

**Agreement BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
and
Sher Edling LLP and Altshuler Berzon LLP;
For Professional Legal Services**

This Agreement, dated for convenience of reference as of November 1, 2018, is by and between the San Francisco City Attorney's Office, acting on behalf of the People of the State of California and the City and County of San Francisco ("the City Attorney"), Sher Edling LLP, and Altshuler Berzon LLP (collectively, the "Parties"). Sher Edling LLP and Altshuler LLP shall be referred to jointly in this Agreement as "Special Counsel."

This Agreement is made with reference to the following facts and circumstances:

A. The City Attorney wishes Special Counsel to provide professional legal services to assist the City Attorney in its prosecution of the action styled CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the San Francisco City Attorney DENNIS J. HERRERA v. BP P.L.C., et al. ("the Litigation"). Pursuit of civil penalties or any proceeds akin to civil penalties are excluded from the scope of the representation.

B. California Code of Civil Procedure section 731 vests the San Francisco City Attorney with authority to file actions in the name of the People of the State of California in order to abate a public nuisance. The City Attorney has the authority to retain outside legal counsel and consultants to assist him with such representation. The City Attorney believes that entering into this Agreement will protect the public and "lead to results that will be beneficial to society—results which otherwise might not have been attainable." (*County of Santa Clara v. Superior Court* (2010) 50 Cal.4th 35, 58.)

C. Special Counsel are known for their expertise in the area of environmental litigation and complex civil litigation and are well qualified to assist the City Attorney in accordance with the provisions of this Agreement.

D. Special Counsel will report to and work under the direction and control of the City Attorney as provided in this Agreement.

E. This Agreement creates an ongoing attorney-client relationship between Special Counsel and the City Attorney's Office. The attorney-client relationship shall remain in place at all times from the effective date of this Agreement until such time as either party provides written notice of its intent to terminate the attorney-client relationship. The attorney-client relationship will remain in place continuously under this Agreement until such notice is provided, regardless of whether Special Counsel is actively performing legal work for the City Attorney at any given time.

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF SERVICES

1.1 Scope

Upon request of the City Attorney, Special Counsel shall advise and assist the City Attorney on matters relating to the Litigation. The Scope of Services of Special Counsel may be modified from time to time, in writing, by the City Attorney.

(a) The San Francisco City Attorney, as the chief legal officer of the City and County of San Francisco (“San Francisco” or the “City”), who is charged with representing it in legal proceedings with respect to which it has an interest, and who is authorized to bring public nuisance actions on behalf of the People of the State of California, shall retain final authority over all aspects of the Litigation, including all critical discretionary decisions involved in the Litigation and in particular, any decision regarding the ultimate disposition of the Litigation. In order to retain final authority over the Litigation, the City Attorney will (1) retain complete control over the course and conduct of the Litigation; (2) retain a veto power over any decisions made by Special Counsel; and (3) appoint a Deputy City Attorney with supervisory authority who will specifically be assigned and personally be involved in overseeing the Litigation and supervising the work of Special Counsel as follows:

(1) The City Attorney’s Office will retain complete control over the course and conduct of the Litigation, and Deputy City Attorneys will be actively involved in and direct all decisions related to the Litigation. To assist the City Attorney’s Office with retaining complete control over the course and conduct of the Litigation, Special Counsel will present the following matters to the City Attorney’s Office for decision with adequate time for the City Attorney’s Office to review and decide such matters: (a) ultimate disposition of the Litigation, including but not limited to whether to settle or try the case; (b) witnesses and evidence to be presented at trial; (c) waiver of a jury trial, if applicable; (d) the necessity of pursuing discovery motions, depositions, and written discovery; (e) all dispositive motions and oppositions to such motions; (f) all significant court pleadings, discovery, or procedural motions; (g) witnesses and evidence to be produced during discovery; (h) retention and selection of experts and consultants, including but not limited to subject matter and areas of expert reports and testimony; (i) approval of expert reports; (j) procedural tactics; (k) overall discovery approach; (l) gathering and presentation of evidence at trial; (m) all litigation and trial strategy questions; and (n) any and all other discretionary matters. These provisions are not meant to be exhaustive, and Special Counsel agree that at all times the final authority for discretionary decisions in the Litigation will remain vested in the City Attorney’s Office. It is the intent of the Parties to this Agreement that this paragraph be construed broadly to effectuate the Parties’ intent that the City Attorney’s Office exercise control over the course and conduct of the Litigation and that the City Attorney’s Office have final decision-making authority over all aspects of the litigation strategy. Status meetings between the City Attorney’s Office and Special Counsel will be held as requested by the City Attorney’s Office.

