of performance that can and may be utilized when evaluating Consultant as a responsible bidder for future bid and proposal submissions, extension or renewal consideration, or termination due to unsatisfactory performance. Consultant evaluation program and appeal procedures are located on the Commission's website at <https://www.sdhc.org/doing-business-with-us/contracting-and-procurement-services/vendor-information/>, as amended from time to time, and are incorporated herein in full by this reference.

36. **Interests of Current or Former Commissioners, Officers, and Employees.** No commissioner, officer, or employee of the Commission, no member of the governing body of the locality in which the work performed pursuant to this Agreement is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of such work, shall, during such person's tenure, or for one (1) year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this Section shall result in unilateral and immediate termination of this Agreement by the Commission upon written notice to Consultant.

37. **Conflicts of Interest; Disclosure of Economic Interests.** Consultant and its subconsultants shall comply with all applicable federal, state, and local conflict of interest laws and regulations, including, but not limited to, the Commission's Conflict of Interest Code (for purposes of this Section only, the "Code"), a current copy of which may be requested from the Commission. In addition to the other requirements of the Code, and subject to the Commission's determination in writing in accordance therewith, Consultant shall cause each of its officers, directors, partners, limited partners, members, managers, employees, and agents that is determined to be a "consultant" pursuant to the Code to file a completed and executed Statement of Economic Interests (Form 700) with the City's Clerk's Office at the following times:

- (a) No later than thirty (30) days after the execution of this Agreement;
- (b) Annually on or before April 1 of each year;
- (c) Within thirty (30) days after full performance of this Agreement, as determined by the Commission in its sole discretion;

In addition, the Contractor shall complete the Ethics Commission's ethics orientation training within 90 days of assuming office and on a biennial basis.

Consultant shall cause each designated consultant to email a copy of each filed Form 700 to Cassie Li, Legal Contracts Analyst, at cassiel@sdhc.org within five business (5) days of filing.

Consultant shall provide all assistance requested by the Commission to determine whether any of the above-specified individuals qualifies as a "consultant." Additionally, upon the cessation of a consultant's legal relationship with Consultant, Consultant shall notify such consultant of the consultant's responsibility to file a Form 700 with the City's Clerk's Office within thirty (30) days of such termination or expiration.

Any violation of the Code or this Section shall be deemed a material breach of this Agreement and shall entitle the Commission to terminate this Agreement immediately upon written notice to Consultant.

Consultant Initial: _____

38. **Procedure for Handling Conflicts of Interest.** Except upon the prior, written consent of

the Commission, which it may withhold in its sole and absolute discretion, and in compliance with the other terms of this Section, Consultant shall not perform services of any kind for any person or entity during the term of this Agreement if so doing appears reasonably likely to result in a Conflict. Notwithstanding the foregoing, this Section shall not apply to any of Consultant's business arrangements with clients that began prior to the execution of this Contract.

(a) Meet and Confer. Consultant shall promptly notify the Commission in writing in the event a Conflict appears reasonably likely. Thereafter, Consultant shall meet and confer with the Commission to agree upon terms to apply to its arrangements with an affected prospective client, and/or its arrangements with the Commission, in order to continue to perform services for such client and the Commission without compromising the interests of either. Should no agreement regarding modification be reached within a reasonable time thereafter, or should the prospective client refuse to agree to such modification, the Commission may terminate this Agreement immediately upon written notice to Consultant.

(b) When Consent Is Given. If and when the Commission has consented as provided above in this Section, Consultant shall use best efforts to avoid performance on behalf of the affected client that would in any manner undermine Consultant's effective performance of the terms of this Agreement. Consultant agrees to alert every prospective client for whom consent to a Conflict is required to the existence of the terms of this Section and to include language in its agreement with such client that will enable Consultant to comply fully with such terms.

(c) Termination. Failure to follow the procedures of this Section shall entitle the Commission to terminate this Agreement immediately upon written notice to Consultant. Additionally, the Commission may unilaterally and immediately terminate this Agreement upon written notice to Consultant if Consultant employs an individual who, within twelve (12) months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Consultant.

Attachment C Specifications/Scope of Work

I. SUMMARY

The Scope of Services detailed herein is not intended to be an all-inclusive listing of the legal services that the Commission may require Contractor to provide. The below listed service areas are intended to be a representative listing of service areas that the Commission has historically required legal services. The service areas include, but are not limited to:

The preparation and review of legal documents and papers; rendition of advice and assistance to the departments and employees of the Commission; attendance at meetings; preparation and review of resolutions and related documents; review and approve minutes, Board reports of the Commission; legal review, advise guidance regarding the Commission's contractual solicitations, contracting processes, procedures and policies; consultation with parties having dealings of a legal nature with the Commission; supervision as to legality of the official acts and minutes of the Commission; rendition of legal opinions on all matters submitted by the Commission, including questions regarding conflicts of interest and Brown Act matters. Required legal services are further detailed below.

Contractor will provide legal services in connection with one or more of the following legal specialties:

- General Counsel**
- Housing Programs Counsel**
- Real Estate Counsel**
- Procurement and Contracting Counsel**
- Human Resources Counsel**

II. SCOPE OF REQUIRED SERVICES

1. Administration, including, but not limited to:
 - (a) Review Board meeting agendas to ensure compliance with the California Open Meeting Law.
 - (b) Routine communications via phone and/or emails will be responded to within 24 hours, except for weekends and holidays.
 - (c) Work products shall be provided within 48 business hours unless a different deadline is agreed upon between the firm and the President & CEO or designee.
 - (d) Monthly summary reports of the major activities/actions/outcomes (notated by division), etc. of the firm will be submitted to the President & CEO by no later than the 10th of the following month.

- (e) Monthly itemized billing shall be submitted in accordance with the Commission's direction.
 - (f) Responding to emergency inquiries.
2. Real Estate and Housing Law. Perform all legal services in connection with and be responsible for all legal phases of the research discovery, planning, development, occupancy, financing and compliance of all affordable rental & for-sale housing projects and programs to be undertaken by the Commission. Such services include, but are not limited to, the following:
- (a) Assist in the acquisition, disposition, and management of real estate properties owned or operated.
 - (b) Provide legal support for property development, financing, and construction projects.
 - (c) Handle legal matters related to tenant-landlord relationships, evictions, and housing programs.
 - (d) Provide legal advice on Housing Authority owned or managed developments, including bond and tax credit financed developments.
 - (e) Provide legal advice and assistance with Landlord/tenant issues, including but not limited to, lease preparation, lease enforcement and interpretation and premise liability; insurance and insurance claims, evictions and attendance at court proceeding when requested by the Commission.
 - (f) Perform all legal services related to all affordable housing program restrictions and compliance, including negotiation and documentation of affordable housing restrictions and provisions of adequate performance security, negotiation and drafting of affordable housing restrictions, covenants and liens, enforcement of affordable housing agreements, negotiation and documentation of compliance "settlements", and general consultation related to potential program changes.
 - (g) Provide, as necessary, legal services in preparing such documents as may be necessary in connection with exceptions and variances from zoning, building and inspection ordinances and regulations; appearance and representation of the Commission before public bodies and in court in all litigated matters (except as "unusual" litigation as hereinafter defined.) Litigated matters include but are not limited to the following matters: Defending Writ of Mandate in Section 8 matters; Construction Defect Litigation; Insurance Claims, Judicial Foreclosure matters, including the appointment of receivers, if necessary or appropriate; Condemnation matters; Commercial litigation; Appellate work relating to litigated matters, if necessary; Employment related litigation; 42 USC 1983 complaints; Payroll liability issues.
 - (h) Provide, as necessary, legal services in securing the approval of local public entities such as the approval of the local governing body of applications for preliminary loans, of local cooperation agreements and of low-income projects.
 - (i) Provide, as necessary, legal services in acquiring any interest in real property; rendition of advice and assistance in the preparation of necessary documents regarding such acquisition; approval of title insurance policies; rendition of legal opinions regarding title

or an interest in real property acquired by the Commission; and in projects to be acquired by the turnkey method to assist in the negotiation, drafting and review of procedures and documents involving the selection of the developer, the entering into of letters of intent and contacts of sale, the acquisition of title, and participation of closing or "settlement" transaction upon completion of the turnkey project.

