

**AGREEMENT FOR SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
HANSON BRIDGETT LLP**

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and HANSON BRIDGETT LLP, a California limited liability partnership (hereinafter "EVALUATOR/INVESTIGATOR").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

EVALUATOR/INVESTIGATOR shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

- A. The term of this AGREEMENT shall be from July 1, 2019 ("Commencement Date") and shall continue through June 30, 2023, inclusive, subject to the provisions of Section 11 of this AGREEMENT. Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Commencement Date.

- B. EVALUATOR/INVESTIGATOR acknowledges and agrees that funding for services performed under this AGREEMENT following June 30, 2020 is subject to appropriation of funding by CITY at CITY's sole discretion. In the event such funding is not appropriated, this AGREEMENT shall terminate as of June 30th of the most recent year for which funding has been appropriated.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of EVALUATOR/INVESTIGATOR are to be completed according to the schedule set out in EXHIBIT B, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

A. The total compensation to be paid to EVALUATOR/INVESTIGATOR, including both payment for professional services and reimbursable expenses, shall not exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), subject to the appropriation of funds. The rate and schedule of payment is set out in EXHIBIT C, entitled "COMPENSATION," which is attached hereto and incorporated herein.

B. EVALUATOR/INVESTIGATOR agrees that in the performance of this AGREEMENT, EVALUATOR/INVESTIGATOR shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:

1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.
2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of

water may need to be distributed for health and safety reasons.

3. EVALUATOR/INVESTIGATOR acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.

SECTION 5. METHOD OF PAYMENT.

Each month, EVALUATOR/INVESTIGATOR shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that EVALUATOR/INVESTIGATOR, in the performance of the work and services agreed to be performed by EVALUATOR/INVESTIGATOR, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, EVALUATOR/INVESTIGATOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and EVALUATOR/INVESTIGATOR hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of EVALUATOR/INVESTIGATOR are material considerations for this AGREEMENT. Notwithstanding the "SPECIAL PROVISIONS" for "Investigative Services" set forth in EXHIBIT F, EVALUATOR/INVESTIGATOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of EVALUATOR/INVESTIGATOR's obligations hereunder, without the prior written consent of CITY, and any attempt by

EVALUATOR/INVESTIGATOR to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

Personal Injury or Death, or Property Damage.

EVALUATOR/INVESTIGATOR shall defend, indemnify and hold harmless CITY, and its officers, agents and employees, against any claim, loss or liability regarding the personal injury or death of any person, or property damage, caused by EVALUATOR/INVESTIGATOR, its officers, agents or employees while engaged in performance of this AGREEMENT, due to the willful or negligent acts (active or passive) or omissions by EVALUATOR/INVESTIGATOR's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 9. INSURANCE REQUIREMENTS.

EVALUATOR/INVESTIGATOR agrees to have and maintain the policies set forth in EXHIBIT D, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

EVALUATOR/INVESTIGATOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 10. NONDISCRIMINATION.

EVALUATOR/INVESTIGATOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

- B. If EVALUATOR/INVESTIGATOR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

- C. CITY's City Attorney is empowered to terminate this AGREEMENT on behalf of CITY.

- D. In the event of termination, EVALUATOR/INVESTIGATOR shall deliver to the City Attorney copies of all reports, documents, and other work performed by EVALUATOR/INVESTIGATOR under this AGREEMENT, and upon receipt thereof, CITY shall pay EVALUATOR/INVESTIGATOR for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and EVALUATOR/INVESTIGATOR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

EVALUATOR/INVESTIGATOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, EVALUATOR/INVESTIGATOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 14. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

EVALUATOR/INVESTIGATOR agrees that, in the performance of this AGREEMENT, EVALUATOR/INVESTIGATOR shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY'S website at the following link: <http://www.sanjoseca.gov/?nid=1774>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.
- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for EVALUATOR/INVESTIGATOR in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by EVALUATOR/INVESTIGATOR or any other person engaged directly or indirectly by EVALUATOR/INVESTIGATOR to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 17. WAIVER.