(2) The City Attorney’s Office will retain veto power over any decisions, proposals, or recommendations made by Special Counsel, including, but not limited to, those matters listed in subparagraph (1) above. In order to effectuate control over the Litigation, Special Counsel

will provide the City Attorney's Office with adequate notice of all events, timely copies of all pleadings that Special Counsel propose filing, and timely copies of pleadings that defendants filed in the Litigation (in the event that defendants do not serve them directly on the City Attorney's Office, as defendants are required to do under the California Rules of Court) to allow proper, complete, and considered valuation of all subject matters, including, but not limited to, those listed in subparagraph (1) above. For example, copies of motions filed by defendants (and not directly served on the City Attorney's Office) will be sent to the City Attorney's Office immediately so that the City Attorney's Office can review them and, as necessary, discuss strategy related to the opposition or reply. By further example, Special Counsel will consult with the City Attorney's Office regarding any motions to be filed and allow the City Attorney's Office adequate time to make a considered judgment regarding the necessity and strategy involved in filing the motions.

(3) The City Attorney's Office will appoint a Deputy City Attorney with supervisory authority who will specifically be assigned and personally be involved in overseeing the Litigation and the relationship with Special Counsel. The City Attorney, as the chief legal officer, will be apprised by his or her designee regarding the course and conduct of the Litigation.

(4) Decisions regarding settlement of the Litigation are explicitly reserved to the discretion of the City Attorney's Office. Defense Counsel may contact the assigned Deputy City Attorney directly, without having to confer with Special Counsel regarding settlement.

(b) Special Counsel are authorized to take appropriate legal steps to handle the Litigation as it pertains to any and all claims made and all relief sought, with the exception of civil penalties.

(c) Special Counsel shall not make or distribute any press releases without the express permission of the City Attorney. Special Counsel shall make every effort not to make statements to the press without the permission and consent of the City Attorney.

(d) Special Counsel shall provide sufficient resources, including attorney time, and competent personnel to handle the Litigation through judgment after trial court proceedings and any appeals or petitions for discretionary appellate review, or, subject to approval as provided herein, through settlement.

1.2 Ownership of Documents, Reports, and Data Files

Any and all documents, reports and/or data files originated and prepared by Special Counsel pursuant to this Agreement shall be and become the property of the City Attorney's Office for its use in any manner it deems appropriate. If the City Attorney disseminates any or all of such information to other persons who are not public officers or employees, it may identify Special Counsel as the source of said information. The City Attorney need not receive Special Counsel's authorization for any such dissemination, but will seek to advise of such dissemination before so doing. Nothing herein shall modify existing law regarding ownership of an attorney's work product, nor limit in any respect an attorney's obligations under the applicable Rules of Professional Conduct.

1.3 Retention of Records

Special Counsel shall maintain records, including records of financial transactions, pertaining to the performance of this Agreement, in their original form, in accordance with requirements prescribed by the City Attorney. These records shall be retained for a period of no less than five years following the expiration date of this Agreement. Said records shall be subject to examination and audit by authorized City Attorney personnel at any time during the term of this Agreement or within the five years following the termination date of this Agreement. City Attorney acknowledges its responsibility to undertake all necessary effort to identify, preserve, and retain documents concerning potential claims or defenses related to the Litigation. City Attorney shall cooperate with Special Counsel in locating, preserving, and reproducing its records which may be material to the investigation, discovery, prosecution, and trial in the Action.

1.4 Maintaining Attorney-Client Privilege

Special Counsel acknowledge that they have no authority to waive the attorney-client privilege on behalf of the City Attorney and agree to conduct their activities relating to this matter in such a manner as to maintain the confidentiality of communications between Special Counsel and the City Attorney and any City official or employee. Special Counsel further agree not to waive the attorney-client privilege with respect to documents or communications obtained or conducted in connection with this matter without the express written consent of the City Attorney.