- (j) In any project being constructed through the conventional competitive bidding procedures, Counsel is to provide review of documents relating to the award of developer collaborative solicitations, construction contracts, including the construction contract, specifications and performance and payment bonds.
 - (k) Provide, as necessary, legal services in connection with the leasing or subleasing of property, the entering into a variety of instruments including but not limited to agreements to lease, options to purchase property and the sale of dwelling units to tenants.
 - (l) Prepare and review of contracts with owners, surveyors, land negotiators, cost estimators, brokers, architects, appraisers, attorneys and all parties having dealings of a legal nature with the Commission regarding planning, development and occupancy of a project; review and legal approbation for such contracts and payments thereon; handling of all other legal matters arising under such contracts with the Commission.
3. Housing Programs and General Compliance: Services include, but not limited to, the following:
- (a) Regulatory and statutory requirements, and flexibilities afforded under the Department of Housing and Urban Developments Moving to Work (MTW) Demonstration Program.
 - (b) Section 3 and Labor Compliance Programs
 - (c) General Section 8 Housing Choice Voucher Program, including HUD special purpose vouchers expertise and legal assistance. This will include applicable HUD CFR regulations related to tenant and project-based housing choice voucher program regulations and requirements.
 - (d) Local, state and federal regulations governing all areas of housing and homelessness related programs administered and operated by the Commission.
 - (e) Compliance with deed restricted affordable housing covenants.
 - (f) Fair Housing issues, including claims involving violations including but not limited to the Fair Housing Act, ADA and Section 504 or the Rehabilitation Act.
 - (g) Provide legal advice and assistance to the Commission's governing body and staff on all legal matters affecting such projects and programs.
 - (h) Provide, as necessary, legal services in the preparation of application for local, federal and/or state financial assistance/grants and the preparation and adoption of development programs, resolutions and policies necessary for the establishment of a complete tenant service and operation program.
 - (i) Provide, as necessary, legal services in the preparation of application for local, federal and/or state financial assistance/grants and the preparation and adoption of homeless services programs, resolutions and policies necessary for the establishment of, oversight administration of and direct services of homelessness services programs.

4. Development/Modernization program: Services include, but not limited to, the following:
 - (a) Real estate transactions.
 - (b) Zoning, building and inspection codes and regulations.
 - (c) Court proceedings.
 - (d) Construction and due diligence contracts.
 - (e) Property, Purchase, Sale and Lease agreements.
 - (f) Partnership development and contract documents.
 - (g) Land use and development policies.
5. Compliance, Equity Assurance and Procurement Operations Legal Services: Services include, but not limited to, the following:
 - (a) Review of identified solicitations and contracts for the procurement of goods, equipment, services, properties and construction projects.
 - (b) Risk and liability exposure issues.
 - (c) Contractual conflicts.
 - (d) Compliance with federal, state and local codes, regulations and requirements.
 - (e) Assist with the preparation of Commission contract and procurement policies and procedures.
 - (f) Construction contract and procurement issues, including claims involving payment and performance bonds, change order requirements, owner liability and various procurement issues.
 - (g) Labor Compliance, prevailing wage and Section 3 issues.
 - (h) ADA and Section 504 issues.
 - (i) Diversity, equity and inclusion program development matters.
6. Legal representative of the Commission: Services include, but not limited to, the following:
 - (a) Appearance for and representation of the Commission at judicial proceedings involving landlord-tenant issues; contractual disputes with contractors, etc.
 - (b) Defending the Commission in or initiating on its behalf, breach of contract actions that will not require or involve complex litigation.
 - (c) Referring legal matters to the Commission's insurance carrier for resolution and/or defense.
 - (d) As directed by the Commission, the potential supervising, managing or otherwise coordinating all legal services provided on behalf of the Commission.
 - (e) Attendance and representation of the Commission at administrative meetings, hearings, quasi-judicial forums, etc. on the federal, state and local levels.

- (f) Preparation and/or review of Commission contracts, inter-agreements and memorandums of understanding as requested by Commission staff.
 - (g) Review of Commission's policies and procedures to determine compliance with applicable federal, state and/or local law.
 - (h) Preparation, review and/or modification of legal documents utilized by the Commission in the course of business to ensure and/or determine compliance with applicable federal, state and local law. These documents may include Board resolutions and meeting minutes, lease agreements, employment applications/forms and housing program forms and notices.
 - (i) Attendance and participation at meetings about and/or with entities having legal business with the Commission.
 - (j) Risk and liability exposure issues.
 - (k) Conflicts of interest.
 - (l) Clarification regarding general legal issues as they arise.
 - (m) Provision of legal opinions on various subjects.
 - (n) At the request of the President & CEO or designee, assist in selection of attorneys needed in specialized fields of practice such as environmental law, bankruptcy law, and civil rights and construction law.
7. General legal services for personnel and labor relations:
- (a) Personnel advisory and related employment support consultation, to include interpretation of state, federal and local regulations, personnel policies, memorandum of understanding and preparation of legal opinions and documents.
 - (b) Scope of services may include, but not limited to, legal representation of the Commission during labor union negotiations. [Note: Commission office, clerical and technical employees are represented by one (1) bargaining unit: Service Employee International Union Local 221. The executive, management, supervisory and professional employees are not union represented.]
8. Other legal services that the Commission may have need of during the term of the Agreement.

Attachment D Compensation Terms

Consultant must complete the San Diego City's mandatory form 700 filing and its associated ethics training before submitting invoice for payment.

Hourly Rates of Compensation:

Partner: \$275.00

Associate: \$235.00

Paralegal: \$125.00

Hourly rates are fixed for the initial term. Hourly rates are reviewed annually thereafter, and when appropriate, adjusted to reflect increases in inflationary factors. Any increase must be approved by the Commission and shall not exceed the maximum of 5% per annum.

Extraordinary Expenses of Other Direct Costs:

| Description of Cost Item | Cost of Item | Notes/Comments/Conditions |
|--------------------------|-----------------|---------------------------------|
| Copies | \$0.10 per page | Or actual cost if less |
| U.S. Postage | Actual Cost | Will be billed at cost |
| Travel | Actual Cost | As approved by SDHC – no markup |
| Process Servers | Actual Cost | Will be billed at cost |
| Couriers | Actual Cost | Will be billed at cost |
| Telephone | No Charge | No Charge |
| Overnight Delivery | Actual Cost | Will be billed at cost |

Contractor shall be compensated for allowable Other Direct Costs (ODCs) at cost with no mark up. All ODCs must be billed at actual cost as documented by receipt & subject to Commission pre-approval. ODCs shall not exceed the costs established by the United States General Services Administration (GSA) for San Diego, California at the following website:

<http://www.gsa.gov/portal/category/100120>

Attachment E
Prevailing Wage Attachment (Not Applicable)

DRAFT

Attachment F
COVID-19 Protocols and Acknowledgment

Notice and Acknowledgment Regarding Operations During COVID-19 Pandemic

The Commission hereby notifies Consultant that it is the Commission’s policy to take all reasonably necessary and legally mandated precautions to safeguard the health, safety, and welfare of all persons that enter onto property owned or operated by the Commission or any of its affiliates (“Commission Properties”).

In pursuit of that policy, Consultant and all of its subConsultants shall take all reasonably necessary and legally mandated precautions to comply with mandatory guidance and regulations promulgated by local, state, and federal public health authorities in the performance of work under this Contract. This includes, but is not limited to, practicing recommended social distancing and wearing approved facial coverings. Consultant and its subConsultants shall require all persons performing work on Commission Properties to wear an approved facial covering at all times while indoors and, when outdoors, any time recommended social distance cannot be maintained. In addition, the Commission strongly recommends Consultant and its subConsultants follow all other public health guidance related to the COVID-19 pandemic that is issued by local, state, and federal public health authorities, including, but not limited to, the California Department of Public Health, the U.S. Centers for Disease Control, the Division of Occupational Safety and Health of the California Department of Industrial Relations, and the federal Occupational Safety and Health Administration.

Nothing in this COVID-19 Protocols and Acknowledgement shall be construed to modify, amend, or otherwise alter the terms and conditions of the Contract, including the terms and conditions regarding indemnity or liability due to performance of work as set forth in the Consultant.

Consultant hereby acknowledges receipt of this COVID-19 Protocols and Acknowledgement, and, by execution below, represents that it understands and will comply herewith.

Consultant:
Christensen & Spath LLP

By: _____
Name: Charles Christensen
Title: Senior Partner/Managing Partner

Date: _____

Attachment G Invoice Requirements

All invoices submitted by Consultant to the Commission shall comply with the following requirements:

Maximum Compensation

The total invoiced compensation for all services performed or supplies and/or materials provided shall not exceed the amount specified in Article 3 of the Contract or, as applicable, the amount specified in any purchase order or work order. Consultant acknowledges that the Commission is under no obligation to compensate Consultant for services rendered or expenses incurred in excess of such specified amounts. Consultant shall monitor its activities and those of its subConsultants to ensure that the work required by this Contract is within such constraints and no charges are incurred in excess of the specified amounts. In the event that the work under the Contract may not be capable of completion within the specified time for performance, or it appears that the maximum specified amounts may be exceeded before the completion of work under this Contract, Consultant shall promptly notify the Contracting Officer.

