

HUMAN RESOURCES MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

THIS HUMAN RESOURCES MANAGEMENT PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of the 3rd day of June, 2022, by and between **KOFF & ASSOCIATES, A DIVISION OF GALLAGHER BENEFIT SERVICES, INC.** ("Gallagher"), a Delaware corporation with offices at 2835 Seventh Street, Berkeley, CA 94710, and **San Jose Federated City Employees' Retirement System** ("Client"), located at **1737 North First Street, Suite 600, San Jose, CA 95112.**

RECITAL

Client desires to retain Gallagher as an independent contractor to perform human resource management professional services for Client, and Gallagher is willing to perform such services, on the terms set forth below.

Scope of Work:

The scope of work includes a Benefits Comparison Study for the San Jose Federated City Employees' Retirement System, described in more detail in **Exhibit A**, which is attached to this Agreement and incorporated herein by this reference.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. Services.

1.1 **Services.** Gallagher agrees to perform the work project that is identified above to Client and other such services as may be requested by Client from time to time and that are within the competence and consistent with the expertise of Gallagher (collectively, the "Services"). The parties may delete, add or substitute Services, extend the term of this Agreement or alter the terms of compensation by executing one or more amendments or addenda, provided that each such amendment or addendum shall be signed by authorized representatives of both parties.

1.2 **Personal Services of Consultant.** The personal services of Georg Krammer and Katie Kaneko, officers of Gallagher, shall be a material part of the consideration for this Agreement, and they shall personally conduct all interactions with Client.

2. Compensation. Client agrees to pay Gallagher compensation as follows:

2.1 **Project Fee.** On a project fee basis. The Fee for Services for the specified work project shall not exceed **Fifteen Thousand Dollars** (\$15,000). Expenses are included in the Project Fee. Project fees shall be billed upon monthly progress task completion.

Should Client desire additional levels of effort that are directly related to the identified scope of work indicated above, Gallagher will honor our composite rate of **\$170/hour**.

2.2 **Time Expended.** On a time expended basis. Should Client desire Gallagher to perform other human resources work unrelated to the above identified project, time shall be billed by Gallagher for each of its staff at the rates of \$220 per hour for Managing Director, \$175 per hour for Senior Project Manager, \$170 for Project Manager, \$165 per hour for Senior Associate, \$160 per hour for Associate, \$80 per hour for Administrative Coordinator, and \$75 per hour for Administrative Assistant. Any request for such time expended work must be evidenced in writing signed by Client's authorized representative.

Time is accounted for and billed on a quarter hour (.25) basis. Travel time in connection with Services is billed for each staff member at one half the normal hourly billing rate, and no more than four hours of travel time is billed per day within California.

Expenses are incorporated in our hourly rates and will not be charged separately on a reimbursement basis. They include photocopying, binding, and other similar document production charges, long distance telephone and facsimile, postage and courier, mileage at the then current IRS rate, hotel, airfare, car rentals, per diem, and other similar charges.

3. **Payment.**

Our Regular Terms are Net 30.

Client shall pay Gallagher for its fees and reimbursable expenses (if applicable) within 30 days following the date of receipt of each applicable invoice. If Client contests or questions any invoice, it agrees to raise any questions with management of Gallagher within such 30-day period. Late fees in the amount of 2% of invoice amount will accrue if current invoice is not paid within 30 days of payment due date of that invoice. If late fees are not paid, they will carry forward to next invoice.

4. **Confidentiality.**

4.1 **Definition.** "Confidential Information" means any Client software source code; proprietary information; employment records; records containing confidential information on Client's members and beneficiaries; financial, tax, business and/or product records; and marketing, financial statements or records or other business information disclosed by Client either directly or indirectly, in writing, orally or by drawings or inspection of parts or equipment. "Confidential Information" shall not be deemed to include information which (a) is known to Gallagher at the time of disclosure to Gallagher by Client, as evidenced by written records of Gallagher; (b) has become publicly known and made generally available through no wrongful act of Gallagher; or (c) has been rightfully received by Gallagher from a third party who is authorized to make such disclosure.

4.2 **Covenant Not to Use or Disclose.** Gallagher shall not, during or subsequent to the term of this Agreement, use any of the Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of Client, nor disclose any Confidential Information to any third party. It is understood that all Confidential Information shall remain the sole property of Client. Gallagher further agrees to take all reasonable precautions to prevent any unauthorized disclosure of the Confidential Information by its employees or agents.

4.3 **Return of Materials.** Upon the termination of this Agreement or upon Client's earlier request, Gallagher will deliver to Client all of Client's Confidential Information in tangible form that Gallagher may have in Gallagher's possession or control, except that Gallagher may retain one copy of all such materials solely for archival purposes.

