Standard City of San José Legal Services Agreement

This Agreement is between the City of San José, a municipal corporation ("City"), and Ashurst LLP, a limited liability partnership ("Attorney").

This Agreement is made and entered into on Aug 11, 2021 ("Contract Date").

THE CITY AND ATTORNEY AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 **General:** This Agreement sets forth the terms and conditions under which the Attorney will provide professional consulting services to the City.

1.2 **Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:

Exhibit A: Scope of Basic Services

Exhibit B: Compensation

Exhibit C: Insurance Requirements

1.3 **City Attorney:** "City Attorney" means the City Attorney for the City of San José or the City Attorney's designee.

1.4 **Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct business.

1.5 **Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.

1.6 **Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

The Agreement term is from the Contract Date to one year from the Contract Date, inclusive, unless terminated earlier pursuant to Section 19 below.

3. SCOPE OF SERVICES

3.1 **Basic Services:** "Basic Services" means the services set forth in **Exhibit A**. The Attorney must perform the Basic Services to the City Attorney's satisfaction.

3.2 **Additional Services:** "Additional Services" means services that relate but are not included in the Basic Services.

3.2.1 **Authorization:** The City will not compensate Attorney for any Additional Services without the City Attorney's prior written authorization.

3.2.2 **City Attorney's Authorization:** The City Attorney may authorize the Attorney to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The City Attorney must authorize the Attorney to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Attorney for such services. The City Attorney is authorized to execute the amendment for Additional Services for the City.

4. INTENTIONALLY OMITTED

5. CITY'S CONTRACT MANAGER

The City's contract manager for this Agreement is:

Name: Kevin Fisher, Assistant City Attorney	Phone No.: 408-535-1900
Department: City Attorney's Office	E-mail: kevin.fisher@sanjoseca.gov
Address: City of San José 200 E. Santa Clara Street, 16th Fl San José, CA 95113	

The City Attorney can change the above contract manager by giving the Attorney written notice.

6. ATTORNEY'S STAFFING

6.1 **Attorney's Contract Manager and Other Staffing:** Identified below are the following: (a) the Attorney's contract manager, and (b) the Attorney(s) and/or employee(s) of the Attorney who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of

Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Attorney must comply with the requirements of Subsection 17.2 below.

		Required to File Form 700?		
Attorney's Contract Manager		**Yes Already Filed (Insert Date Filed)**	**Yes Need to File**	**No**
Name: Anna Hermelin, Co-head of Projects, Americas & Office Managing Partner (Los Angeles)	Ph.: (646) 457-9521		X	
Address: 1299 Ocean Avenue, Suite 320 Santa Monica, CA 90401	E-mail: anna.hermelin@ashurst.com			
Other Staffing				
Name:	Assignment:			
1. Shmel Graham	Counsel		X	
2. Tristan Robinson	Senior Associate		X	
3. Talia Lake	Senior Associate		X	
4. Casey Thomas	Associate			X
5. Andrew Smith	Partner (Pre-Development Agreement, Financing)			X
6. Kimberley DeLooze	Senior Associate (Financing, Airport Transit)			X

6.2 **Contract Manager's Authority:** The Attorney's contract manager is authorized to act on behalf of the Attorney.

6.3 **Staffing Changes:** The Attorney shall notify the City Attorney of any change to its staffing identified in this provision. The City Attorney's prior written approval is required for the Attorney to remove or replace the contract manager identified in this provision.

7. INTENTIONALLY OMITTED

8. INDEPENDENT CONTRACTOR

8.1 **General:** The Attorney has complete control over its operations and employees, and is an independent contractor. The Attorney is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Attorney does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

8.2 **Subcontractors:** As an independent contractor, the Attorney has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Attorney contracts in furtherance of this Agreement.

9. STANDARD OF PERFORMANCE

The Attorney represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Attorney represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

10.1 **Maximum Total Compensation:** The maximum amount the City will pay the Attorney for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is **$75,000** ("Maximum Total Compensation").

10.2 **Intentionally Omitted.**

10.3 **Exhibit B - Compensation:** The City will pay the Attorney up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.4 **Compensation Table – Part 1:** Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services.