2. TERM

The term of this Agreement (the "Term") shall be from November 1, 2018 until six months after the final resolution of the Litigation, unless sooner terminated according to the terms of this Agreement, including, but not limited to, the City Attorney's exercising its rights to terminate under Section 6 of this Agreement. Special Counsel is not responsible for any legal work performed before the date of this Agreement.

3. EFFECTIVE DATE

This Agreement shall become effective upon full execution and delivery of this Agreement by all Parties, provided that Special Counsel shall not perform any work under this Agreement until the City Attorney gives Special Counsel either written or oral notice to proceed with performance of the Scope of Services under this Agreement.

4. COMPENSATION

4.1 Costs

(a) Special Counsel agree to advance all out of pocket litigation costs incurred by Special Counsel or by the City Attorney's Office in the Litigation. San Francisco and the City Attorney's Office are not liable to pay any of the expenses of the Litigation, whether such

expenses are attorneys' fees, costs or other amounts. The repayment of any costs and other expenses is contingent upon a monetary recovery, other than civil penalties, being obtained. If no such monetary recovery is obtained, San Francisco and the City Attorney's Office will owe nothing for costs and other expenses. If such a monetary recovery is obtained, Special Counsel shall be reimbursed out of that recovery for "Reimbursable Costs" incurred, as further described below.

(b) For the purposes of this Agreement, Reimbursable Costs shall include: deposition costs (other than videotaping, unless approved in advance), filing fees for which the City Attorney is not exempt, court reporter and transcript fees, fees for service of process, fees for messenger services, and reasonable travel expenses.

(c) Reimbursable Costs shall also include the following, if Special Counsel first obtains approval from the City Attorney's Office: charges for outside vendor document reproduction, document hosting, and database management which, because of volume or format, is impractical to complete, host or maintain in-house; fees for consultants, experts, or investigative services; videotaping of depositions; costs associated with special master or alternative dispute resolution services; and other expenses for which Special Counsel obtains prior approval.

(d) Reimbursable Costs shall not include: postage (except for the costs of special shipping or overnight mail, as required); online subscription, connection or other costs for computerized research; telephone charges (whether local or long distance); facsimile charges; wages and overtime (except for approved wages and overtime paid to contract attorneys); and any other charges incurred without the authorization of the City Attorney's Office.

(e) In the event the court awards the defendants certain costs they incurred in defending the Litigation ("Statutory Costs"), those costs will be paid out of the Revolving Fund described below in Section 4.2(d). If the funds in the Revolving Fund are not sufficient to pay any Statutory Costs awarded to defendants, the City Attorney's Office will pay up to twenty-five thousand dollars (\$25,000) of the Statutory Costs above the funds in the Revolving Fund, and Special Counsel shall pay any remaining Statutory Costs.

4.2 Attorneys Fees

(a) If Special Counsel and the City Attorney are successful in obtaining and collecting a recovery—whether by judgment, settlement, or otherwise—Special Counsel shall be paid the following contingency fee out of such Net Monetary Recovery as defined herein:

(1) If the Net Monetary Recovery is between zero and one hundred million dollars (\$100,000,000), Special Counsel shall be paid twenty-five percent (25%) of Net Monetary Recovery;

(2) If the Net Monetary Recovery is between one hundred million dollars (\$100,000,000) and one hundred fifty million dollars (\$150,000,000), Special Counsel shall be paid the amount set forth in subparagraph (1) above; plus fifteen percent (15%) of the amount of the Net Monetary Recovery greater than one hundred million dollars (\$100,000,000).

(3) If the Net Monetary Recovery is greater than one hundred and fifty million dollars (\$150,000,000), Special Counsel shall be paid the amounts set forth in subparagraph (1) and (2) above; plus seven and one-half percent (7.5%) of the amount of the Net Monetary Recovery greater than one hundred fifty million dollars (\$150,000,000).

The City Attorney's Office will support Special Counsel's application for an award of attorneys' fees from any common fund created by the resolution of the Litigation. The City Attorney's Office will support Special Counsel's application for an award of attorneys' fees and costs from the defendants in the event that the Litigation is resolved on the basis of injunctive relief alone.

(b) Notwithstanding paragraph 4.2(a) above, the City Attorney shall pay no higher percentage for compensation of Special Counsel than is paid by any other city, county or local government entity that Special Counsel represents on a contingent fee basis in this or similar litigation.

