

ALAMEDA COUNTYWIDE CLEAN WATER PROGRAM LEGAL SERVICES REQUEST FOR QUALIFICATIONS

Program Background

The Alameda Countywide Clean Water Program (Program) was initiated in 1991 to help member agencies comply with the Water Quality Control Plan for the San Francisco Bay Basin prepared by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), and other requirements of state and federal laws applicable to water quality and urban runoff management. For more information on the Program visit <https://cleanwaterprogram.org/>.

The Program assists members with the implementation of the Phase I municipal stormwater discharge permit, the “Municipal Regional Stormwater Permit” (MRP) issued under the National Pollutant Discharge Elimination System (NPDES) by the Regional Water Board to the Program’s member agencies and 62 other Bay Area municipalities and flood control districts. A copy of the current MRP, known as MRP 3 is available on the Regional Water Board website:

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/.

The next 5-year permit (MRP 4) is expected to be released as an administrative draft in the Fall of 2026 with anticipated adoption by the Regional Water Board in May 2027.

The following agencies are member agencies of the Program: the Alameda County Flood Control and Water Conservation District (District), County of Alameda, City of Alameda, City of Albany, City of Berkeley, City of Dublin, City of Emeryville, City of Fremont, City of Hayward, City of Livermore, City of Newark, City of Oakland, City of Pleasanton, City of Piedmont, City of San Leandro, City of Union City, and Zone 7 Water Agency. The Program participants have executed an “Agreement to Implement the Alameda Countywide Clean Water Program” (Program Agreement). The Program Agreement provides the basis for the participants to implement the Program and establishes a Management Committee, which is the decision-making body of the Program. The City of Fremont serves as the Program’s Fiscal Agent and issues and administers contracted services on behalf of the Program.

Overview of Requested Services

The Program’s long-time Legal Counsel is retiring, and the Program is seeking new Legal Counsel. The Program’s Legal Counsel will provide expert on-call legal guidance and advice on compliance with the MRP, Clean Water Act and NPDES regulation, California Water Code; assistance with the negotiation of future permit requirements; legal guidance and advice on municipal ordinances as they relate to stormwater; state unfunded mandates; as well as support for the legal aspects of the Program administration.

Statements of qualification are welcome from sole proprietorships, partnerships, or corporations. The Program intends to enter a 5-year contract with the successful service provider with options to renew. The City of Fremont, as the Program’s Fiscal Agent, will issue the contract. The anticipated annual budget for the services is estimated as \$100,000. The annual budget for legal services will be approved by the Program Manager and Fiscal Agent as authorized by the Management Committee.

Scope of Services

- 1. Permit Compliance** – Advise the Program and members on interpretation of and compliance with MRP provisions, appropriate actions to be taken to implement permit provisions, and assist them in responding to communications from the Regional Water Board. This may also include responses to

threatened or actual administrative enforcement actions commenced by the Regional Water Board or matters referred to the Attorney General for enforcement.

2. **Legal/Regulatory Summary** – Prepare monthly confidential legal/regulatory written summaries for the PLS meetings relating to the development and implementation of new or revised state and federal water quality directives, regulations, and court decisions relevant to the Program and member agencies. These confidential monthly legal summaries are typically 5-10 pages in length and include priority relevant activities at the State Water Resources Control Board (State Water Board) and the Regional Water Board as well as pertinent court cases and legislation. The monthly legal summaries are intended to better inform the Program and member agencies in proceeding with their administration and compliance with the Municipal Regional Stormwater permit.
3. **Policy Level Subcommittee (PLS), Management Committee (MC), and Planning & Budget Workgroup (P&B Workgroup) monthly meetings** – Attend these monthly meetings and provide legal perspective and guidance. The meetings are held virtually but may be held in person on occasion.
4. **MRP Reissuance** – Advise and represent the Program and member agencies in negotiations and discussions with the Regional Water Board staff and Board Members relating to the consideration and adoption of the MRP 4. This may include 1) meetings with Regional Water Board staff and other interested parties to discuss proposed permit conditions, 2) reviewing and/or preparing written comments to the Regional Water Board on the Tentative Order, 3) providing testimony at the adoption hearings, and 4) potentially drafting and submitting a petition for review of the adopted permit to the State Water Board if so directed.
5. **Unfunded State Mandates** – Advise the Program and member agencies on the three Test Claims currently pending before the Commission on State Mandates (CSM). Two of the member agencies have filed Test Claims before the CSM – City of Dublin on MRP 1, and Union City on MRPs 2 and 3. Each test claim is at a different stage in the test claim process. These services will also include coordination of the lead representation work being performed by Duane Morris, LLP, on these three test claims.
6. **Outstanding Petition for Review of MRP 3** – Advise and represent the Program and member agencies, if needed, on the pending petition for review of MRP 3, which the State Water Resources Control Board has taken up on their own motion.
7. **Program Administration Support** – Advise the Program on various matters that may arise that are related to the administration of the program. Such matters may include: renewal of the Program Agreement (currently underway); advise on the conduct of Program business consistent with the Program Agreement, review of Program developed organizational process documents; evaluation of laws and regulations pertaining to the maintenance of the program website; advise on public records act requests.