5. **Ownership of Work Product.** Gallagher agrees that all of its customized reports, recommendations, plans, handbooks, copyrightable material and other work product created or assembled by it in the course of performing its Services hereunder are works for hire for the benefit of Client and as such are the sole property of Client. To the extent that such materials and work product do not constitute work for hire, in consideration of the payments and other covenants of Client as set forth or called for herein, Gallagher hereby sells, transfers, conveys and assigns any and all of its rights therein to Client. Notwithstanding the foregoing, Gallagher will retain sole and exclusive ownership of all right, title and interest in and to its intellectual property and derivatives thereof which no data or confidential information of the Client was used to create and which was developed entirely using Gallagher's own resources. To the extent Gallagher's intellectual property is necessary for the Client to use the services provided, Gallagher grants to the Client a non-exclusive, royalty-free license to Gallagher's intellectual property solely for the Client's use of such services.
6. **Reports.** Gallagher shall regularly confer with and report to Client as to Gallagher's progress in performing the Services hereunder and that Gallagher will, as requested by Client, prepare written reports with respect thereto.
7. **Insurance.** Gallagher agrees to obtain and maintain the insurance coverages set forth in **Exhibit B** to this Agreement. Gallagher shall, upon request, provide evidence of such insurance to Client. Any cancelled or non-renewed policy will be replaced with no coverage gap and a current Certificate of Insurance will be provided to the Client.
8. **Limits on Gallagher's Responsibility, Indemnification and Limitation of Liability.**

8.1 **Limitations on Gallagher's Responsibility.** Client acknowledges that in the absence of an express written undertaking by it to the contrary, Gallagher, in agreeing to perform and in performing the Services hereunder, does not in any manner guarantee the outcome, recommendation of any undertaking or activity that constitutes any portion of the Services. Gallagher warrants in this respect that its Services will be performed in a professional and businesslike manner, in accordance with human resources best practices

and in accordance with the description of Services provided by it in its proposal or in one or more other signed written documents.

8.2 Client Indemnification. Gallagher agrees to indemnify, hold harmless and defend Client, its officers, equity owners, directors, partners, managers, agents and employees from and against all liabilities, losses, costs, damages and/or other expenses (including reasonable attorneys' and experts' fees and expenses and court costs) arising in connection with or related to claims, actions or proceedings raised or brought by any third parties on account of or occurring in connection with Gallagher's performance of the Services hereunder, except to the extent caused by the gross negligence or willful misconduct of Client or its agents or employees.

8.3 Limitation of Liability. Gallagher's liability to the Client and any other party for any losses, injury or damages to persons or properties or work performed arising out of in connection with this Agreement and for any other claim, whether the claim arises in contract, tort, statute or otherwise, shall be limited to three times the amount of the total fees due to Gallagher from Client for the Services rendered herein.

9. Term and Termination.

9.1 Termination for Convenience. Either party may terminate this Agreement without cause upon giving at least thirty (30) days prior written notice thereof to the other party.

9.2 Actions upon Termination. Upon termination as provided above, all rights and duties of the parties toward each other shall cease except (a) if terminated by Client, Gallagher shall immediately cease all Services; and (b) if terminated by Gallagher for any reason other than a breach hereunder by Client, and if desired by Client, Gallagher agrees to complete any assignment, on the same terms and conditions, including compensation, as otherwise applicable.

9.3 Survival. The following sections shall survive termination of this Agreement: **Section 3, Section 4, Section 5, Section 8, Section 9.2, this Section 9.3 and Section 10.**

10. General.

10.1 Assignment. Neither party shall assign any rights or delegate any duties without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer without the other party's consent shall be void and of no effect.

10.2 Independent Contractor. Nothing in this Agreement shall in any way be construed to constitute Gallagher as an agent, employee or representative of Client, but Gallagher shall perform the Services hereunder as an independent contractor. Since Gallagher is not an employee of Client, it is understood that Gallagher is not entitled to

any employee benefits during the term of this Agreement. Gallagher agrees to furnish any and all materials necessary for it to perform the Services.

10.3 Governing Law. This Agreement shall be governed by the laws of the State of California, without reference to conflict of law principles.

10.4 Entire Agreement. This Agreement, together with the description of the project and any and all amendments and addenda, as applicable, is the entire agreement of the parties and supersedes any prior agreements between them with respect to the subject matter hereof. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by both parties.

10.5 Notices. Any notices required or permitted by this Agreement shall be in writing and shall be addressed to the other party at the address shown at the beginning of this Agreement or such other address of which such party may notify the other and shall be deemed given upon delivery if delivered personally, one (1) business day following delivery by facsimile with machine confirmation of transmission, or three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

10.6 Waiver. The failure of either party to assert any claim or right against the other party regarding its obligations under this Agreement and/or any amendments or addenda hereto, in any one or more instances, shall not constitute a waiver of such claim or right of any obligations under this Agreement.