(c) For the purposes of this Agreement, Net Monetary Recovery shall include, without limitation, the then present value of any monetary payments by the defendants in the Litigation, or their affiliates or insurance carriers, whether by judgment, settlement, or otherwise, after all Reimbursable Costs incurred by Special Counsel and the City Attorney's Office are reimbursed out of the gross monetary recovery. If the Net Monetary Recovery is zero or less (that is, if Reimbursable Costs exceed the gross monetary recovery) Special Counsel will receive nothing for their legal services under this Section 4.2, but may petition the court for an award of attorneys' fees and costs against the defendants consistent with the terms of Section 4.2(a).

(d) Subject to Section 9 of this Agreement, Special Counsel may associate with other law firms as co-counsel in the Litigation subject to the City Attorney's approval, which approval shall not be unreasonably withheld. Any associated co-counsel must execute an agreement to be bound by the terms of this Agreement. Any contingent attorneys' fees paid to Special Counsel shall be apportioned among Special Counsel subject to disclosure and express consent by the City Attorney. In the event of a dispute among Special Counsel relating to the apportionment of any fee award, the full amount of the disputed fees shall be placed in an escrow account to be released only after resolution of the dispute among Special Counsel, and the undisputed portion will be distributed promptly and appropriately. Special Counsel shall resolve any fee dispute independently among themselves, and the undisputed portion of any monetary recovery shall be deposited into a separate trust account created by Special Counsel for disbursement in accordance with the terms of this Agreement.

(e) All monies recovered by judgment, settlement, or otherwise, and any other proceeds resulting from the Litigation, shall be deposited into a separate trust account created by Special Counsel for disbursement in accordance with the provisions of this Agreement and any court orders governing the distribution of such funds, subject to the direction of the City Attorney. Special Counsel shall be responsible for the administration and management of claims and for any associated costs relating to claims management and administration, subject to the direction of the City Attorney.

(1) Revolving Fund. When a gross recovery is received by Special Counsel, Special Counsel shall notify the City Attorney and provide the City Attorney with a statement of outstanding fees and unreimbursed Costs. Funds in the trust account shall be released, first, to pay unreimbursed Costs up to the date of such Recovery, second to pay any fees owed to Special Counsel up to the date of such Recovery and, third, the remainder of such funds shall be distributed as follows:

- 100% of the first five hundred thousand dollars (\$500,000) will remain in the trust account as a “Revolving Fund” to be held for reimbursement of future costs advanced. If the amount in the revolving fund at the time of settlement is greater than zero but less than five hundred thousand dollars (\$500,000), 100% of the cash recovery needed to bring the Revolving Fund back up to five hundred thousand dollars (\$500,000) will remain in the Revolving Fund.
- Amounts above five hundred thousand dollars (\$500,000) will be allocated as follows: 50 percent to be received by the City Attorney as a recovery prior to the conclusion of the case and 50% to be retained by the City Attorney in the Revolving Fund managed by Special Counsel in order to pay future costs. The Revolving Fund is capped at a total of two million dollars (\$2,000,000) (i.e., the first \$500,000 plus another \$1.5 million) at the time of any settlement; once the cap is reached in connection with a given settlement the City Attorney shall receive 100% of the rest of the recovery.

Interest earned in the trust account shall accrue in the fund and be used to pay expenses or be distributed as part of a final distribution in the case. When the Litigation is concluded and unappealable, by way of a settlement with or judgment against the final remaining defendant or otherwise, the Revolving Fund shall be closed and the remaining proceeds in the fund shall be used as part of the final distribution to the City Attorney and Special Counsel of Costs and Net Recovery.

5. TAXES

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation Special Counsel.

6. TERMINATION

6.1 Termination Without Cause

The City Attorney, in his sole discretion, may terminate this Agreement for convenience and without cause, at any time, by giving Special Counsel written notice of such termination.

6.2 Non Exclusive Remedies

The City Attorney’s right to terminate this Agreement under this Section 6 is not its exclusive remedy but is in addition to all other remedies available to the City Attorney by law, in equity, or under the provisions of this Agreement.