Statement of Qualifications Contents

The Statement of Qualifications (SOQ) shall include the following information. The SOQ shall not exceed 15 pages for items 1-7. Resumes included are not included in this page limitation.

1. **Transmittal letter** signed by an authorized representative of the firm. The transmittal letter shall state the name and title of the contact person and list any exceptions to the City of Fremont's standard agreement.

2. **Overview and Summary** should clearly convey understanding of the work and project approach and address the following:
 - Understanding of the purpose of the project as specified in the scope of services;
 - Awareness of institutional, organizational and political issues related to the history of the project; and
 - Summary of the overall approach to the project and the methodologies that will be used, and administrative and operational management expertise that will be employed.
3. **Key Personnel Experience** shall identify the person proposed as Legal Counsel and provide an estimate of the availability of the key personnel.
 - Describe the roles and organization of the roles of key personnel assigned to the project. Key personnel, especially the proposed Legal Counsel, shall have significant demonstrated experience with this type of work. For the purposes of this clause, "key personnel" is defined as those individuals who are essential to the successful completion and execution of this contract for legal services. Key personnel must be available for the duration of the engagement and may not be substituted without prior written approval by the Program.
 - Provide a brief biographical summary of the key personnel including the professional licenses certifications, and education, number of years with firm, and a summary of work experience.
 - Provide resumes for the key personnel. Include the resumes in an appendix. Resumes are not included in the page limitations.
4. **Relevant Projects**, include descriptions of up to two relevant projects performed by the Legal Counsel and key personnel.
5. **References**, provide up to three references for clients/projects that are similar to this one and who can attest to firm's and key personnel's performance. Provide name, email address, and telephone number, with brief description of the project. At least one reference should be for services performed for a public agency.
6. **Conflicts of Interest**, identify any potential conflicts of interest.
 - Responders agree that consistent with Government Code Section 81000, for the term of this contract, no ACCWP member agency, member agency employee or member agency official shall have any direct interest in the contract or any direct or material benefit arising therefrom.
 - Responders must provide a list of any potential conflicts of interest in working for ACCWP. This must include, but is not limited to, a list of your firm's clients who are the following:
 - Public or private clients located or operating within the jurisdictional limits of the Program that may pose a potential conflict of interest.
 - List all such clients with a brief description of completed and/or current work for these clients.
 - This list must identify all potential conflicts of interest prior to the release of this RFQ as well as current and future commitments to other projects.
7. **Rates**, provide a rate schedule that includes the hourly rates and other direct expenses. The Program may negotiate an acceptable payment schedule with the selected firm.

Questions

All questions regarding this RFQ shall be submitted the Program Manager by email SandyM@lwa.com via email Noon on February 9, 2026, with the subject line **ACCWP Legal Services Questions**. Questions

and responses will be emailed to all question submitters and posted to the ACCWP website by end of day on February 17, 2026.

Submittal Instructions

SOQs must be submitted to the Program Manager by email Sandym@lwa.com, with the subject line **ACCWP Legal Services SOQ**, by midnight on March 2, 2026. The SOQ shall be submitted as single PDF file. The Program reserves the right to reject late submittals.

By submission of its qualifications the Responder agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform. All costs required for the preparation and submission of the SOQ shall be borne by the Responder. Only one SOQ will be accepted from any one person, partnership, corporation, or other entity.

Evaluation and Selection Process

The Program will select the SOQ that presents the best value and is most advantageous to the Program and its members. Accordingly, the Program may not necessarily award the proposer with the lowest cost if doing so would not be in the overall best interest of the Program.

All submittals will be evaluated by the Program's Evaluation Committee. The Evaluation Committee will evaluate each SOQ meeting the qualification requirements set forth in this RFQ. All contacts during the evaluation phase shall be through the Program Manager only. Responders shall neither contact nor lobby evaluators during the evaluation process. Attempts by Responders to contact and/or influence members of the Evaluation Committee or program members may result in disqualification of the Responder.