10.5 **Compensation Table – Part 2:** Part 2 of the Compensation Table indicates whether or not the City will reimburse the Attorney separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Attorney separately for expenses.

10.5.1 Subconsultants: The cost of subconsultants is not treated as a reimbursable expense.

10.5.2 Maximum Amount of Reimbursable Expenses: The City will reimburse the Attorney for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Attorney incurs in excess of the stated maximum are at no cost to the City.

10.5.3 Expenses That Are Reimbursable: Any reimbursement to the Attorney is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only.

Reimbursable Expense Schedule	
1.	The cost of mailing, shipping and/or delivery of any documents or materials.
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.
3.	Telephone and facsimile transmission charges.
4.	The rental of any specialized equipment to the extent the City's contract manager has preapproved, in writing, the cost of such rental.
5.	With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Attorney acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.
6.	Any other expenses expressly identified in **Exhibit B** as being reimbursable.

10.6 Intentionally Omitted.

10.7 Intentionally Omitted.

10.8 Tax Forms Required: The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

10.8.1 U.S. Based Person or Entity: If the Attorney is a U.S. based person or entity, the Attorney acknowledges and agrees that the Attorney is required to provide the City with a properly completed Internal Revenue Service

Form W-9 before the City will process payment. If the Attorney is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Attorney acknowledges and agrees that the Attorney is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

10.8.2 **Non-U.S. Based Person or Entity:** If the Attorney is not a U.S. based person or entity, the Attorney acknowledges and agrees that the Attorney is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

11.1 **Obligation:** The Attorney shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part – arise out of, pertain to, or relate to any of the following:

- The Attorney's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Attorney, any of its subcontractors, anyone directly or indirectly employed by either the Attorney or any of its subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Attorney pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

11.2 **Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.

11.3 **Duty to Defend:** The Attorney's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Attorney, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

11.4 **Insurance:** The City's acceptance of any insurance in accordance with Section 12 does not relieve the Attorney from its obligations under this Section 11. The Attorney's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

11.5 **Survival:** The Attorney's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

12.1 **General:** The Attorney shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

12.2 **Documentation:** Before performing any services, the Attorney must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.

12.3 **Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

13.1 **Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Attorney or any other person engaged directly or indirectly by the Attorney to perform the Attorney's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").

13.2 **Intentionally Omitted.**

13.3 **Intentionally Omitted.**

13.4 **Attorney's Reuse:** With the City Attorney's prior written consent, the Attorney may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. INTENTIONALLY OMITTED

15. AUDIT/INSPECTION OF RECORDS

15.1 **Retention Period:** The Attorney shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Attorney under this Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Attorney's charges for performing services, or to the Attorney's expenditures and disbursements charged to the City; and

- All Work Product and other records evidencing Attorney's performance.

15.2 **Producing Records:** At any time during the Agreement term or during the period of time that the Attorney is required to retain the Records, the City Manager, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Attorney shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Attorney shall produce the requested Records at no cost to the City.

15.3 **State Auditor:** In accordance with Government Code Section 8546.7, the Attorney may be subject to audit by the California State Auditor with regard to the Attorney's performance of this Agreement if the compensation under this Agreement exceeds $10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

16.1 **Prohibition:** The Attorney shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

16.2 **Intentionally Omitted.**

17. CONFLICT OF INTEREST

17.1 **General:** The Attorney represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Attorney certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Attorney shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Attorney has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

17.2 **Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Attorney shall cause each person

performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the City Attorney;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the City Attorney.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 **General:** The Attorney shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 **Prohibition of City Funding for Purchase of Single Serving Bottled Water:** The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the City Attorney.

18.3 **Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement. Environmental procurement policies and activities related to the completion of Attorney's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

19.1 **For Convenience:** The City Attorney may terminate this Agreement at any time and for any reason by giving the Attorney written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.

19.2 **For Cause:** The City Attorney may terminate this Agreement immediately upon written notice for any material breach by the Attorney. If the City Attorney terminates the Agreement for cause and obtains the same services from another attorney at a greater cost, the Attorney is responsible for such excess cost in addition to any other remedies available to the City.