6.3 Duties Upon Termination

Upon any termination of this Agreement, Special Counsel shall immediately provide the City Attorney with complete and accurate copies or originals—where appropriate—of all documents in its possession belonging to the City. Special Counsel further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of the City Attorney.

6.4 Attorneys’ Fees and Expenses

In the event this Agreement is terminated without cause under this Section 6, Special Counsel retains full rights to petition the court for an award of attorneys’ fees and costs to be paid exclusively by the defendants. Prior to the execution of this Agreement, City Attorney has ended its relationship with prior Special Counsel Hagens Berman Sobol Shapiro LLP (“HB”). Any obligation to pay HB’s attorneys’ fees and/or costs, on a Quantum Meruit or any other basis as set forth in this clause, shall not reduce the Net Monetary Recovery (as defined in Section 4.2) for purposes of calculating attorneys’ fee, but instead shall come from the attorneys’ fees (as defined in Section 4.2).

7. STAFFING

7.1 Commitment of Qualified Personnel

Services under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Special Counsel. Particular tasks must be performed by lawyers with appropriate levels of experience for the performance of such tasks.

7.2 Named Personnel

Sher Edling LLP and Altshuler Berzon LLP shall provide the legal services required under this Agreement.

Special Counsel has been selected due to the unique skills and experience of counsel and the following named personnel:

Vic Sher
Matt Edling
Michael Rubin
Barbara J. Chisholm

The lead attorneys named above shall be the principal contacts with the City Attorney. Any change in the lead attorneys or addition to or substitution of any of the other named staff requires

the City Attorney's prior written approval. Staffing decisions required to be taken by Special Counsel in an emergency for which prior written approval of the City Attorney is not feasible shall be limited to such emergency situation only, taken by Special Counsel in a reasonable manner and require immediate follow-up discussions with the City Attorney.

At all times Special Counsel shall staff meetings, hearings, proceedings, and the other elements of the scope of services to be rendered under this Agreement in a cost effective manner, consistent with the requirements of Section 7.1 above and as otherwise provided in this Agreement.

Before undertaking any major task such as engaging in a document review or drafting of a motion or pleading, Special Counsel shall consult with the City Attorney about the most cost effective method of undertaking work, including but not limited to using City staff or City Attorney staff to do as much of the work as appropriate. Special Counsel may nonetheless proceed with any time-sensitive task while awaiting a response from the City Attorney to a request for authority or consultation.

8. INSURANCE

8.1 Required Coverage

Without in any way limiting Special Counsel's liability pursuant to Section 15 of the Agreement ("Indemnification"), and subject to approval by the City's Risk Manager of the insurer and the policy forms, Special Counsel shall procure and maintain throughout the Term of this Agreement, at Special Counsel's sole expense, the following insurance:

(a) Workers' Compensation Insurance in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness;

(b) Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages; and

(c) Professional Liability Insurance with limits not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than two hundred fifty thousand dollars (\$250,000), each claim, covering legal malpractice arising from any services provided under this Agreement.

8.2 Liability Policies

Each policy shall be with an insurer with a rating comparable to A-, VIII or higher, that is authorized to do business in the State of California. Except for Professional Liability Insurance, all liability policies that this Section requires Special Counsel to maintain shall provide for the following: severability of interests and that an act or omission of one of the named insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which

occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

If requested by the City Attorney, Special Counsel will provide a complete copy of each insurance policy required under Section 8.1 of this Agreement.

8.3 Certificates

At a date to be specified by the City Attorney, Special Counsel shall deliver to the City Attorney a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and workers' compensation insurance.

8.4 General Annual Aggregate Limits

Should Special Counsel provide any of the required liability insurance under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the occurrence or claims limits specified above.

8.5 Lapse in Coverage

Should any required insurance lapse during the term of this Agreement, Special Counsel shall immediately notify the City Attorney. Regardless of whether the City Attorney receives such notice from Special Counsel, the City Attorney shall have the sole option to direct Special Counsel to immediately discontinue all work under this Agreement. Requests for payments originating after such lapse shall not be processed until the City Attorney receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City Attorney may, at his sole option, terminate this Agreement upon the lapse of any required insurance.