The Evaluation Committee will evaluate and rank the proposals using the following scoring:

| Evaluation Criteria | Points |
|--|-----------|
| Completeness of Response Responses that do not include the content requirements identified within this RFQ will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration. | Pass/Fail |
| Overview and Summary | 15 |
| Key Personnel Experience | 40 |
| Relevant Projects | 25 |
| References | 20 |
| Total Points Possible | 100 |

The Program reserves the right to request clarification and/or additional information from the Responders.

Evaluation Committee may schedule in-person or virtual interviews with the top ranked Responders and reserves the right to determine the number of interviews it will conduct.

Schedule for RFQ Process

Dates are subject to change.

| Event | Date |
|-------------------------------|----------------------------|
| Issue RFQ | January 26, 2026 |
| Question Deadline | February 9, 2026 |
| Responses to Questions | February 17, 2026 |
| SOQ Submission Deadline | March 2, 2026 |
| Interviews | March 24-April 3, 2026 |
| Management Committee Approval | April 22, 2026 |
| Notice to Proceed | Upon execution of contract |

Contract Information

The Evaluation Committee will recommend award to the service provider whose, in its opinion, submittal best serves the overall interests of the Program including an acceptable fee proposal to the Clean Water Program's Management Committee. The Management Committee will make the final decision on the provider for these services.

The Program reserves the right to reject any or all responses that materially differ from any terms contained herein and to waive informalities and minor irregularities in responses received. The Program and the City of Fremont have the right to decline to award this contract for any reason.

The City of Fremont is the Fiscal Agent for the Clean Water Program and will contract with the provider selected by the Management Committee.

The selected provider is expected to sign the City of Fremont's standard agreement, see Attachment 1. Any exceptions to the standard agreement must be noted in the SOQ transmittal letter.

Following successful completion of the contracting process, work will be authorized annually by the Program. Funding for each fiscal year is dependent upon adequate Program funds being available.

Rate schedules submitted with the SOQ and accepted by the Program shall not be changed for the first year of the contract. Following the first year, rates may be increased by no more than 3% per year. Rate schedules are to be provided annually (on a fiscal year basis) to the Program Manager and Fiscal Agent.

ATTACHMENT 1

CITY OF FREMONT STANDARD AGREEMENT

MASTER LEGAL SERVICES AGREEMENT

[INSERT FIRM NAME] (2025)

This Master Legal Services Agreement (hereinafter "Agreement") is made and entered into by and between the City of Fremont, a municipal corporation (hereinafter "City"), and _____ (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the "Parties."

RECITALS

- A.** City requested Consultant to perform legal services related to general municipal law. It is anticipated that, as legal issues arise for which the City requires the Consultant to provide services, the City will issue Task Orders describing the specific services to be performed.
- B.** Consultant has agreed to perform the services as provided in this Agreement and agreed upon Task Orders in return for the compensation described in this Agreement.
- C.** In reliance upon Consultant's representations regarding its qualifications, the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES.** Consultant shall perform general municipal legal services, as described more particularly in each Task Order, in accordance with the terms and conditions contained in this Agreement. No work shall be performed except to the extent the Consultant receives a Task Order from the City's Authorized Representative.
- 2. TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance and shall complete all required services no later than the dates set forth in each Task Order. Any services for which times for performance are not specified in this Agreement or a Task Order shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. PAYMENT.

3(A). Billing. In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefor (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates set forth on Exhibit "A." The Consultant shall endeavor to provide monthly invoices no later than 30 days after the end of each billing cycle (i.e., all services identified on the invoice were performed no more than 60 days prior to the date the City received the invoice). The City shall have no obligation to pay Consultant for services to the extent performed more than 90 days prior to the date the City receives the invoice for the services. The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). "Not to Exceed" Compensation. The compensation payable to Consultant for the services identified in this Agreement shall not, without prior written approval of the City, exceed the total amount identified in all Task Orders issued by the City. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. The City does not guarantee any specific amount of work or billable hours will be authorized, unless specifically set forth in Task Orders approved by the City's Authorized Representative. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City.

3(C). Consultant's Failure to Perform. If Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services, without additional compensation from the City. Consultant shall reimburse the City for damages incurred due to Consultant's failure to perform, which City may charge as an offset to Consultant's payment.

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant's Representative. Consultant understands that, in entering into this Agreement, the City has relied upon the representations of Consultant regarding the qualifications of the Consultant's representatives. Therefore, Consultant shall not replace any of the personnel identified in any Task Order without the prior written consent of the City's Authorized Representative.