19.3 **Delivery of Work:** If the City Attorney terminates the Agreement – whether for convenience or for cause – the City Attorney has the option of requiring the Attorney to provide to the City any finished or unfinished Work Product prepared by the Attorney up to the date of Attorney's receipt of the written notice of termination.

19.4 **Compensation:** The City will pay the Attorney the reasonable value of services satisfactorily rendered by the Attorney to the City up to the date of Attorney's receipt of the written notice of termination. For services to be "satisfactorily rendered," the City Attorney must determine that the Attorney provided them in accordance with the terms and conditions of this Agreement. The City Attorney will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.

19.5 **Receipt of Notice:** For purposes of this provision, the Attorney's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

20.1 **Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.

20.2 **When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.

20.3 **To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
City Attorney's Office
Attn: Kevin Fisher
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
408-535-1900

To the Attorney: Ashurst LLP
Attn: Anna Hermelin
1299 Ocean Avenue, Suite 320
Santa Monica, CA 90401
(646) 457-9521
anna.hermelin@ashurst.com

20.4 **Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. MISCELLANEOUS

21.1 **Gifts Prohibited:** The Attorney represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Attorney shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Attorney's violation of this Subsection 21.1 is a material breach.

21.2 **Disqualification of Former Employees:** The Attorney represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing

services to the City connected with his/her former duties or official responsibilities. The Attorney shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Attorney's violation of this Subsection 21.2 is a material breach.

21.3 **Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Attorney is not a waiver of any other violation by the Attorney.

21.4 **Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.

21.5 **Compliance with Laws:** The Attorney shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Attorney's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

21.6 **Business Tax:** The Attorney represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.

21.7 **Assignability:** The Attorney shall not assign any part of this Agreement without the City Attorney's prior written consent. The City Attorney, at the City Attorney's discretion, may void this Agreement if a violation of this provision occurs.

21.8 **Governing Law:** California law governs the construction and performance of this Agreement.

21.9 **Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.

21.10 **Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.

21.11 **Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

21.12 **Use of Electronic Signatures:** Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

IN WITNESS WHEREOF, the City and Attorney have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Attorney must make one of the following representations by placing its initials in the space provided. **The City will not process this Agreement unless the Attorney has initialed one of the provisions.**

☐ The Attorney certifies that the Attorney has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Attorney will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Attorney ceases to have a permanent place of business in California or ceases to do any of the above, the Attorney will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

____ If the Attorney is unable to make the above certification, the Attorney acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

City of San José

By Nora Frimann (Aug 11, 2021 15:03 PDT) Aug 11, 2021

Name: Nora Frimann Date
Title: City Attorney

Attorney

By Aug 11, 2021

Name: Anna Hermelin Date
Title: Partner

Approval as to Form (City Attorney):

☐ **Form Approved by the Office of the City Attorney**

(Maximum Total Compensation is $100,000 or less, and standard provisions of the form are not altered.)

☒ **Approved as to Form:**

Kevin Fisher Aug 11, 2021

Kevin Fisher
Assistant City Attorney Date

EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-Capital Projects)

The Attorney shall provide services and deliverables as set forth in this **Exhibit A**. The Attorney shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the City Attorney.

General Description of Project: Provide legal counsel to the City of San José in connection with the development and competitive procurement of a mass transit airport connector to and from Mineta San José International Airport ("Project").

Task No. 1: Project Readiness and Strategic Planning

A. <u>Services</u>:

1. Assist the City to define project goals for inclusion in a Request for Proposals ("RFP"). Examples of project goals may include: accelerating project delivery, cost-efficiency in achieving mode shift goals, technology innovation and readiness, vehicle capacity and throughput.

2. Validate/further define the project readiness elements required to launch the procurement and deliver a checklist of project readiness elements. Examples of project readiness elements may include: formation of a project team; production of a technical scope; production of a program/timetable; budget and costing; sources and uses of funds; transaction management; planning/property and environmental issues; advanced/enabling/preparatory works (e.g., utility relocations or foundation works for complex project components); stakeholder management; and coordination with interfacing projects (e.g., Diridon Station).