8.6 Claims Made Forms

Should any of the required insurance be provided under a claims-made form, Special Counsel shall maintain such coverage continuously throughout the term of this Agreement and without lapse, for a period of three (3) years beyond the expiration of the term of this Agreement, so if any occurrences during the term of this Agreement give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

8.7 Review of Requirements

At the request of the City Attorney, Special Counsel and the City Attorney shall periodically review the limits and types of insurance carried pursuant to this Section 8. If the general commercial practice in the City is to carry liability insurance in an amount or coverage materially greater than the amount or coverage being carried by Special Counsel for risks

comparable to those associated with the activities to be conducted under this Agreement, then the amounts or coverage carried by Special Counsel shall be increased to conform to such general commercial practice.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Limitations on Assignment

Special Counsel shall not, without written consent of the City Attorney, assign or transfer any interest in this Agreement, or delegate its performance of duties under this Agreement, in whole or in part; and no approval of any assignment, transfer, or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties. Special Counsel recognizes and agrees that the services to be performed under this Agreement are personal in nature, and the City Attorney may give, withhold, or condition his consent in his sole and absolute discretion.

9.2 Limitations on Subcontracting

Special Counsel is prohibited from subcontracting this Agreement or any part of it unless Special Counsel first obtains the City Attorney's written approval of the subcontractor and the scope of services to be performed under any subcontract. Any such subcontracting will be subject to the approval of the City Attorney in his sole and absolute discretion. An agreement made in violation of this provision shall confer no rights on any other party and shall, at the City Attorney's sole option, be void.

10. CONFLICTS OF INTEREST

10.1 Knowledge of Conflict

Through its execution of this Agreement, Special Counsel acknowledges that it is familiar with the provisions of section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and sections 87100 *et seq.* and sections 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that it will immediately notify the City Attorney if it becomes aware of any such fact during the term of this Agreement.

10.2 Disclosure of Any Conflicts

By executing this Agreement, Special Counsel further certifies that it has made a complete disclosure to the City Attorney of all facts bearing upon any possible interest, direct or indirect, which it believes any member of the City Attorney's Office, or other officer, agent or employee of the City, presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder, except as disclosed in advance to and waived in writing by the City Attorney. The existence of any actual or potential conflict must be promptly reported by Special Counsel to the City Attorney and resolved to the City Attorney's

satisfaction before representation proceeds. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination of this Agreement by the City Attorney.

City Attorney understands that currently, and from time to time, Special Counsel represents other municipalities, governmental agencies, governmental subdivisions, or other public or private individuals and/or entities in other actions or similar litigation involving climate change-related injuries and where the defendants may be the same or similar to the defendants in the Action, and that such work is a focus of Special Counsel's practice. City Attorney understands that damages collected from one or more of the same defendants in other suits prosecuted by Special Counsel could, theoretically, reduce the amount of money available from these same defendants in the Litigation. City Attorney has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of cities and other public and/or private entities in similar litigations, because it enables City Attorney to obtain the benefits of Special Counsel's expertise. Therefore, City Attorney consents that Special Counsel may continue to handle such work, and may take on similar new clients and matters, without disclosing each such new matter to City Attorney or seeking the consent of City Attorney. That said, as a matter of practice, Special Counsel will always notify City Attorney before taking on a new client or matter in similar litigation.

10.3 No Conflict of Interest

Special Counsel has done a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to the City Attorney or has obtained a written conflicts waiver from the City Attorney, in his sole and absolute discretion.

The City Attorney is aware of his and the City's right to conflict-free representation and nonetheless agrees that Special Counsel's assistance to the City Attorney in performance of this Agreement shall not preclude Special Counsel from representing its current clients, Bricklayers Local 3, Service Employees International Union Local 1021, and Sheet Metal Workers Local 104, including in matters adverse to the City and City Attorney, or from taking positions adverse to the City and City Attorney, provided that such subject matter is not related to the subject matter of this Agreement. Because the matters in which Special Counsel would represent the City and the unions are unrelated, Special Counsel believe that Special Counsel can continue to faithfully and fully represent the interests of the City and City Attorney even while representing the clients identified above, notwithstanding the conflicts described above.

City Attorney further agrees that it will not unreasonably withhold agreement to Special Counsel's representation of other future clients in matters adverse to the City and City Attorney, or in relation to positions adverse to the City and City Attorney, provided that such representation is with respect to subject matter(s) not related to the subject matter of this Agreement.