EVALUATOR/INVESTIGATOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by EVALUATOR/INVESTIGATOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. EVALUATOR/INVESTIGATOR'S BOOKS AND RECORDS.

- A. EVALUATOR/INVESTIGATOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to EVALUATOR/INVESTIGATOR pursuant to this AGREEMENT.
- B. EVALUATOR/INVESTIGATOR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City

Attorney or the City Attorney's designated representative. Copies of such documents shall be provided to CITY for inspection at the Office of the City Attorney when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at EVALUATOR/INVESTIGATOR's address indicated for receipt of notices in this AGREEMENT. EVALUATOR/INVESTIGATOR acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of EVALUATOR/INVESTIGATOR's business, CITY may, by written request by the City Attorney or the City Attorney's designated representative, require that custody of the records be given to CITY and that the records and documents be maintained in the Office of the City Attorney. Access to such records and documents shall be granted to any party authorized by EVALUATOR/INVESTIGATOR, EVALUATOR/INVESTIGATOR's representatives, or EVALUATOR/INVESTIGATOR's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

EVALUATOR/INVESTIGATOR shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

EVALUATOR/INVESTIGATOR's employees assigned to perform services as specified in EXHIBIT A of this AGREEMENT ("EVALUATOR/INVESTIGATOR's Assigned Employees") shall file an ASSUMING Office Disclosure Statement of Economic Interests (Form 700) as specified in EXHIBIT E, entitled "DISCLOSURE STATEMENT", which is attached hereto and incorporated herein. Such statement shall be filed within thirty (30) days of the date of this AGREEMENT and annually thereafter by the first of

April. Upon termination of this AGREEMENT, EVALUATOR/INVESTIGATOR shall file a Leaving Office Disclosure Statement of Economic Interest (Form 700).

EVALUATOR/INVESTIGATOR shall file the Form 700 with CITY's Clerk and submit a copy to the City Attorney. In addition to disclosure of financial interests, each employee is also subject to disqualification under the conflicts of interest prohibitions in the Political Reform Act §§ 87100 et seq. and Government Code Section 1090.

SECTION 20. GIFTS.

- A. EVALUATOR/INVESTIGATOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. EVALUATOR/INVESTIGATOR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by EVALUATOR/INVESTIGATOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

EVALUATOR/INVESTIGATOR is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance").

EVALUATOR/INVESTIGATOR shall not utilize either directly or indirectly any officer, employee, or agent of EVALUATOR/INVESTIGATOR to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Office of the City Attorney
Attn: Mark Vanni, Deputy City Attorney
200 E. Santa Clara Street, 16th Floor
San José, CA 95113

To EVALUATOR/INVESTIGATOR: Steven D. Miller
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 25. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms

specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

MARK VANNI
Deputy City Attorney

By _____
TONI J. TABER, CMC
City Clerk

“EVALUATOR/INVESTIGATOR”

HANSON BRIDGETT LLP, a California limited liability partnership

By _____
Name:
Title:

EXHIBIT A
SCOPE OF SERVICES

At the request and direction of the City of San José Board of Fair Campaign and Political Practices (“Board”), EVALUATOR/INVESTIGATOR shall perform the following services:

1. Review and investigate complaints and prepare a written report and recommendations directly to the Board. The evaluation and investigation process for complaints, including the report and recommendations of EVALUATOR/INVESTIGATOR, will be required to be done in accordance with the Regulations and Procedures for the Board of Fair Campaign and Political Practices Investigations and Hearings, as currently set forth in Resolution No. 78390, and as may be amended and updated from time to time by the City Council.
2. Appear at the request of the Board for meetings and/or hearings concerning complaints which are filed with the Board.
3. Conduct investigations, reviews or evaluations of documents including reports, statements or forms filed with the City Clerk or a public agency.
4. At the request of the Board, EVALUATOR/INVESTIGATOR will monitor compliance with the requirements of Title 12 of the San José Municipal Code and conduct audits.