4(B). City's Authorized Representative. For the performance of services under this Agreement, the Consultant shall take direction from the City's Authorized Representative, the City Attorney, unless otherwise designated in writing by the City's Authorized Representative.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from City. The City will endeavor to provide Consultant with all information necessary for Consultant's performance of the services under any Task Order. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all requested relevant information in City's possession (unless the information is deemed by the City to be privileged or non-disclosable).

5(B). Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City during normal business hours within a reasonable time after City's request.

5(C). Proprietary or Confidential Information of the City. Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Consultant agrees that all City information accessed by Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

5(D). Ownership of Work Product. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand by the City. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and, at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not an agent of the City and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

7. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of California Government Code Section 1090 and the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other state and local laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.

8. NONDISCRIMINATION. Consultant shall not discriminate against any employee or applicant on the basis of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, gender, or other legally protected status. Consultant will include this requirement in any subcontract.

9. COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all applicable federal, state, and local laws including any applicable legal requirement imposed by Executive Orders duly issued at the federal, state, and local level, whether said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

10. LICENSES. Consultant represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required of Consultant to practice its profession and provide the Services under this Agreement. Consultant further represents and warrants that it shall, at its sole cost and expense, keep in effect or

obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals, which are legally required of Consultant to practice its profession and provide the Services under this Agreement.

11. **BUSINESS TAX.** The Consultant shall apply for and pay the business tax and registration tax in accordance with Fremont Municipal Code Chapter 5.05.
12. **INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement. Exhibit "B" of this Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.
13. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-284-4050, and Consultant shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property); (b) name and address of witnesses; and (c) name and address of any potential insurance companies.
14. **INDEMNIFICATION.** Consultant shall, to the fullest extent permitted by law, hold harmless, defend (with counsel approved by the City), and indemnify the City (including its officials, officers, employees, agents and volunteers), from and against any and all claims, litigation, demands, damages, liabilities, costs, and expenses, including court costs, attorney's fees, experts fees and other costs and fees of litigation or other dispute resolution proceedings ("Claims") resulting or arising from Consultant's performance, or failure to perform, under this Agreement, except Claims arising out of the City's sole negligence or willful misconduct. This provision survives completion of the Services and the expiration or

termination of this Agreement and is not limited by the provisions of Section 12 relating to insurance.

15. **TERM OF THE AGREEMENT.** The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in each Task Order and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in this Agreement or the maximum amount authorized under paragraph 3 of this Agreement.
16. **DEFAULT.** If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice or (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice; then, (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.
17. **NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered or mailed to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of either: (a) actual receipt by a party’s Authorized Representative; or (b) actual receipt at the address designated below; or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing written notice to the other party.

To City:

Rafael E. Alvarado Jr.
City Attorney
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, CA 94538

To Consultant:

[INSERT]

- 18. HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- 19. SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- 20. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.
- 21. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.
- 22. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 23. CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
- 24. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 25. NO THIRD-PARTY BENEFICIARIES.** This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, any third-party beneficiary rights), except as otherwise expressly provided for in this Agreement.
- 26. NEUTRAL INTERPRETATION.** This Agreement represents the

contributions of both parties, each of whom has had the opportunity to be represented by competent counsel. Accordingly, the rule stated in California Civil Code Section 1654 that a contract be construed against its drafter, shall have no application to the interpretation of this Agreement.

- 27. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- 28. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 29. COUNTERPARTS.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original. The Parties agree that the digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Any digital signature shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record keeping system to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the terms.

CITY OF FREMONT:

[INSERT]

Sign: _____

Sign: _____

Date: _____

Date: _____

By: Rafael E. Alvarado Jr.

By:

Title: City Attorney

Title:

Exhibit “A”
RATES

The Consultant shall provide general municipal legal services, as more particularly described in individual Task Orders to be issued by the City in accordance with the terms of the Agreement. The Authorized Representatives of the Consultant and the City for each task shall be identified on each Task Order.

The Consultant’s team of attorneys authorized to perform legal services under this Agreement, and the corresponding billing rate for each, are:

| <u>Title</u> | <u>Rate</u> |
|---------------------|--------------------|
|---------------------|--------------------|

The Consultant may revise the billing rates set forth above not earlier than annually, and not more than once per fiscal year (July 1 to June 30), by providing at least 30 days prior written notice to the City. The amount of any such increase shall not exceed the lesser of: (a) 5%, or (b) the annual percentage increase in the Consumer Price Index for San Francisco-Oakland-San Jose.