11. NO SPECIAL DAMAGES

1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
Attn: Ronald P. Flynn, Chief Deputy City Attorney
ronald.flynn@sfcityatty.org

To the Special Counsel: Sher Edling LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104
Attn: Vic Sher
vic@sheredling.com

Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Attn: Michael Rubin
mrubin@altshulerberzon.com

or to such other address as either the City Attorney or Special Counsel may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section 13 at least ten (10) days prior to the effective date of such change.

Any notice hereunder shall be deemed to have been given three (3) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by email to the email addresses set forth herein or such other number as may be provided from time to time.

14. INDEPENDENT COUNSEL; PAYMENT OF TAXES AND OTHER EXPENSES

Independent Consultant. Special Counsel or any agent or employee of Special Counsel shall be deemed at all times to be an independent counsel and is wholly responsible for the manner in which it performs the services and work requested by the City Attorney under this Agreement. Special Counsel or any agent or employee of Special Counsel shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health, or other benefits that the City may offer its employees. Special Counsel or any agent or employee of Special Counsel is liable for the acts and omissions of itself, its employees, and its agents. Special Counsel shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Special Counsel performing services and work, or any agent or employee of Special Counsel providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City Attorney and Special Counsel or any agent or employee of Special Counsel.

15. INDEMNIFICATION

Special Counsel shall indemnify and save harmless the City Attorney, the City, and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Special Counsel or loss of or damage to property, arising directly or indirectly from Special Counsel's performance of this Agreement, including, but not limited to, Special Counsel's use of facilities or equipment provided by the City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability, or claim is the result of the active negligence or willful misconduct of the City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Special Counsel, its subconsultants as may be permitted under this Agreement or their agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and the City's costs of investigating any claims against the City.

In addition to Special Counsel's obligation to indemnify San Francisco, Special Counsel specifically acknowledges and agrees that it has an immediate and independent obligation to defend San Francisco from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Special Counsel by San Francisco and continues at all times thereafter.

Special Counsel shall indemnify and hold the City harmless from all loss and liability, including attorneys' fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Special Counsel shall not be required to indemnify San Francisco for any actions taken by or claims made against prior Special Counsel arising out of its representation of San Francisco.

16. DEFAULT; REMEDIES

(a) Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Special Counsel fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8 (if not cured as set forth in Section 8), 9, 17, 29.3, 29.12, and 29.13.

(2) Special Counsel fails or refuses to perform or observe any other term, covenant, or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from the City to Special Counsel.

(3) Special Counsel (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Special Counsel or of any substantial part of Special Counsel's property, or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Special Counsel or with respect to any substantial part of Special Counsel property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (c) ordering the dissolution, winding-up or liquidation of Special Counsel.

(b) On and after any Event of Default, the City Attorney shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance. In addition, the City Attorney shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Special Counsel any Event of Default; Special Counsel shall pay to the City Attorney on demand all costs and expenses incurred by the City Attorney in effecting such cure, with interest thereon from the date of such costs or expenses are incurred at the maximum rate then permitted by law. The City Attorney shall have the right to offset from any amounts due to Special Counsel under this Agreement or any other agreement between the City Attorney and Special Counsel all damages, losses, costs or expenses incurred by the City as a result of such Event of Default and any liquidated damages due from Special Counsel pursuant to the terms of this Agreement or any other agreement.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

17. SAN FRANCISCO'S PROPRIETARY OR CONFIDENTIAL INFORMATION

Special Counsel understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Special Counsel will have access to private or confidential information, including, without limitation, attorney work product and information subject to the attorney-client privilege, which may be owned or controlled by San Francisco and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to San Francisco. Special Counsel agrees that all information created by Special Counsel for San Francisco or disclosed by San Francisco to Special Counsel shall be held in confidence and used only in performance of the Agreement. This Section shall survive the termination or expiration of this Agreement.

18. OWNERSHIP OF RESULTS

Any interest of Special Counsel or its subconsultants, in drawings, plans, specifications blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its subconsultants in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the City Attorney. Any such work product shall be attorney work product and subject to the attorney-client privilege of the City Attorney.

19. WORKS FOR HIRE

If, in connection with services performed under this Agreement, Special Counsel or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Special Counsel or its subconsultants under this Agreement are not works for hire under U.S. law, Special Counsel hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City Attorney, Special Counsel may retain and use copies of such works for reference and as documentation of its experience and capabilities.

