

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF BURLINGAME AND NFP**

**THIS AGREEMENT** is by and between **NFP** (“Consultant”) and the City of Burlingame, a public body of the State of California (“City”). Consultant and City agree:

1. **Services.** Consultant shall provide the Deferred Compensation and Defined Contribution Consulting Services set forth in Exhibit A, attached hereto and incorporated herein.
2. **Compensation.** Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum compensation amount, Consultant agrees to perform all of the Scope of Services herein required of Consultant as indicated at Exhibit A, including all materials and other reimbursable amounts (“Maximum Compensation”). Consultant shall submit invoices as the work is completed over the contract term. All bills submitted by Consultant shall contain sufficient information to determine whether the amount deemed due and payable is accurate. In accordance with the Scope of Services, bills shall include a brief description of services performed, the date services were performed and by whom, a brief description of any costs incurred and the Consultant’s signature.
3. **Term.** This Agreement commences on full execution hereof and terminates on August 31, 2026 with three (3) one-year renewal options at the election of the City or unless otherwise extended or terminated pursuant to the provisions hereof. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein.
4. **Assignment and Subcontracting.** A substantial inducement to City for entering into this Agreement is the professional reputation and competence of Consultant. Neither this Agreement nor any interest herein may be assigned or subcontracted by Consultant without the prior written approval of City. It is expressly understood and agreed by both parties that Consultant is an independent contractor and not an employee of the City.
5. **Insurance.** Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof, acceptable to the City, the insurance coverages specified in Exhibit B, "City Insurance Requirements," attached hereto and incorporated herein by reference. Consultant shall demonstrate proof of required insurance coverage prior to the commencement of services required under this Agreement, by delivery of Certificates of Insurance to City.
6. **Indemnification.** Consultant shall indemnify, defend, and hold City, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the negligence, recklessness or willful misconduct of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of the Services, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify City shall be limited to that allowed pursuant to California Civil Code section 2782.8. Acceptance of insurance certificates and endorsements required under this Agreement does not

relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

7. **Termination and Abandonment.** This Agreement may be cancelled at any time by City for its convenience upon written notice to Consultant. In the event of such termination, Consultant shall be entitled to pro-rated compensation for authorized Services performed prior to the effective date of termination provided however that City may condition payment of such compensation upon Consultant's delivery to City of any or all materials described herein. In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the Services described in this Agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this Agreement. Consultant shall be paid for the reasonable value of the authorized Services performed up to the time of Consultant's cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment.

8. **Ownership of Materials.** All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of City. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this Section, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use. Upon City's request, Consultant shall execute appropriate documents to assign to the City the copyright or trademark to work created pursuant to this Agreement. Consultant shall return all City property in Consultant's control or possession immediately upon termination.

9. **Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances, regulations, and policies of the City. Consultant warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. If a license or registration of any kind is required of Consultant, its employees, agents, or subcontractors by law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this Agreement, and that any applicable bond shall be posted in accordance with all applicable laws and regulations.

10. **Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code § 81000 et seq.) respecting this Agreement.

11. **Whole Agreement and Amendments.** This Agreement constitutes the entire understanding and Agreement of the parties and integrates all of the terms and conditions

mentioned herein or incidental hereto and supersedes all negotiations or any previous written or oral Agreements between the parties with respect to all or any part of the subject matter hereof. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement may be amended only by a written document, executed by both Consultant and City's City Manager, and approved as to form by the City's City Attorney. Such document shall expressly state that it is intended by the parties to amend certain terms and conditions of this Agreement. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of City's City Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

12. **Capacity of Parties.** Each signatory and party hereto warrants and represents to the other party that it has all legal authority and capacity and direction from its principal to enter into this Agreement and that all necessary actions have been taken so as to enable it to enter into this Agreement.

13. **Severability.** Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

14. **Notice.** Any notice required or desired to be given under this Agreement shall be in writing and shall be personally served or, in lieu of personal service, may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth in Exhibit A; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier ("Courier"), postage paid and addressed to the other at its street address set forth below; (iii) transmitting the same by facsimile, in which case notice shall be deemed delivered upon confirmation of receipt by the sending facsimile machine's acknowledgment of such with date and time printout; or (iv) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the receipt for acceptance or rejection of the notice. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

15. **Miscellaneous.** Except to the extent that it provides a part of the definition of the term used herein, the captions used in this Agreement are for convenience only and shall not be considered in the construction of interpretation of any provision hereof, nor taken as a correct or complete segregation of the several units of materials and labor.

Capitalized terms refer to the definition provided with its first usage in the Agreement. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.



## SCOPE OF SERVICES

### COMPLIANCE ASSISTANCE

#### **Review & Revise Investment Policy**

\$1,000 per review

We would provide a detailed analysis to insure that Investment Policy is up to date with changes that have occurred in the investment industry as well as regulatory clarification.

1. Meeting with the Committee to discuss changes to the policy to the City of Burlingame's current needs; and
2. Provision of an electronic copy of final investment policy for printing and distribution by the City of Burlingame.

#### **Quarterly Meeting – On-site (or video conference)**

\$3,000 per quarter

Attendance at regularly scheduled quarterly deferred compensation committee meetings. Meetings will include:

1. Stakeholder education;
2. Regulatory & legislative updates;
3. Industry best practices update; and
4. Watch list review.