Elements of a Proper Invoice

Each invoice presented by Consultant for payment must be clear and accurate and free from mathematical and quantitative errors. At a *minimum*, each invoice must contain the following elements to facilitate efficient and effective payment processing:

- Consultant name
- Consultant remittance address
- Unique invoice number
- Invoice date (date of work completed)
- Commission contract name and number
- Commission purchase order (PO) number (if applicable)
- Commission work order (WO) number (if applicable)
- Payment due date
- Payment terms and discounts
- Description of services performed and/or goods delivered (as per the contract, PO, or WO)
- Quantity delivered by line item (as per the contract, PO, or WO)
- Invoiced amount per item and extended item invoiced amounts (must agree with the item and
- Freight charges (as authorized by the contract, PO, or WO)
- Total amount due (in accordance with the contract, PO, or WO)
- Sales tax (as authorized by the contract, PO, or WO); No sales tax shall be added for tax-exempt goods or services
- Special terms or any additional information needed for accurate payment processing
- Total maximum contract amount and, if applicable, PO or WO amount
- Total amount of last invoice (including invoice number)
- Total amount billed to date for the contract and, if applicable, the PO or WO
- Remaining contract balance and, if applicable, PO or WO balance

extended pricing of the contract, PO,
or WO)

Invoice Submittal Methods

The Commission will only accept invoices submitted as follows (by order of preference):

| Submittal Method | Submittal Address |
|---|--|
| Email (one invoice per email in PDF form) | AP@sdhc.org |
| Facsimile | (619) 578-7367 |
| United States Postal Service or express courier service | San Diego Housing Commission Attn: Accounts Payable 1122 Broadway, Suite 300 San Diego, CA 92101 |

The Commission strongly prefers that Consultant consistently uses only one submittal method for the duration of the term of the Contract.

Electronic Invoices: Each electronic invoice shall be transmitted via email to the Commission utilizing a secure, unalterable (locked) PDF format. Only one invoice shall be attached to each email. The email subject line shall specify Consultant's name and the unique invoice number in the subject line. Consultant shall not address the email to any other Commission email address other than as specified above. **Note: Failure to follow these procedures for electronic invoices may result in delayed payment.**

Effective Invoice Period: Consultant will submit invoices within thirty (30) calendar days after complete performance of applicable services or deliver of applicable supplies and/or materials. The Commission may refuse, in its sole discretion, payment of any invoice that is not received within such 30-day period, unless acceptable delays are identified and approved by the Commission in writing prior to the delay.

Defective Invoices

Invoices not delivered in accordance with the terms of this Contract and any applicable purchase order or work order shall be considered untimely and may result in delay of payment or nonpayment. Invoices missing any of the elements of a proper invoice specified above will be

returned unprocessed to Consultant with a written explanation of defects that must be cured prior to processing. The due date of any invoice shall be calculated from the date of receipt of proper invoices only, regardless of earlier submittals.

Inquiries

Contract may contact the Commission's Accounts Payable Department as follows to determine the status of any outstanding invoice:

- Email: AP@sdhc.org (preferred)
- Telephone: (619) 578-7724

Consultant will be notified of payment via payment stub for payment by check or email for payment by ACH.

Credit Holds

Consultant shall not suspend performance of the work or delivery of the supplies and/or materials under the Contract due to non-payment of an invoice by the Commission unless Contract is in full compliance with all terms and conditions of the Contract. Violation of the preceding sentence may be deemed a material breach of the Contract, as determined by the Commission in its sole discretion.

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR LEGAL SERVICES

WITH

ALESHIRE & WYNDER LLP

(More than \$250,000 and Other than Construction or Development)
Contract No. BE-24-04B

This Agreement, entered into this _____ day of _____, 2024

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
Tel.: 619-231-9400

and the Consultant:

ALESHIRE & WYNDER LLP
1 Park Plaza, Suite 1000
Irvine, California 92614
Tel.: 949-250-5410

is made in accordance with the following terms and conditions:

101. **Definitions.** When capitalized, the terms used in this Agreement shall have the meanings ascribed thereto by the “Schedule of Definitions,” attached hereto as Attachment A and incorporated herein in full by this reference, and as otherwise defined by this Agreement, unless the context clearly requires otherwise.

102. **Description of Work.** Consultant shall provide services, supplies, and/or materials to the Commission as specified in the Specifications/Scope of Work.

103. **Term of Agreement.** The term of this Agreement shall be September 30, 2024 through September 29, 2026 (the “Initial Term”), as extended pursuant to this Agreement from time to time.

(a) **Extensions.** Provided that Consultant is not in default under the terms of this Agreement, the Commission may extend the term for one or more periods (each such period, an “Extension Period”) totaling no more than ninety (90) days, in a writing signed by the CEO and delivered to Consultant. No single Extension Period shall be less than seven (7) days. The Commission may not extend the term for an Extension Period earlier than sixty (60) days before nor later than eighty-three (83) days after the then-applicable expiration date of the term.

The Commission shall compensate Consultant during such Extension Period on a *pro rata* basis in accordance with Section 104 as in effect on the date of extension of the term in

accordance with this Subsection.

(b) Options. The Commission may also extend the term for three (3) additional one (1)-year periods (each such one-year period, an “Option Period”) by giving written notice thereof to Consultant prior to the expiration of the then-current term of this Agreement. Compensation to Consultant during any Option Period shall be in the amounts and on the same terms and conditions as provided pursuant to this Agreement during the Initial Term.

(c) Extensions and Options. Nothing contained in this Section shall require the Commission to extend the term of this Agreement. The options to extend the term granted in this Section exist in favor of and for the sole benefit of the Commission and may be exercised in the Commission’s sole and exclusive discretion. During any Extension Period or Option Period, all terms and conditions of the Agreement shall remain in full force and effect except as otherwise specified in this Section or any subsequently executed agreement between the Parties.

104. Compensation. The Commission shall compensate Consultant for all services performed and/or supplies and materials supplied pursuant to this Agreement in accordance with the Compensation Terms, which are attached hereto as Attachment D.

(a) Maximum Compensation. Notwithstanding anything in this Section or elsewhere in this Agreement to the contrary, Consultant acknowledges and understands that the Commission shall be under no obligation to compensate or reimburse Consultant for any amounts incurred in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (“Maximum Compensation”) per year during the Initial Term, or during any Option Period, unless Attachment D provides for greater compensation or reimbursement during such Option Period. Further, Consultant acknowledges and understands that it shall bear the sole responsibility for monitoring its expenditures and ensuring that any amounts incurred pursuant to this Agreement do not exceed the Maximum Compensation. In the event Consultant incurs amounts in excess of the Maximum Compensation, Consultant shall bear sole liability for such amounts. The Commission may authorize an increase in the contract base amount annually, if necessary, in accordance with the Housing Authority-approved delegation of authority level.

(b) Method of Payment. Except as may otherwise be provided by the Compensation Terms, the Commission will endeavor to pay any invoice within thirty (30) days of submission of such invoice, subject to the approval of all amounts therein by the Commission. At a minimum, each invoice shall (i) reference the Contract Number; (ii) reference any associated purchase order numbers; (iii) describe each service performed and/or supply or material supplied in detail and in accordance with the Specifications/Scope of Work; (iv) specify the amount charged for each such service, supply, or material; (v) be accompanied by a certification (on or attached to the invoice) that the payment requested is for work performed in accordance with this Agreement; and (vi) contain such other information or certifications as the Commission may specify in writing from time to time. The Commission, in its sole discretion, may elect not to pay any invoice that fails to comply with the requirements of this Subsection.

105. **Necessary Approvals.**

(a) In the event that the initial amount of this Contract exceeds, or a change order increases the amount of this Contract to an amount that exceeds, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), this Contract must be approved by the Board of Commissioners of the Commission in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract unless and until such approval, if required, is obtained.

(b) In the event that the initial amount of this Contract exceeds, or a change order increases the total amount of this Contract to an amount that exceeds, Five Hundred Thousand and No/100 Dollars (\$500,000.00), this Contract must be approved by the Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract unless and until such approval, if required, is obtained.

106. **Contract Documents.** In addition to this instrument, this Contract includes the Schedule of Definitions, the General Conditions, the Specifications/Scope of Work, the Compensation Terms, the Prevailing Wage Attachment, [and] the COVID-19 Protocols and Acknowledgement, [and] [Insert Other Conditions Attachments], all of which are incorporated herein by this reference, except as to the Prevailing Wage Attachment, which shall only be incorporated in accordance with Section 21 of the General Conditions.

107. **Counterparts; Electronic Execution.** This Agreement may be executed in one or more counterparts and, when and as so executed, all such counterparts taken together shall constitute one and the same agreement. This Agreement may be executed using any “electronic signature” in accordance with California Civil Code section 1633.2.

[Signature Page Follows]

Signature Page to Agreement for Legal Services with Aleshire & Wynder LLP (Contract No. BE-24-04B):

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written, effective as specified in Section 103.