20. AUDIT AND INSPECTION OF RECORDS

Special Counsel agrees to maintain and make available to the City Attorney, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Special Counsel will permit the City Attorney to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Special Counsel shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

21. NON-WAIVER OF RIGHTS

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

22. OMITTED

23. OMITTED

24. OMITTED

25. DRUG-FREE WORKPLACE POLICY

Special Counsel acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Special Counsel agrees that any violation of this prohibition by Special Counsel, its employees, agents, or assigns will be deemed a material breach of this Agreement.

26. OMITTED

27. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Special Counsel acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Special Counsel, must be accessible to the disabled public.

Special Counsel shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Special Counsel agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Special Counsel, its employees, agents, or assigns will constitute a material breach of this Agreement.

28. OMITTED

29. GENERAL CONDITIONS

29.1 Severability

Any provision or portion of this Agreement prohibited as unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

29.2 Governing Law

The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. The exclusive venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be the San Francisco Superior Court. Special Counsel hereby waives the provisions of California Code of Civil Procedure section 394, which could, if otherwise applicable, give Special Counsel the right to move the venue of any such proceeding from San Francisco to a neutral county.

29.3 Compliance with Laws

Special Counsel shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state and federal laws in any manner affecting the performance of this Agreement and must at all times comply with such codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

29.4 Amendments

Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by all Parties hereto or except as otherwise expressly provided in this Agreement.

29.5 Survival

The following sections shall survive any termination, expiration, or cancellation of this Agreement: 8, 11, 14, 15, 17-19, 29.1, 29.2, 29.4, and 29.13.

29.6 Approvals by City Attorney; Point of Contact

Except as otherwise provided in this Agreement or as otherwise required by the City's Charter, all approvals or consents requested or required hereunder may be given by the City Attorney or his designee. All such approvals or consents may be given or withheld in the City Attorney's sole discretion, unless otherwise expressly provided. Silence shall not be considered approval of the City Attorney for any purposes hereof. Any legal advice given by Special Counsel with respect to this representation shall be rendered to the City Attorney, or the City Attorney's designee.

29.7 Special Counsel Responsibility

Special Counsel shall report to, and work under the direction and control of the City Attorney or his designee in the performance of the services. Special Counsel agrees to be solely responsible, however, for its own actions and those of its subordinates and subconsultants throughout the term of this Agreement.

29.8 Notification of Limitations on Contributions

Through execution of this Agreement, Special Counsel acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Special

Counsel acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of fifty thousand dollars (\$50,000) or more.

Special Counsel further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Special Counsel's board of directors; Special Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Special Counsel; any subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Special Counsel. Additionally, Special Counsel acknowledges that Special Counsel must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

29.9 Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

29.10 Requiring Minimum Compensation for Covered Employees

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

29.11 Requiring Health Benefits for Covered Employees

Special Counsel agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse.

29.12 Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Special Counsel may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Special Counsel agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.0 are incorporated herein by this reference. In the event Special Counsel violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit

Special Counsel from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Special Counsel's use of profit as a violation of this section.

29.13 Protection of Private Information

Special Counsel has read and agrees to the terms set forth in the San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Special Counsel agrees that any failure of Special Counsel to comply with the requirements of Section 12142 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Special Counsel pursuant to Chapter 6 or Chapter 21 or the Administrative Code, or debar the Special Counsel.

29.14 Interpretation of Agreement


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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY ATTORNEY
DENNIS J. HERRERA

By: _____
Ronald Flynn
Chief Deputy City Attorney

SPECIAL COUNSEL
SHER EDLING LLP

By:  _____
Victor M. Sher
Sher Edling LLP

SPECIAL COUNSEL
ALTSHULER BERZON LLP

By: _____
Michael Rubin
Altshuler Berzon LLP

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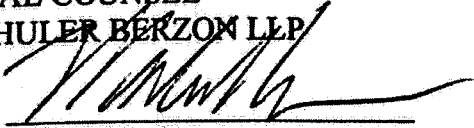
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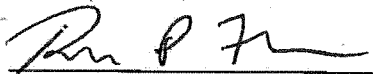
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