Billing shall be provided in increments not greater than 1/10th of an hour.

Unless specifically authorized by a Task Order, or unless the Consultant obtains prior approval from the City’s Authorized Representative, the Consultant shall not bill the City for:

- (1) More than one attorney attending a meeting or other proceeding.
- (2) Internal administrative costs such as secretarial services, word processing, local telephone service, computer assisted research, or general overhead.
- (3) Travel expenses outside the Bay Area.
- (4) An annual audit letter (if requested by the City or its auditor).

In addition to billing for services based on the hourly rates set forth above, the Consultant is authorized to bill the City for reimbursement of its actual costs directly related to the services; provided that the total billing (for hourly services and reimbursable costs) shall not exceed the amount identified in each Task Order, and provided that the Consultant either: (a) obtains the approval of the City’s Authorized Representative prior to incurring the costs, or (b) the costs fall into one of the following categories:

- (1) Travel expenses within the Bay Area.

- (2) Court costs, such as filing fees.
- (3) Service of process.
- (4) Court reporter fees.
- (5) Expert witnesses, consultants, or investigators.
- (6) Copying costs, at \$0.10 per page.
- (7) Actual costs of mailing.

Exhibit “B”

INSURANCE REQUIREMENTS

Consultant's performance of the services under this agreement shall not commence until Consultant shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Consultant shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Consultant, the Consultant's agents, representatives, employees and subcontractors. Required professional liability insurance shall be maintained at the level specified herein for the duration of this agreement and any extension thereof and for twelve additional months following the agreement termination or expiration.

INSURANCE COVERAGE AND LIMITS RESTRICTIONS

- 1.** It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

- 2.** The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Fremont before the City of Fremont's own insurance or self-insurance shall be called upon to protect it as a named insured.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- 1.** Insurance Services Office Commercial General Liability coverage:
 - a. Blanket contractual liability
 - b. Broad form property coverage
 - c. Personal injury

- 2.** Insurance Services Office form covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Professional Liability insurance
5. Such other insurance coverages and limits as may be required by the City of Fremont.

B. MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.
Bodily Injury by Disease - \$1,000,000 policy limit.
Bodily Injury by Disease - \$1,000,000 each employee.
4. Professional Liability insurance: \$2,000,000.
5. Such other insurance coverages and limits as may be required by the City of Fremont.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

1. Any deductibles or self-insured retentions must be declared to and approved by the City of Fremont. At the option of the City of Fremont, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Fremont, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City of Fremont.
3. The City of Fremont reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. ADDITIONAL INSURED REQUIREMENTS:

1. The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:
 - a. The City of Fremont, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on

behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Fremont, its officers, officials, employees, agents or volunteers.

b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Fremont, its officers, officials, employees, agents or volunteers.

c. The Consultant'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.

d. Consultant shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City of Fremont and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific evidence of separate endorsements naming the City of Fremont and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been filed with the City Clerk.

Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Consultant shall replace such certificates for policies expiring prior to completion of work under this agreement.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. COMPLETED OPERATIONS

Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Consultant fails to obtain or maintain completed operations coverage as required by this agreement, the City of Fremont at its sole discretion may purchase the coverage required and the cost will be paid by the Consultant.

G. CROSS-LIABILITY

The Liability policy shall include a cross-liability or severability of interest endorsement.

H. FAILURE TO MAINTAIN INSURANCE COVERAGE

If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this agreement, the same shall be deemed a material breach of contract. The City of Fremont, at its sole option, may terminate this agreement and obtain damages from the Consultant resulting from said breach. Alternatively, the City of Fremont may purchase such required insurance coverage, and without further notice to Consultant, the City of Fremont may deduct from sums due to Consultant any premium costs advanced by the City of Fremont for such insurance.

I. PRIMARY AND NON-CONTRIBUTORY

For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Fremont, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Fremont, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The additional insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City of Fremont's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

J. SUBCONTRACTORS

Consultant shall require all subconsultants to maintain the same levels of insurance and provide the same indemnity that the Consultant is required to provide under this Agreement. A subconsultant is anyone who is under contract with the Consultant or any of its subconsultants to perform work contemplated by this Agreement. The Consultant shall require all subconsultants to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

K. SUBROGATION WAIVER

Consultant agrees to waive subrogation rights against City of Fremont regardless of the applicability of any insurance proceeds, and to require all Consultants, subcontractors or others involved in any way with the services to do likewise.

L. VERIFICATION OF COVERAGE

Consultant shall furnish the City of Fremont with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Fremont before the services commence.