B. <u>Completion Time</u>: The Attorney must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☒ On or before the following date: Expiration date of Agreement.

☐ On or before ____ Business Days from _____.

Task No. 2: Commercial, Legal and Financial Structuring for Pre-Development Agreement ("PDA") and Risk Strategy

A. <u>Services</u>:

1. Support the City and its other advisors to devise the optimal commercial, legal and financial structure for the PDA and deliver a white paper analyzing the structure. This may include consideration of: governance; legal framework and authorization; commercial structuring and packaging of civil works, systems, rolling stock, operations and maintenance of infrastructure and rolling stock; public funding (Measure A and other) and private financing; procurement methodology; project phasing (pre-construction and construction services); contract term and maintaining flexibility for scalability or future extensions (e.g., future project phases along the Stevens Creek Boulevard Corridor to De Anza College), adjustment to service levels, operator flexibility, and modifications.

2. Work with the City to validate and further define opportunities for innovative funding and financing structures.

3. Work with the City to identify opportunities for monetizing any maintenance and storage facility site (including models for a developer-provided site) and other value capture opportunities along the alignment given the significant planned future development in the Project area.

4. Assist the City to develop a Project risk allocation matrix.

5. Develop a term sheet of key contract terms for the PDA, including the payment structure, project milestones/validation points and off-ramps.

B. <u>Completion Time</u>: The Attorney must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☒ On or before the following date: Expiration date of Agreement.

☐ On or before ____ Business Days from _____.

Task No. 3: Development of Procurement Documents

A. <u>Services</u>:

1. Deliver workshop(s) on procurement methodology, evaluation criteria, and process for evaluating proposals with a view to optimizing the evaluation criteria and submittals requirements in the RFP to align with the project

goals and the commercial, legal and financial structuring to ensure that the PDA procurement process achieves the City's desired outcomes.

2. Assist the City Attorney with reviewing the RFP, including for legal and regulatory compliance. Provide comments on the RFP, as requested by the City Attorney.

B. <u>Completion Time</u>: The Attorney must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

☒ On or before the following date: Expiration date of Agreement.

☐ On or before ____ Business Days from _____.

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	**Column 2**	**Column 3**	**Column 4**
Task Nos.	**Basis of Compensation**	**Invoice Period**	**Compensation**
1-3	☒ Time & Materials ☐ Fixed Fee	☒ Monthly ☐ Completion of Task(s) ☐ Completion of Work	$75,000
Part 2 – Reimbursable Expenses			
☒ No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		☐ Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:	$
Part 3 – Intentionally Omitted			
Part 4 – Additional Services			
☒ No money is budgeted for Additional Services, and the City Attorney can not authorize any Additional Services.		☐ The City Attorney may authorize the Attorney to perform Additional Services up to the following maximum amount:	$
		Maximum Total Compensation (sum of Parts 1 through 4):	$75,000

Section 2 – Schedule of Rates and Charges

☐ **Omitted**. No Schedule of Rates and Charges is included because the City will not be compensating the Attorney for any Basic Services on a "time & materials" basis.

☒ The following is the Schedule of Rates and Charges applicable to this Agreement:

Blended Hourly Rate: $515 per hour

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

EXHIBIT C: INSURANCE REQUIREMENTS

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

4. Professional Liability Errors & Omissions for all professional services.

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

B. Minimum Limits of Insurance

Attorney shall maintain limits no less than:

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

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of $1,000,000 per accident; and

4. Professional Liability Errors & Omissions: $1,000,000 per occurrence/ aggregate limit.

C. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

   a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Attorney; products and completed operations of Attorney; premises owned, leased or used by Attorney; and automobiles owned, leased, hired or borrowed by Attorney. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

   b. Any failure to comply with reporting provisions of the policies by Attorney shall not affect coverage provided City, its officers, employees, agents, or contractors.

   c. Coverage shall state that Attorney'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. Verification of Coverage

Attorney shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Alternatively, Attorney shall provide a certificate of currency issued by the placing broker.