Consultant:

Aleshire & Wynder LLP

By: _____

Name: Fred Galante

Title: Equity Partner

Date: _____

Commission:

San Diego Housing Commission

By: _____

Name: Jeff Davis

Title: Deputy Chief Executive Officer

Date: _____

By: _____

Name: Suket Dayal

Title: Executive Vice President of Business Administration
and Chief Financial Officer

Date: _____

By: _____

Name: George Williams

Title: Director of Procurement Operations

Date: _____

Attachment A Schedule of Definitions

1. “Agreement” or “Contract” means the main instrument to which this Attachment A is attached and all exhibits or attachments thereto to the extent the same have been incorporated and as the same may be amended from time to time.
2. “Applicable Law” means all applicable federal, state, and local constitutions, treaties, laws, statutes, ordinances, regulations, rules, orders, decrees, permits, resolutions, requirements, and policies of the United States of America, the State of California, the City, the Commission, or any other governmental authority of competent jurisdiction.
3. “Authority” means the Housing Authority of the City of San Diego.
4. “CEO” means the Chief Executive Officer of the Commission or the CEO’s lawful designee.
5. “City” means the City of San Diego.
6. “Claims” means damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (including Consultant’s employees, agents, and subConsultants) and damage to real or personal property, or any other losses, damages, or expenses.
7. “Commission” means the San Diego Housing Commission. When this Agreement specifies an action to be taken or withheld by the Commission, “Commission” shall include the authorized officers, employees, and agents of the Commission.
8. “Compensation Terms” means the terms and conditions specified in Attachment D to the Agreement.
9. “Conflict” means circumstances, known to the Consultant, that would conflict with Consultant’s performance of the terms of this Agreement or place the Commission and a prospective client of Consultant in adverse, hostile, or incompatible positions wherein the interests of the Commission, the Authority, or the City may be jeopardized.
10. “Contract Number” means the number specified next to the phrase “Contract No.” at the top of this Agreement.
11. “Consultant” means the Party other than the Commission identified above, and, unless the context requires otherwise, such Party’s officers, directors, members, managers, partners, limited partners, employees, agents, and subconsultants.
12. “COVID-19 Protocols and Acknowledge” means the terms and conditions specified in Attachment F to the Agreement.

13. “Extension Period” shall have the meaning ascribed thereto by Section 103(a).
14. “General Conditions” means the terms and conditions contained in Attachment B to the Agreement.
15. “HUD” means the United States Department of Housing and Urban Development and any successor agency thereto.
16. “Indemnitee” means the Commission, the Authority, the City, or any commissioner, officer, employee, member, council member, or agent thereof.
17. “Inspecting Agency” means the Commission and any of its duly authorized representatives.
18. “Initial Term” shall have the meaning ascribed thereto by Section 103.
19. “Maximum Compensation” shall have the meaning ascribed thereto by Section 104.
20. “Option Period” shall have the meaning ascribed thereto by Section 103(b).
21. “Parties” means the Commission and Consultant, collectively, and “Party” means either of the Parties, individually.
22. “Project Records” means all administrative and financial records required to be prepared or gathered by Consultant pursuant to this Agreement, including, but not limited to, all books, papers, invoices, receipts, accounting records, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigations, videos, work product, and any other documents, data, and records pertaining to this Agreement.
23. “Specifications/Scope of Work” means the terms and conditions specified in Attachment C to the Agreement.

Attachment B
General Conditions

1. **Status of Consultant.** Consultant acknowledges that Consultant is an independent Consultant and is not an agent or employee of the Commission, the Housing Authority, the City, HUD, or any other governmental authority.

(a) Any term of this Agreement that could be construed to give the Commission a right to direct Consultant concerning the details of performing its obligations and duties hereunder or to exercise any control over such performance shall be construed to pertain only to the Commission's direction concerning the expected results of performance under this Agreement.

(b) Consultant shall have no authority to bind the Commission in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the Commission, whether by contract or otherwise, unless such authority is expressly granted pursuant to this Agreement or in a writing signed by the Commission.

2. **Designated Representative.** Consultant shall designate a representative with the authority to bind Consultant with respect to decisions to be made pursuant to this Agreement. Consultant may designate a new representative upon ten (10) days written notice to the Commission.

3. **Ownership of Materials and Documents.** Any and all sketches, drawings, and other materials or documents prepared by Consultant pursuant to or in connection with this Agreement shall be the property of the Commission from the moment of their preparation, and Consultant shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. Consultant shall have the right to make duplicate copies of such materials and documents for its own file or for other purposes in compliance with Section 4.

4. **Non-disclosure.** The designs, plans, reports, investigations, materials, and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate or electronic copies however and wherever stored) shall not be disclosed to any non-party, except as previously authorized by the Commission in writing. Furthermore, Consultant shall not disclose to any nonparty any information regarding the activities of the Commission during the term of this Agreement or at any time thereafter except as previously authorized by the Commission in writing. Consultant shall use reasonable care to prevent the unauthorized disclosure of information subject to this Section. If requested by the Commission, Consultant shall negotiate the terms of and enter into a formal non-disclosure agreement with the Commission in form and substance reasonably satisfactory to the Commission.

(a) **Exception.** Nothing in this Section shall apply to the disclosure of any information that:

(i) Was publicly known, or otherwise known to Consultant, at the time the information was first provided to Consultant by the Commission;

(ii) Subsequently becomes publicly known through no act or omission of Consultant;

(iii) becomes known to Consultant from a third party other than the Commission, provided Consultant has not induced such disclosure in violation of law or in breach of any agreement of such third party with the Commission if such agreement was known to Consultant or should have been known to Consultant through the exercise of due diligence;

(iv) is considered a public record pursuant to the California Public Records Act, codified at California Government Code sections 6250 et seq.; or

(v) is required to be disclosed pursuant to law or a court order, provided that Consultant gives notice of such requirement to the Commission prior to such disclosure, if permitted by law; such shall be reasonably calculated to allow the Commission to seek a protective order or other appropriate legal protection against disclosure prior to the disclosure.

5. **Consultant's Indemnification Liability.** Consultant agrees to and shall indemnify, hold harmless, and defend, with counsel of Indemnitees' choosing, at Consultant's sole cost and expense, Indemnitees from and against any and all Claims arising directly or indirectly out of the acts or omissions of Consultant (irrespective of culpability), all obligations of this Agreement, or out of the operations conducted by Contract pursuant to this Agreement, including, but not limited to, those in part due to the negligence of any of Indemnitees, except as to liabilities, claims, judgments or demands arising through the sole negligence or more culpable act or omission of any Indemnitee.

6. **Insurance Requirements.** Consultant shall not commence work until Consultant has obtained, at its sole cost and expense, all insurance required pursuant to this Section and comply with the other requirements of this Section.

(a) **Requirements for All Policies.** All commercial general liability, commercial automobile liability, and errors and omissions insurance policies required pursuant to this Section shall comply with the following:

(i) Each policy shall contain an endorsement stating that the policy may not be cancelled or materially altered or amended except upon written notice to the Commission via certified mail, deposited at least thirty (30) days prior to the effective date thereof.

(ii) Each policy shall contain an endorsement adding the Commission, the Authority, and the City, and their respective elected and appointed officials, officers, agents, employees, and representatives as additional insureds.

(iii) Each policy shall contain an endorsement stating it is primary and non-contributory to any insurance that may be carried by the Commission, the Authority, or the City.

(iv) Each policy shall contain an endorsement waiving subrogation against the Commission, the Authority, and the City, and each of their respective elected or appointed commissioners, officers, employees, members, council members, or agents for losses paid by Consultant's insurers that arise out of or in relation with Consultant's performance under this Agreement.

(v) No policy may contain an endorsement or other language limiting liability in scenarios in which an insured has a dispute with another insured or limiting contractual liability.

(b) Commercial General Liability Insurance. At all times during the term of this Agreement, Consultant shall maintain commercial general liability insurance, written on an ISO occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of at least \$1,000,000 per occurrence, subject to an annual aggregate of at least \$2,000,000. In addition to the endorsements required by Subsection (a), the policy shall contain an endorsement excluding all costs of defense from the policy limits.

(c) Commercial Automobile Liability Insurance. At all times during the term of this Agreement, Consultant shall maintain commercial automobile liability insurance for all of Consultant's automobiles (including owned, hired, and non-owned automobiles) that will be used in the performance of Consultant's duties and obligations pursuant to this Contract, written on an ISO form CA 00 01 12 90 or later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage, with a combined single limit of at least \$1,000,000 per occurrence. The insurance policy shall reflect coverage for any automobile ("any auto").

(d) Errors and Omissions Insurance. At all times during the term of this Agreement, Consultant shall maintain errors and omissions liability insurance in the amount of at least \$1,000,000 per occurrence.