#### **Monitor Vendor Performance -**

\$5,000 per review

The monitoring of investment performance focuses on individual funds. Monitoring vendor or administrator performance focuses on the complete array of performance guarantees established in primary and secondary criteria and incorporated into the contract. Such guarantees are often based on administrator analysis or surveys. This component includes:

1. Review and analysis of performance guarantees provided contractually; and
2. Written executive summary of performance results that enables the Deferred Compensation Committee to obtain financially "at risk" performance standards or other evaluative measurement. The term "at risk" is defined as financial commitments providers make to achieve mutually agreeable standards or outcomes in delivery of service.

These annual summaries also serve as the benchmarks for subsequent RFPs in establishing both standards and evaluation criteria.

#### **Monitor Investment Performance -**

\$7,500 per review

This component provides an annual analysis of fund performance based on:

1. External, neutral investment indices that identify the performance of funds within identified asset classes;
2. Comparison of funds, portfolio returns with other pre-determined employers who offer similar plans with similar investment options; and

3. Written summary of year-end performance for the Committee's review and use, especially related to funds that may not be performing to standards.

**Stand-Alone Watch List Review-** \$1,000 per review

**Assist Selecting / Deleting Investment Options -** \$500 per fund

Investment performance constantly changes as new investment options emerge and current options fail to meet performance standards or competitive alternative funds. Part of employer fiduciary responsibility is the monitoring and evaluation of existing funds and constant due diligence in replacing under-performing funds. This component includes:

1. External review of investments based upon a one, three year and five year performance history compared to the relevant benchmark index;
2. Comparison of each investment with other current investments by asset class and asset category; and
3. Written summary of investments and investments on the Watch List.

**Education / Training** \$ 7,500 per training

NFP will be the trainers of 457 University, a comprehensive one-day training program for 457 plan decision-makers and staff. The training will focus on trustee/fiduciary duties of plan decision-makers, and the due diligence necessary to carry out these duties. The training will also focus on the legal requirements applicable to 457 Plans, and the practical administration necessary to meet all legal and fiduciary responsibilities. The above cost assumes preparation of an on-site presentation and up to 25 binders. (Consultant has found that approximately 25 participants provide an interactive workshop that serves participants most effectively.)

**Compliance Audit** \$20,000 per audit

The Internal Revenue Service (IRS) has recently notified public employers through forums like NAGDCA, that it intends to audit public plans. The IRS has specifically identified eligibility requirements, adherence to annual maximums, appropriate standards for determining catch-up, adherence to hardship and loan requests and Domestic Relations Orders. Additionally, the IRS has indicated they wish to scrutinize decision-making meeting minutes to assure that decisions are made for reasons that reflect due diligence and compliance with legislative and regulatory mandates NFP will provide an external audit of the functions likely to be examined by the IRS for plan sponsor compliance. Specifically this component will examine:

1. Decision-maker policies regarding actions / decisions that impact plan compliance and governance;
2. Hardship procedures (whether administered internally or externally) and adherence to IRS guidelines regarding the appropriate basis for approvals;
3. Administration of loans, domestic relations orders and catch up provisions;
4. Establishment of internal controls regarding eligibility (initial participant contributions), adherence to annual maximums; and
5. Recommendations that may bring the employer into a stronger position relative to potential future audits.

## EXHIBIT B

### INSURANCE REQUIREMENTS

Before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the City, the insurance specified herein.

1. **Insurance Requirements.** Coverage shall be at least as broad as follows, and the City is to be endorsed as additional insured as described below up to the maximum limit of coverage if it is greater than the minimums specified here.
  - ❑ Statutory Worker's Compensation Insurance and Employer's Liability Insurance coverage: \$1,000,000
  - ❑ Commercial General Liability Insurance: \$1,000,000 (Minimum), \$2,000,000 Aggregate
  - ❑ Automobile Liability Insurance-including owned, non-owned and hired vehicles: \$1,000,000 per occurrence
  - ❑ Where applicable, professional Errors and Omissions coverage: \$1,000,000
  
2. **Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant shall be provided as required by the California Labor Code.
  
3. **Commercial General and Automobile Liability.** Consultant, at Consultant's own cost and expense, shall maintain Commercial General and Business Automobile Liability insurance for the period covered by this Agreement in an amount not less than the amount set forth in this Exhibit B, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of hired, owned and non-owned automobiles. Coverage shall be at least as broad as the latest edition of the Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.
  - a. A policy endorsement must be delivered to City demonstrating that City, its officers, employees, agents, and volunteers are to be covered as insured as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
  - b. The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.
  - c. An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

- d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
  - e. Insurance is to be placed with California-admitted insurers with current, unrestricted licenses and no negative financial ratings.
4. **Deductibles and Self-Insured Retentions.** Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Any self-insured retention or deductible is subject to approval of City. During the period covered by this Agreement, upon express written authorization of City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Attorney may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
5. **Notice of Reduction in Coverage.** In the event that any coverage required under the Agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
6. **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
  - b. Order Consultant to stop work under this Agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
  - c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.