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

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

E. Subcontractors

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

Contact
Sarah Thorne
Level 33, 201 Kent Street,
Sydney NSW 2000

m +61 428 985 708
e sarah.thorne@aon.com

Rehana Box

Ashurst Australia
5 Martin Place
Sydney NSW 2000

Certificate of Currency

Date of Issue 14 September 2021

In our capacity as Insurance Brokers to Ashurst Australia and Ashurst LLP, we hereby certify that the under mentioned insurance policy is current.

Policy Information

Policy Type	General Public & Products Liability
Insured	Ashurst LLP and/or Ashurst Australia as more fully described in the policy wording
Insurer	Chubb European Group SE (Primary Master Policy) QBE Europe (UK Limited) & CNA Hardy (Excess Public Liability Policy)
Policy Number	UKMSTD02388 (Master policy issued in UK)
Principal Address	London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW
Period of Insurance	From: 1 July 2021 to 30 June 2022 (Both days inclusive Local Standard Time at the Principal Address of the Insured)
Limits of Liability	Products Liability not less than $50,000,000 any one occurrence and in the aggregate any one Period of Insurance
Territorial Limit	Worldwide excluding Cuba
Additional Insureds	The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Attorney; products and completed operations of Attorney; premises owned, leased or used by Attorney; and automobiles owned, leased, hired or borrowed by Attorney. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.

Further Information
Should you have any queries, please contact us. Our details are set out in the top right side of this document.
This certificate is a summary of cover only. Please refer to the Policy Wording and Schedule for its full terms and conditions.

Important notes

- Aon does not guarantee that the insurance outlined in this Certificate will continue to remain in force for the period referred to as the Policy may be cancelled or altered by either party to the contract, at any time, in accordance with the terms of the Policy and the Insurance Contracts act 1984 (Cth).
- Aon accepts no responsibility or liability to advise any party who may be relying on this Certificate of such alteration to or cancellation of the Policy.
- This certificate does not:
  - represent an insurance contract or confer rights to the recipient; or
  - amend, extend or alter the Policy.

Aon Risk Services Australia Limited | ABN 17 000 434 720 | AFSL 241141

Sarah Thorne
Client Executive
Financial Services Group
Commercial Risk Solutions, Aon

Further Information
Should you have any queries, please contact us. Our details are set out in the top right side of this document.
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CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
07/19/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Northeast, Inc.
New York NY Office
One Liberty Plaza
165 Broadway, Suite 3201
New York NY 10006 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122
FAX (A/C. No.): (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Federal Insurance Company	20281
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Ashurst LLP
55 Hudson Yards, 18th Floor
New York NY 10001 USA

COVERAGES **CERTIFICATE NUMBER:** 570088478259 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			3593-37-82 GAB	06/30/2021	06/30/2022	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE / X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
							MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$1,000,000
	X POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	Included
	OTHER:							
A	AUTOMOBILE LIABILITY			3593-37-82 GAB	06/30/2021	06/30/2022	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ANY AUTO						BODILY INJURY (Per person)	
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	
	DED / RETENTION							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE	
							E.L. DISEASE-POLICY LIMIT	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Evidence of Insurance.

CERTIFICATE HOLDER

Ashurst LLP
7 Times Sq Fl 19
New York NY 10036-6580 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast, Inc.

Holder Identifier :

Certificate No : 570088478259

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Empower Results®

Contact
Ruth Parker
Level 33, 201 Kent Street,
Sydney NSW 2000

t +61 2 9253 7729
e ruth.parker1@aon.com

Rehana Box

Ashurst Australia
5 Martin Place
Sydney NSW 2000

Certificate of Currency

Date of Issue 31 October 2020

In our capacity as Insurance Brokers to Ashurst Australia and Ashurst LLP, we hereby certify that the under mentioned insurance policy is current.

Policy Information

Policy Type	Professional Indemnity Insurance
Insured	Ashurst LLP and/or Ashurst Australia and each branch, office, partnership or other entity associated with Ashurst LLP and/or Ashurst Australia as more fully described in the policy wording
Insurer	A panel of local and overseas insurers led by Underwriters at Lloyd's of London QBE 1886
Policy Number	APPUK2001007
Principal Address	London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW
Period of Insurance	From 31 October 2020 to 31 October 2021 (Both days inclusive Local Standard Time at the Principal Address of the Insured)
Territorial Limit	Worldwide

Ruth Parker
Client Manager
Financial Services Group
Commercial Risk Solutions, Aon

Further Information
Should you have any queries, please contact us. Our details are set out in the top right side of this document.
This certificate is a summary of cover only. Please refer to the Policy Wording and Schedule for its full terms and conditions.