(e) Workers' Compensation Insurance. At all times during the term of this Agreement, Consultant shall maintain workers' compensation insurance for Consultant's employees who perform Consultant's duties and obligations under this Agreement, to the extent and in the minimum amount required by the California law, with a minimum of \$1,000,000 of employer's liability coverage.

(f) Additional Requirements. In addition to the foregoing requirements, Consultant shall comply with the following requirements:

(i) Carriers. All carriers shall have a rating of "A-" or better as determined by A.M. Best Company, Inc.'s Financial Strength Ratings, shall be licensed to do business in the State of California, and shall be subject to the approval of the Commission. The Commission will accept non-admitted "surplus lines" carriers only if licensed to do business in the State of California and listed on the current "List of Approved Surplus Lines Insurers" maintained by the California Department of Insurance.

(ii) Certificate Holders. The Commission, the Authority, and the City shall be named as certificate holders on all insurance policies.

(iii) Timing. All insurance required by this Section must be bound and evidenced by certificates of insurance delivered to the Commission prior to the commencement of the Initial Term and shall remain in full force and effect during the entire term of the Agreement, as extended from time to time, and for such term thereafter as the Commission may reasonably specify.

(iv) Deductibles. All deductibles and retentions shall be Consultant's sole responsibility.

(v) No Limitation on Liability. Consultant's liability shall not be limited in any way as a result of the insurance policies required by this Section.

(vi) No Increased Exposure. Consultant shall not modify any policy or endorsement required by this Section if doing so would increase the Commission's exposure to loss during the term of this Agreement.

(vii) Additional Insurance. Consultant may obtain additional insurance not required by this Agreement.

(viii) Expiration. Prior to the expiration of an insurance policy required by this Section, Consultant shall provide the Commission with certificates evidencing that new or extended policies have been obtained that continue to meet the requirements of this Section. Consultant shall provide all endorsements for any new or extended policy within fifteen (15) days of the expiration date of such policy's predecessor.

(g) Commission Review of Policies. Upon the Commission's request, Consultant shall promptly submit to the Commission a copy of any policy required by this Section. If the Commission determines that any such policy is insufficient in light of the risk posed by Consultant's performance under the Agreement and in consideration of any change in relevant circumstances, the Commission may unilaterally amend this Agreement to add new coverages, increase coverage limits, reduce deductibles and retentions, or add or remove endorsements, as determined in the Commission's reasonable discretion, and Consultant shall comply with any the Agreement as amended.

7. **Insurance Proceeds**. If Consultant receives insurance proceeds when property owned or provided by the Commission, or procured using funds provided pursuant to this Agreement, has been lost or damaged by fire, casualty, or natural disaster, Consultant agrees to apply those proceeds to the cost of replacing such property.

8. **Casualty, Fire, Natural Disaster, and Misused Property**. When property owned or provided by the Commission, or property procured using funds provided pursuant to this Agreement, is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of such property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. If any damage to such property results from Consultant's acts or omissions, Consultant agrees to restore such property to its original condition.

9. **Correction of Work.** Performance of the terms of this Contract shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the Commission, provided such work is due to the acts or omissions of Consultant and has not been accepted in writing by an authorized representative of the Commission.

10. **Compliance with Laws and Policies.** Consultant shall comply with Applicable Law. In addition, Consultant shall immediately comply with all directives issued by the Commission or the City, or their duly authorized representatives, under authority of any Applicable Law. Failure by Consultant to comply with Applicable Law shall be deemed a material breach of this Agreement and shall be grounds for the Commission to terminate this Agreement immediately upon written notice to Consultant.

11. **California Equal Opportunity Requirements.** During the performance of this Contract, Consultant agrees as follows:

(a) Consultant and its subconsultants shall not deny this Contract's benefits to any person on the basis of race (such as hair texture and protective hairstyles, including braids, locks, and twists), religious creed (including religious belief, observance, and practice, and dress or grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (including pregnancy, childbirth, breast feeding, and related medical conditions), gender (including sex stereotyping), gender identity, gender expression, age (40 or older), sexual orientation, or military and veteran status, reproductive health decision making (including a decision to use or access a particular drug, device, product, or medical service for reproductive health), reproductive loss, use of cannabis off the job and away from the workplace, or any other characteristic protected under applicable federal, state, or local law; nor shall they discriminate unlawfully against any employee or applicant for employment based on the protected characteristics outlined above. Consultant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) Consultant shall comply with the provisions of the Fair Employment and Housing Act (Cal. Gov. Code § 12900 et seq.), the regulations promulgated thereunder (2 C.C.R. §§ 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the California Government Code (Gov. Code, §§ 11135-11139.5), and any regulations or standards adopted by the Commission to implement such article

(c) Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the Commission upon reasonable notice at any time during normal business hours, but in no case upon less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as either shall require ascertaining compliance with this clause.

(d) Consultant and its subconsultants shall give written notice of their obligations under this Section 11 to labor organizations with which they have a collective bargaining or other agreement.

(e) Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

12. **Records.** Consultant shall take reasonable measures to maintain the integrity and accuracy of Project Records and shall comply with the terms of this Section.

(a) Accounting Records. In accordance with generally accepted accounting principles maintained on a consistent basis, Consultant shall maintain full and complete records of the cost of services performed pursuant to this Agreement, utilizing internal controls and maintaining appropriate source documentation for all costs incurred.

(b) Inspection and Photocopying. At any time during normal business hours and as often as requested, during the term of this Agreement for so long as storage is required pursuant to Subsection (d) below, Consultant shall permit any Inspecting Agency to inspect and photocopy, at Consultant's offices or such other reasonable location requested by any of the foregoing, all Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and evaluating Consultant's performance of its obligations and duties under this Agreement. An Inspecting Agency may retain copies of Project Records if the Inspecting Agency deems such retention necessary in its sole discretion.

(c) Copies of Records. Upon any request by an Inspecting Party for copies of Project Records, Consultant shall submit exact duplicates of the originals of the requested Project Records to such Inspecting Party for the purposes described above in Subsection (b).

(d) Storage. Consultant shall store all Project Records for a period of not less than five (5) years after the Consultant's final submission of all required reports under this Agreement, or five (5) years after the Commission and Consultant make all final payments, or until all pending matters including audits and litigation have been finally resolved, whichever period is longest. All Project Records shall be kept at the Consultant's regular place of business. After the storage period has expired, Consultant shall provide each Inspecting Agency with thirty (30) calendar days written notice of Consultant's intent to dispose of any Project Records. During such 30-day period, Consultant shall provide any and all Project Records to any Inspecting Agency upon such Agency's request, and Consultant shall refrain from disposing of specified Project Records if requested by any Inspecting Agency.

(e) Flow Down. Consultant shall include the terms of this Section, including the terms of this Subsection, in each of its subcontracts and shall cause each of its subconsultants to do the same.

13. **Subcontracting.** No performance required of Consultant by this Agreement may be subcontracted without the prior written approval of the Commission, which it may withhold in its sole and absolute discretion. Any putative subcontracting of Consultant's rights, obligations, and/or duties under this Agreement shall not create a contractual relationship between the Commission and any putative subconsultant, and any such subcontracting shall be null and void. Any subcontracting in violation of this Section shall be grounds for immediate termination of this Agreement upon written notice to Consultant, at the sole discretion of the Commission.

(a) Requesting Consent. In order to obtain consent to subcontract, Consultant shall submit to the Commission a list of all potential subconsultants and a description of work to be performed by each subconsultant. Once this list has been approved, no changes to the list will be allowed except upon written approval of the Commission.

(b) Consultant's Liability. Consultant shall be fully liable for the acts and omissions of its subconsultants, and their employees, agents, and Consultants, as though such acts and omissions were those of Consultant itself.

14. Assignment. Consultant shall not assign or transfer any interest in this Agreement (whether by assignment or novation) without the express prior written consent of the Commission. Notwithstanding the foregoing, no such approval shall be required for the assignment of claims for money due or to become due to Consultant from the Commission to a bank, trust company, or other financial institution, or to a receiver or trustee in bankruptcy, but Consultant shall promptly provide written notice thereof to the Commission.

15. Preference for Domestic Materials. Except as otherwise provided by California Government Code sections 4300 et seq., wherever possible in the performance of this Agreement, only unmanufactured materials produced in the United States, and only manufactured materials manufactured in the United States, substantially all from materials produced in the United States, shall be used in the performance of the Agreement.

16. Preparation of Written Reports or Documents. Provided that the total cost for work performed by Consultant pursuant to this Agreement exceeds \$5,000, any document or written report prepared in whole or in part by Consultant for or under the direction of the Commission shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

17. Termination. The Commission may terminate this Agreement, in whole or in part, effective thirty (30) days after delivering written notice to Consultant, if the Commission determines such termination is in the Commission's interest. If this Agreement is terminated, the Commission shall be liable only for amounts due for services, supplies, and/or materials rendered and/or supplied before the effective date of such termination. Additionally, the Commission may terminate this Agreement immediately upon written notice to Consultant as a result of cessation of funding of or lack of adequate appropriations for any federal, state, or local program that provides funds used by this Agreement. The termination rights in this Section are in addition to and cumulative with any other rights of termination located elsewhere in this Agreement.