10.7 Non-Solicitation. Except with the written consent of Georg Krammer or Katie Kaneko, which consent may be given or withheld in their sole discretion, Client agrees that during the term of this Agreement and for a period ending one year thereafter (the "Time Period") Client will not solicit services from or hire any Gallagher employee or contractor (each, a "Team Member") who has performed billable services under this Agreement.

10.8 Non-Discrimination. Gallagher shall comply with all Federal, State, and local laws and regulations including Client's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Executive Order 11246-Compliance with Section 3, Title VII of the Civil Rights Act of 1964 as amended, Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1102.1. Gallagher shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay

or other forms of compensation. Nor shall Gallagher discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, marital status, or any other protected group.

10.9 Conflicts of Interest. Gallagher shall avoid all conflicts of interest or the appearance of a conflict of interest in performing services under this Agreement.

10.10 Gifts. Gallagher is familiar with the City of San Jose's prohibition against the acceptance of any gift by a City officer or employee (Chapter 12.08, San Jose Municipal Code.) Gallagher agrees not to offer any City officer, Board member or employee any gift prohibited by City law. The offer or giving of any gift prohibited by City law shall constitute a material breach of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above on Page 1.

KOFF & ASSOCIATES, A DIVISION OF
GALLAGHER BENEFIT SERVICES, INC.

SAN JOSE FEDERATED CITY EMPLOYEES'
RETIREMENT SYSTEM

By: Georg S. Krammer

By: Roberto L. Pena

(print name)


(signature)


(signature)

Title: Managing Director

Title: Chief Executive Officer

Date: June 2, 2022

Date: June 3, 2022

EXHIBIT A

SCOPE OF WORK

EXHIBIT B
INSURANCE

Gallagher, at its 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 Gallagher, 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 or equivalent; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 or equivalent covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers’ Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services.

B. Minimum Limits of Insurance

Gallagher shall maintain limits no less than:

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General 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; coverage shall be endorsed to state that carrier waives its right of subrogation against the

City of San José, its officers, employees, agents and contractors; this limit may be met through a combination of employers liability and excess liability insurance; and

4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to Client's Risk Manager. Gallagher policies include the following deductibles: Professional Liability - \$10M deductible; Workers' Compensation & Employer's Liability - \$1M deductible; Commercial General Liability - \$500K deductible; Automobile Liability - \$2M deductible; these are not stated on the Certificates of Insurance and are not subject to change.

D. Other Insurance Provisions

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

1. Commercial General Liability Coverage
 - a. The City of San José, Client, together with their trustees, 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 Gallagher; products and completed operations of Gallagher; premises owned, leased or used by Gallagher; and automobiles owned, leased, hired or borrowed by Gallagher.
 - b. Gallagher's insurance coverage shall be primary insurance as respects City and Client, and their trustees, officers, employees, agents and contractors. Any insurance or self-insurance maintained by City or Client, or their trustees, officers, employees, agents or contractors shall be excess of Gallagher's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Gallagher shall not affect coverage provided City and Client, and their trustees, officers, employees, agents, or contractors.
 - d. Coverage shall state that Gallagher's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain waiver of subrogation in favor of City and

Client, and their trustees, officers, employees, agents and contractors.

2. Workers' Compensation

Coverage shall contain waiver of subrogation in favor of the City and Client, and their trustees, officers, employees, agents and contractors.

3. All Coverages

Coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days prior written notice has been given to Client, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium by Gallagher. Any cancelled or non-renewed policy will be replaced with no coverage gap and a current Certificate of Insurance will be provided to the Client.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to Risk Manager.

F. Verification of Coverage

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

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

City of San José - Human Resources
Risk Management
200 East Santa Clara St., 4th Floor Tower Bldg.
San José, CA 95113-1905



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: _____
STAFF EMAIL: _____

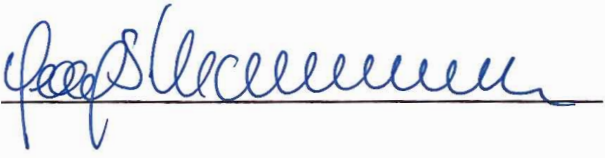
SCANNED SIGNATURE AUTHORIZATION

DATE: June 2, 2022

TOTAL PAGES: _____
(INCLUDING THIS PAGE)

CONSULTANT NAME: Georg S. Krammer
EMAIL: gkrammer@koffassociates.com
PHONE: 510-274-2760

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:
REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE: <ol style="list-style-type: none">1. SIGN THE DOCUMENT2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN BLUE INK4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

To BE COMPLETED BY CITY STAFF:
ALTERNATIVE METHODS OF VERIFICATION: <ul style="list-style-type: none"><input type="checkbox"/> USE OF A PASSWORD PROTECTED WEBSITE<input type="checkbox"/> CONFIRMED BY A KNOWN TELEPHONE NUMBER<input type="checkbox"/> PERSONALLY KNOWN TO CITY STAFF