Important notes

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Aon Risk Services Australia Limited | ABN 17 000 434 720 | AFSL 241141

THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

August 10, 2021

For Information Only
550 W 34TH ST
NEW YORK NY 10001-1304

Account Information:

Policy Holder Details :	ASHURST LLP

Contact Us

Business Service Center
Business Hours: Monday - Friday
(7AM - 7PM Central Standard Time)
Phone: (877) 287-1316
Fax: (888) 443-6112
Email: agency.services@thehartford.com
Website: https://business.thehartford.com

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 08/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER
AUTOMATIC DATA PROCESSING INS AGCY
76250717
71 HANOVER ROAD
FLORHAM PARK NJ 07932

CONTACT NAME:

PHONE (A/C, No, Ext): (800) 524-7024 **FAX (A/C, No):** (800) 524-4013

E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC#
INSURER A : Hartford Fire and Its P&C Affiliates	00914
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
ASHURST LLP
550 W 34TH ST
NEW YORK NY 10001-1304

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED.NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	
	CLAIMS-MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	
	OTHER:							
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	
	ANY AUTO						BODILY INJURY (Per person)	
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB / **EXCESS LIAB**						EACH OCCURRENCE	
	OCCUR / CLAIMS-MADE						AGGREGATE	
	DED / RETENTION $							
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N	N/ A		76 WEG AD5MFR	07/01/2021	07/01/2022	E.L. EACH ACCIDENT	$1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE -EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES **(ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

For Information Only
550 W 34TH ST
NEW YORK NY 10001-1304

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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City of San José Contract/Agreement Transmittal Form

Route Order

TO: ☐ City Attorney
☐ City Manager
☑ City Clerk **OR** Return to Dept. (circle one)

Attached / Completed

☑ Insurance Certificates / Waivers
☑ Business Tax Certificate
☑ Contacted Clerk re: Form 700
☐ Supplemental Memorandums (if applicable): Select One

Electronically Signed

☑ Electronically Signed: Yes
☑ Audit Trail Attached (if applicable)
☐ Scanned Signature Authorization

Type of Document: New Contract

Type of Contract: Professional Services

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667132-000

Contractor: Ashurst LLP

Address: 1299 Ocean Avenue, Suite 320 Santa Monica, CA 90401

Phone: (424) 416-5440

Email: anna.hermelin@ashurst.com

Contract Description: Legal Services Agreement in connection with the development and competitive procurement of a mass transit airport connector to and from Mineta San José International Airport

Term Start Date: upon execution

Term End Date: one year

Extension: No

Method of Procurement: RFQ

RFB, RFP or RFQ No.: _____

Date Conducted: _____

Agenda Date (if applicable): _____

Agenda Item No.: _____

Resolution No.: _____

Ordinance No.: _____

Original Contract Amount: $75,000

Amount of Increase/Decrease: _____

Option #: ___ of ___

Option Amount: _____

NTE/Updated Contract Amount: _____

Fund/Appropriation: 429-51209631-4052

Form 700 Required (**Selection mandatory for processing**): Yes

Revenue Agreement: No

Tax Certificate No.: Submitted 8/9/21

Expiration Date: _____

Department: Attorney (44)

Department Contact: Kara Lamm

Customer (Finance Only): _____

Notes: Form 700 Filers: Anna Hermelin (anna.hermelin@ashurst.com), Shmel Graham (shmel.graham@ashurst.com), Tristan Robinson (tristan.robinson@ashurst.com), Talia Lake (talia.lake@ashurst.com)

Department Director Signature: Nora Frimann (Aug 11, 2021 15:03 PDT)

Aug 11, 2021
Date

Office of the City Manager Signature: _____
Date

Updated October 2019