18. Patents and Copyrights. The Commission hereby reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for government purposes, any patents and copyrights in any work developed under this Agreement.

19. Drug-free Workplace. Consultant certifies to the Commission that it will provide a drug-free workplace and will:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance as defined in schedules I-V of section 202 of the federal Controlled Substance Act is prohibited in Consultant's workplace; such statement shall specify the actions that will be taken against employees for violation of such prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace.
- (ii) Consultant's policy of maintaining a drug-free workplace.
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs.
- (iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) Post the statement required by Subsection (a) in a prominent place at Consultant's main office and at any job site large enough to necessitate an on-site office.

20. **Plan of Operations.** Consultant shall submit to the Commission a complete plan of operations. Consultant shall promptly notify the Commission of any changes to the plan of operations.

21. **Labor Law.** Consultant shall be fully aware of and shall comply with each and every requirement of federal, state, and local law regarding the provision of labor concerning this Agreement, including but not limited to, the payment of applicable prevailing wages, if either or both boxes are checked below. In the event both boxes are checked below, Consultant acknowledges that it is solely responsible for determining which prevailing wage terms apply to the work performed under this Agreement.

If checked, additional state prevailing wage terms are contained in Attachment E, which is hereby incorporated in this Agreement in full by this reference.

If checked, additional federal prevailing wage terms are contained in Attachment E, which is hereby incorporated in this Agreement in full by this reference.

22. **Entire Agreement.** This Agreement represents the sole and entire Agreement between the Commission and Consultant and supersedes all prior and contemporaneous negotiations, representations, agreements, arrangements, or understandings, either oral or written, between or among the Parties, relating to the subject matter of this Agreement, except as expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party.

23. **Waiver.** No failure of a Party to insist upon the strict performance by the other Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy

consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement.

24. **Successors in Interest.** The rights, duties, and obligations of this Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns.

25. **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiation of the terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each Party participated in the negotiation or drafting of the Agreement.

26. **Signing Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that such individual is authorized to execute and deliver this Agreement on behalf of such entity in accordance with duly adopted resolutions or other authorizing actions that are necessary and proper under such entity's governing documents, and that this Agreement is binding upon such entity in accordance with its terms. Upon request, Consultant shall provide the Commission with evidence, satisfactory to the Commission, that such individual's authority is valid and that such entity has been duly formed and is in good standing in the jurisdiction of its formation, and that such entity is authorized to do business in the State of California.

27. **Conflict Between Agreement and Attachments.** To the extent that the terms of the Agreement and the attachments conflict, the construction most favorable to the Commission shall apply.

28. **Partial Invalidity.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

29. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its principles regarding the conflict of laws. The courts of the State of California shall have exclusive jurisdiction over any dispute, claim, or matter arising out of or related to this Agreement, and venue shall lie exclusively in the Central Division of the Superior Court of the County of San Diego, California.

30. **Headings.** All headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

31. **Attorney's Fees and Costs.** In any action involving breach, interpretation, and/or enforcement of the terms of this Agreement, the prevailing party shall be entitled to its costs, expert witness fees, if any, and reasonable attorneys' fees.

32. **Remedies Upon Default.** The failure of Consultant to perform each and every covenant of

Consultant in a timely manner, and in a good and workmanlike manner, and in strict compliance with the requirements of the Specifications/Scope of Work (which, in the case of goals and outcomes shall be construed to require good-faith efforts to meet such goals and outcomes), shall constitute a breach under the terms of the Agreement. For any breach that does not jeopardize the health, safety, or general welfare of Consultant's clients or members of the public, the Commission shall give seven (7) days written notice to Consultant, detailing the nature of such breach and requiring Consultant to cure such breach within such seven-day period. In the event that such a breach is not timely cured, the Commission shall have all remedies available at law or in equity, including, without limitation, the right to terminate the Contract, the right to cause another Consultant or the Commission to take over the duties under the terms of the Contract, the right to sue for damages, specific performance or injunctive relief, and any other remedies available at law or in equity. In the event that the health, safety, or general welfare of Consultant's clients members of the public is jeopardized, the Commission shall have the right to terminate the Agreement immediately upon written notice to Contract. In addition, in the event of an uncured breach or a breach without the right to cure, the Commission shall have the right to recoup any and all funds that may have been advanced to the Consultant and that have not been earned.

The failure of the Commission to make a timely payment to Consultant under this Agreement shall constitute a breach under the terms of the Agreement. Consultant shall give seven (7) days written notice to cure any such breach to the Commission. In the event that the breach is not cured, Consultant shall have the right to terminate this Agreement.

33. **Notices.** All notices required or permitted to be given by a Party pursuant to this Agreement shall be deemed delivered (i) immediately upon receipt if delivered personally, (i) the next business day if delivered to a nationally recognized overnight carrier with charges prepaid prior to the cutoff for next-day delivery specified by such carrier, or (ii) three (3) business days the date of deposit with the United States Postal Service for delivery via certified mail, postage prepaid, return receipt requested, and in all cases addressed to the other Party at such Party's addresses as set forth at the beginning of this Agreement, or at such other address as such Party shall designate in writing to the other Party by written notice given as specified in this Section from time to time.

34. **Audit Requirements.** Consultant shall comply with the audit requirements of 2 C.F.R. pt. 200, as amended, if no audit requirements are specified in the award of the Contract. Otherwise, Consultant shall comply with the audit requirements specified in the award of the Contact.

35. **Consultant Evaluation Program.** An essential component of public works contract administration is the regular evaluation and documentation of Consultant performance. During the course of the Agreement, the Commission shall conduct performance evaluations to document Consultant's record of complying with the terms of the Agreement. The Commission shall proactively monitor and manage the performance of Consultant during the term of the Agreement and shall create an objective record of performance that can and may be utilized when evaluating Consultant as a responsible bidder for future bid and proposal submissions, extension or renewal consideration, or termination due to unsatisfactory performance. Consultant evaluation program and appeal procedures are located on the Commission's website at <https://www.sdhc.org/doing-business-with-us/contracting-and-procurement-services/vendor-information/>, as amended from time to time, and are incorporated herein in full by this reference.

36. **Interests of Current or Former Commissioners, Officers, and Employees.** No commissioner, officer, or employee of the Commission, no member of the governing body of the locality in which the work performed pursuant to this Agreement is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of such work, shall, during such person's tenure, or for one (1) year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this Section shall result in unilateral and immediate termination of this Agreement by the Commission upon written notice to Consultant.

37. **Conflicts of Interest; Disclosure of Economic Interests.** Consultant and its subconsultants shall comply with all applicable federal, state, and local conflict of interest laws and regulations, including, but not limited to, the Commission's Conflict of Interest Code (for purposes of this Section only, the "Code"), a current copy of which may be requested from the Commission. In addition to the other requirements of the Code, and subject to the Commission's determination in writing in accordance therewith, Consultant shall cause each of its officers, directors, partners, limited partners, members, managers, employees, and agents that is determined to be a "consultant" pursuant to the Code to file a completed and executed Statement of Economic Interests (Form 700) with the City's Clerk's Office at the following times:

- (a) No later than thirty (30) days after the execution of this Agreement;
- (b) Annually on or before April 1 of each year;
- (c) Within thirty (30) days after full performance of this Agreement, as determined by the Commission in its sole discretion;

In addition, the Contractor shall complete the Ethics Commission's ethics orientation training within 90 days of assuming office and on a biennial basis.

Consultant shall cause each designated consultant to email a copy of each filed Form 700 to Cassie Li, Legal Contracts Analyst, at cassiel@sdhc.org within five business (5) days of filing.

Consultant shall provide all assistance requested by the Commission to determine whether any of the above-specified individuals qualifies as a "consultant." Additionally, upon the cessation of a consultant's legal relationship with Consultant, Consultant shall notify such consultant of the consultant's responsibility to file a Form 700 with the City's Clerk's Office within thirty (30) days of such termination or expiration.

Any violation of the Code or this Section shall be deemed a material breach of this Agreement and shall entitle the Commission to terminate this Agreement immediately upon written notice to Consultant.

Consultant Initial: _____

38. **Procedure for Handling Conflicts of Interest.** Except upon the prior, written consent of

the Commission, which it may withhold in its sole and absolute discretion, and in compliance with the other terms of this Section, Consultant shall not perform services of any kind for any person or entity during the term of this Agreement if so doing appears reasonably likely to result in a Conflict. Notwithstanding the foregoing, this Section shall not apply to any of Consultant's business arrangements with clients that began prior to the execution of this Contract.