EXHIBIT B
SCHEDULE OF PERFORMANCE

Services will be performed on an ongoing basis throughout the term of this AGREEMENT. All services shall be completed by June 30, 2023.

EXHIBIT C
COMPENSATION

A. CITY agrees to compensate EVALUATOR/INVESTIGATOR at the hourly rates shown below for professional services performed in accordance with the terms and conditions of this AGREEMENT.

| <u>Classification</u> | <u>Hourly Rate</u> |
|-------------------------------|--------------------|
| Partners | \$465 |
| Senior Counsel | \$405 |
| Associates | \$365 |
| Paralegal and other Political | \$210 |
| Compliance Specialists | |
| Investigator | \$100 |

B. The parties agree that the rates set forth herein may be changed without formal amendment to this AGREEMENT. EVALUATOR/INVESTIGATOR shall submit any proposed changes to the fee schedule to the City Attorney. The City Attorney must affirmatively accept said schedule in writing before it becomes binding under the terms of this AGREEMENT.

C. The maximum amount of compensation to be paid to EVALUATOR/INVESTIGATOR under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00), subject to the appropriation of funds. Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

- D. Reimbursable expenses shall include such expenses incurred by EVALUATOR/INVESTIGATOR which are determined by the City Attorney to be reasonable in amount and necessary to permit EVALUATOR/INVESTIGATOR to perform its obligations.

EXHIBIT D
INSURANCE

EVALUATOR/INVESTIGATOR, at EVALUATOR/INVESTIGATOR's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by EVALUATOR/INVESTIGATOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

EVALUATOR/INVESTIGATOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or EVALUATOR/INVESTIGATOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, EVALUATOR/INVESTIGATOR; products and completed operations of EVALUATOR/INVESTIGATOR; premises owned, leased or used by EVALUATOR/INVESTIGATOR; and automobiles owned, leased, hired or borrowed by EVALUATOR/INVESTIGATOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. EVALUATOR/INVESTIGATOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of EVALUATOR/INVESTIGATOR's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by EVALUATOR/INVESTIGATOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

- d. Coverage shall state that EVALUATOR/INVESTIGATOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

EVALUATOR/INVESTIGATOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

G. Subcontractors

EVALUATOR/INVESTIGATOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT E
DISCLOSURE STATEMENT

EVALUATOR/INVESTIGATOR shall file with City Clerk a disclosure statement (Statement of Economic Interests -- Form 700) which includes disclosure of the following:

1. Schedule A - 1 -- Investments.
2. Schedule A - 2 -- Investments, Income and Assets of Business Entitles/Trusts.
3. Schedule B -- Interests in Real Property.
4. Schedule C -- Income and Business Positions.
5. Schedule D -- Income - Loans.
6. Schedule E -- Income - Gifts.
7. Schedule F -- Income - Gifts; Travel Payments, Advances and Reimbursements.

EXHIBIT F
SPECIAL PROVISIONS

Investigative Services

- A. If EVALUATOR/INVESTIGATOR determines that investigative services are required that do not require direct involvement of an attorney and the participation of a non-attorney investigator can provide a savings in time and money to the Board, the EVALUATOR/INVESTIGATOR will retain a private investigation firm after obtaining written approval from CITY.

- B. EVALUATOR/INVESTIGATOR shall be responsible for directing the work of any private investigation firm and for any compensation due to the firm. CITY agrees to compensate EVALUATOR/INVESTIGATOR as shown in Exhibit C, "COMPENSATION", for "Investigator". CITY assumes no responsibility whatsoever concerning such compensation.

- C. EVALUATOR/INVESTIGATOR shall change or add private investigation firms only with the written approval of the City Attorney or his or her designee.