(a) Meet and Confer. Consultant shall promptly notify the Commission in writing in the event a Conflict appears reasonably likely. Thereafter, Consultant shall meet and confer with the Commission to agree upon terms to apply to its arrangements with an affected prospective client, and/or its arrangements with the Commission, in order to continue to perform services for such client and the Commission without compromising the interests of either. Should no agreement regarding modification be reached within a reasonable time thereafter, or should the prospective client refuse to agree to such modification, the Commission may terminate this Agreement immediately upon written notice to Consultant.

(b) When Consent Is Given. If and when the Commission has consented as provided above in this Section, Consultant shall use best efforts to avoid performance on behalf of the affected client that would in any manner undermine Consultant's effective performance of the terms of this Agreement. Consultant agrees to alert every prospective client for whom consent to a Conflict is required to the existence of the terms of this Section and to include language in its agreement with such client that will enable Consultant to comply fully with such terms.

(c) Termination. Failure to follow the procedures of this Section shall entitle the Commission to terminate this Agreement immediately upon written notice to Consultant. Additionally, the Commission may unilaterally and immediately terminate this Agreement upon written notice to Consultant if Consultant employs an individual who, within twelve (12) months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Consultant.

Attachment C Specifications/Scope of Work

I. SUMMARY

The Scope of Services detailed herein is not intended to be an all-inclusive listing of the legal services that the Commission may require Contractor to provide. The below listed service areas are intended to be a representative listing of service areas that the Commission has historically required legal services. The service areas include, but are not limited to:

The preparation and review of legal documents and papers; rendition of advice and assistance to the departments and employees of the Commission; attendance at meetings; preparation and review of resolutions and related documents; review and approve minutes, Board reports of the Commission; legal review, advise guidance regarding the Commission's contractual solicitations, contracting processes, procedures and policies; consultation with parties having dealings of a legal nature with the Commission; supervision as to legality of the official acts and minutes of the Commission; rendition of legal opinions on all matters submitted by the Commission, including questions regarding conflicts of interest and Brown Act matters. Required legal services are further detailed below.

Contractor will provide legal services in connection with one or more of the following legal specialties:

- General Counsel**
- Housing Programs Counsel**
- Real Estate Counsel**
- Procurement and Contracting Counsel**
- Human Resources Counsel**

II. SCOPE OF REQUIRED SERVICES

1. Administration, including, but not limited to:

- (a) Review Board meeting agendas to ensure compliance with the California Open Meeting Law.
- (b) Routine communications via phone and/or emails will be responded to within 24 hours, except for weekends and holidays.
- (c) Work products shall be provided within 48 business hours unless a different deadline is agreed upon between the firm and the President & CEO or designee.
- (d) Monthly summary reports of the major activities/actions/outcomes (notated by division), etc. of the firm will be submitted to the President & CEO by no later than the 10th of the following month.

- (e) Monthly itemized billing shall be submitted in accordance with the Commission's direction.
 - (f) Responding to emergency inquiries.
2. Real Estate and Housing Law. Perform all legal services in connection with and be responsible for all legal phases of the research discovery, planning, development, occupancy, financing and compliance of all affordable rental & for-sale housing projects and programs to be undertaken by the Commission. Such services include, but are not limited to, the following:
- (a) Assist in the acquisition, disposition, and management of real estate properties owned or operated.
 - (b) Provide legal support for property development, financing, and construction projects.
 - (c) Handle legal matters related to tenant-landlord relationships, evictions, and housing programs.
 - (d) Provide legal advice on Housing Authority owned or managed developments, including bond and tax credit financed developments.
 - (e) Provide legal advice and assistance with Landlord/tenant issues, including but not limited to, lease preparation, lease enforcement and interpretation and premise liability; insurance and insurance claims, evictions and attendance at court proceeding when requested by the Commission.
 - (f) Perform all legal services related to all affordable housing program restrictions and compliance, including negotiation and documentation of affordable housing restrictions and provisions of adequate performance security, negotiation and drafting of affordable housing restrictions, covenants and liens, enforcement of affordable housing agreements, negotiation and documentation of compliance "settlements", and general consultation related to potential program changes.
 - (g) Provide, as necessary, legal services in preparing such documents as may be necessary in connection with exceptions and variances from zoning, building and inspection ordinances and regulations; appearance and representation of the Commission before public bodies and in court in all litigated matters (except as "unusual" litigation as hereinafter defined.) Litigated matters include but are not limited to the following matters: Defending Writ of Mandate in Section 8 matters; Construction Defect Litigation; Insurance Claims, Judicial Foreclosure matters, including the appointment of receivers, if necessary or appropriate; Condemnation matters; Commercial litigation; Appellate work relating to litigated matters, if necessary; Employment related litigation; 42 USC 1983 complaints; Payroll liability issues.
 - (h) Provide, as necessary, legal services in securing the approval of local public entities such as the approval of the local governing body of applications for preliminary loans, of local cooperation agreements and of low-income projects.
 - (i) Provide, as necessary, legal services in acquiring any interest in real property; rendition of advice and assistance in the preparation of necessary documents regarding such acquisition; approval of title insurance policies; rendition of legal opinions regarding title

or an interest in real property acquired by the Commission; and in projects to be acquired by the turnkey method to assist in the negotiation, drafting and review of procedures and documents involving the selection of the developer, the entering into of letters of intent and contacts of sale, the acquisition of title, and participation of closing or "settlement" transaction upon completion of the turnkey project.

- (j) In any project being constructed through the conventional competitive bidding procedures, Counsel is to provide review of documents relating to the award of developer collaborative solicitations, construction contracts, including the construction contract, specifications and performance and payment bonds.
 - (k) Provide, as necessary, legal services in connection with the leasing or subleasing of property, the entering into a variety of instruments including but not limited to agreements to lease, options to purchase property and the sale of dwelling units to tenants.
 - (l) Prepare and review of contracts with owners, surveyors, land negotiators, cost estimators, brokers, architects, appraisers, attorneys and all parties having dealings of a legal nature with the Commission regarding planning, development and occupancy of a project; review and legal approbation for such contracts and payments thereon; handling of all other legal matters arising under such contracts with the Commission.
3. Housing Programs and General Compliance: Services include, but not limited to, the following:
- (a) Regulatory and statutory requirements, and flexibilities afforded under the Department of Housing and Urban Developments Moving to Work (MTW) Demonstration Program.
 - (b) Section 3 and Labor Compliance Programs
 - (c) General Section 8 Housing Choice Voucher Program, including HUD special purpose vouchers expertise and legal assistance. This will include applicable HUD CFR regulations related to tenant and project-based housing choice voucher program regulations and requirements.
 - (d) Local, state and federal regulations governing all areas of housing and homelessness related programs administered and operated by the Commission.
 - (e) Compliance with deed restricted affordable housing covenants.
 - (f) Fair Housing issues, including claims involving violations including but not limited to the Fair Housing Act, ADA and Section 504 or the Rehabilitation Act.
 - (g) Provide legal advice and assistance to the Commission's governing body and staff on all legal matters affecting such projects and programs.
 - (h) Provide, as necessary, legal services in the preparation of application for local, federal and/or state financial assistance/grants and the preparation and adoption of development programs, resolutions and policies necessary for the establishment of a complete tenant service and operation program.
 - (i) Provide, as necessary, legal services in the preparation of application for local, federal and/or state financial assistance/grants and the preparation and adoption of homeless services programs, resolutions and policies necessary for the establishment of, oversight administration of and direct services of homelessness services programs.

4. Development/Modernization program: Services include, but not limited to, the following:
 - (a) Real estate transactions.
 - (b) Zoning, building and inspection codes and regulations.
 - (c) Court proceedings.
 - (d) Construction and due diligence contracts.
 - (e) Property, Purchase, Sale and Lease agreements.
 - (f) Partnership development and contract documents.
 - (g) Land use and development policies.
5. Compliance, Equity Assurance and Procurement Operations Legal Services: Services include, but not limited to, the following:
 - (a) Review of identified solicitations and contracts for the procurement of goods, equipment, services, properties and construction projects.
 - (b) Risk and liability exposure issues.
 - (c) Contractual conflicts.
 - (d) Compliance with federal, state and local codes, regulations and requirements.
 - (e) Assist with the preparation of Commission contract and procurement policies and procedures.
 - (f) Construction contract and procurement issues, including claims involving payment and performance bonds, change order requirements, owner liability and various procurement issues.
 - (g) Labor Compliance, prevailing wage and Section 3 issues.
 - (h) ADA and Section 504 issues.
 - (i) Diversity, equity and inclusion program development matters.
6. Legal representative of the Commission: Services include, but not limited to, the following:
 - (a) Appearance for and representation of the Commission at judicial proceedings involving landlord-tenant issues; contractual disputes with contractors, etc.
 - (b) Defending the Commission in or initiating on its behalf, breach of contract actions that will not require or involve complex litigation.
 - (c) Referring legal matters to the Commission's insurance carrier for resolution and/or defense.
 - (d) As directed by the Commission, the potential supervising, managing or otherwise coordinating all legal services provided on behalf of the Commission.
 - (e) Attendance and representation of the Commission at administrative meetings, hearings, quasi-judicial forums, etc. on the federal, state and local levels.

- (f) Preparation and/or review of Commission contracts, inter-agreements and memorandums of understanding as requested by Commission staff.
 - (g) Review of Commission's policies and procedures to determine compliance with applicable federal, state and/or local law.
 - (h) Preparation, review and/or modification of legal documents utilized by the Commission in the course of business to ensure and/or determine compliance with applicable federal, state and local law. These documents may include Board resolutions and meeting minutes, lease agreements, employment applications/forms and housing program forms and notices.
 - (i) Attendance and participation at meetings about and/or with entities having legal business with the Commission.
 - (j) Risk and liability exposure issues.
 - (k) Conflicts of interest.
 - (l) Clarification regarding general legal issues as they arise.
 - (m) Provision of legal opinions on various subjects.
 - (n) At the request of the President & CEO or designee, assist in selection of attorneys needed in specialized fields of practice such as environmental law, bankruptcy law, and civil rights and construction law.
7. General legal services for personnel and labor relations:
- (a) Personnel advisory and related employment support consultation, to include interpretation of state, federal and local regulations, personnel policies, memorandum of understanding and preparation of legal opinions and documents.
 - (b) Scope of services may include, but not limited to, legal representation of the Commission during labor union negotiations. [Note: Commission office, clerical and technical employees are represented by one (1) bargaining unit: Service Employee International Union Local 221. The executive, management, supervisory and professional employees are not union represented.]
8. Other legal services that the Commission may have need of during the term of the Agreement.

Attachment D Compensation Terms

Consultant must complete the San Diego City's mandatory form 700 filing and its associated ethics training before submitting invoice for payment.

Hourly Rates of Compensation:

Partner: \$315.00

Associate: \$290.00

Law Clerk: \$180.00

Paralegal: \$180.00

Document Clerk: \$105.00

Hourly rates are reviewed annually, and when appropriate, adjusted to reflect increases in inflationary factors. Any increase must be approved by the Commission and shall not exceed the maximum of 5% per annum.

Contractor shall be compensated for allowable Other Direct Costs (ODCs) at cost with no mark up. All ODCs must be billed at actual cost as documented by receipt & subject to Commission pre-approval. ODCs shall not exceed the costs established by the United States General Services Administration (GSA) for San Diego, California at the following website: <http://www.gsa.gov/portal/category/100120>

Attachment E
Prevailing Wage Attachment (Not Applicable)

DRAFT

Attachment F

COVID-19 Protocols and Acknowledgment

Notice and Acknowledgment Regarding Operations During COVID-19 Pandemic

The Commission hereby notifies Consultant that it is the Commission’s policy to take all reasonably necessary and legally mandated precautions to safeguard the health, safety, and welfare of all persons that enter onto property owned or operated by the Commission or any of its affiliates (“Commission Properties”).

In pursuit of that policy, Consultant and all of its subConsultants shall take all reasonably necessary and legally mandated precautions to comply with mandatory guidance and regulations promulgated by local, state, and federal public health authorities in the performance of work under this Contract. This includes, but is not limited to, practicing recommended social distancing and wearing approved facial coverings. Consultant and its subConsultants shall require all persons performing work on Commission Properties to wear an approved facial covering at all times while indoors and, when outdoors, any time recommended social distance cannot be maintained. In addition, the Commission strongly recommends Consultant and its subConsultants follow all other public health guidance related to the COVID-19 pandemic that is issued by local, state, and federal public health authorities, including, but not limited to, the California Department of Public Health, the U.S. Centers for Disease Control, the Division of Occupational Safety and Health of the California Department of Industrial Relations, and the federal Occupational Safety and Health Administration.

Nothing in this COVID-19 Protocols and Acknowledgement shall be construed to modify, amend, or otherwise alter the terms and conditions of the Contract, including the terms and conditions regarding indemnity or liability due to performance of work as set forth in the Consultant.

Consultant hereby acknowledges receipt of this COVID-19 Protocols and Acknowledgement, and, by execution below, represents that it understands and will comply herewith.

Consultant:
Aleshire & Wynder LLP

By: _____
Name: Fred Galante
Title: Equity Partner

Date: _____

Attachment G Invoice Requirements

All invoices submitted by Consultant to the Commission shall comply with the following requirements:

Maximum Compensation

The total invoiced compensation for all services performed or supplies and/or materials provided shall not exceed the amount specified in Article 3 of the Contract or, as applicable, the amount specified in any purchase order or work order. Consultant acknowledges that the Commission is under no obligation to compensate Consultant for services rendered or expenses incurred in excess of such specified amounts. Consultant shall monitor its activities and those of its subconsultants to ensure that the work required by this Contract is within such constraints and no charges are incurred in excess of the specified amounts. In the event that the work under the Contract may not be capable of completion within the specified time for performance, or it appears that the maximum specified amounts may be exceeded before the completion of work under this Contract, Consultant shall promptly notify the Contracting Officer.

Elements of a Proper Invoice

Each invoice presented by Consultant for payment must be clear and accurate and free from mathematical and quantitative errors. At a *minimum*, each invoice must contain the following elements to facilitate efficient and effective payment processing:

- Consultant name
- Consultant remittance address
- Unique invoice number
- Invoice date (date of work completed)
- Commission contract name and number
- Commission purchase order (PO) number (if applicable)
- Commission work order (WO) number (if applicable)
- Payment due date
- Payment terms and discounts
- Description of services performed and/or goods delivered (as per the contract, PO, or WO)
- Quantity delivered by line item (as per the contract, PO, or WO)
- Invoiced amount per item and extended item invoiced amounts (must agree with the item and
- Freight charges (as authorized by the contract, PO, or WO)
- Total amount due (in accordance with the contract, PO, or WO)
- Sales tax (as authorized by the contract, PO, or WO); No sales tax shall be added for tax-exempt goods or services
- Special terms or any additional information needed for accurate payment processing
- Total maximum contract amount and, if applicable, PO or WO amount
- Total amount of last invoice (including invoice number)
- Total amount billed to date for the contract and, if applicable, the PO or WO
- Remaining contract balance and, if applicable, PO or WO balance

extended pricing of the contract, PO,
or WO)

Invoice Submittal Methods

The Commission will only accept invoices submitted as follows (by order of preference):

| Submittal Method | Submittal Address |
|---|--|
| Email (one invoice per email in PDF form) | AP@sdhc.org |
| Facsimile | (619) 578-7367 |
| United States Postal Service or express courier service | San Diego Housing Commission Attn: Accounts Payable 1122 Broadway, Suite 300 San Diego, CA 92101 |

The Commission strongly prefers that Consultant consistently uses only one submittal method for the duration of the term of the Contract.

Electronic Invoices: Each electronic invoice shall be transmitted via email to the Commission utilizing a secure, unalterable (locked) PDF format. Only one invoice shall be attached to each email. The email subject line shall specify Consultant's name and the unique invoice number in the subject line. Consultant shall not address the email to any other Commission email address other than as specified above. **Note: Failure to follow these procedures for electronic invoices may result in delayed payment.**

Effective Invoice Period: Consultant will submit invoices within thirty (30) calendar days after complete performance of applicable services or deliver of applicable supplies and/or materials. The Commission may refuse, in its sole discretion, payment of any invoice that is not received within such 30-day period, unless acceptable delays are identified and approved by the Commission in writing prior to the delay.

Defective Invoices

Invoices not delivered in accordance with the terms of this Contract and any applicable purchase order or work order shall be considered untimely and may result in delay of payment or nonpayment. Invoices missing any of the elements of a proper invoice specified above will be returned unprocessed to Consultant with a written explanation of defects that must be cured prior

to processing. The due date of any invoice shall be calculated from the date of receipt of proper invoices only, regardless of earlier submittals.

Inquiries

Contract may contact the Commission's Accounts Payable Department as follows to determine the status of any outstanding invoice:

- Email: AP@sdhc.org (preferred)
- Telephone: (619) 578-7724

Consultant will be notified of payment via payment stub for payment by check or email for payment by ACH.

Credit Holds

Consultant shall not suspend performance of the work or delivery of the supplies and/or materials under the Contract due to non-payment of an invoice by the Commission unless Contract is in full compliance with all terms and conditions of the Contract. Violation of the preceding sentence may be deemed a material breach of the Contract, as determined by the Commission in its sole discretion.