

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT ("Agreement") is entered into this 13 day of September, 2022 by and between the CITY OF FRESNO, a municipal corporation, hereinafter called "the CITY," and THE LAW OFFICE OF MARK W. COLEMAN hereinafter called "the LAW FIRM."

RECITALS

WHEREAS, the CITY desires to retain the LAW FIRM, having expertise in providing general advice in legal services; and

WHEREAS, the LAW FIRM is engaged in the business of furnishing expert legal services in general legal advice and is fully competent, authorized, and able to perform the legal services required under this Agreement; and

WHEREAS, the LAW FIRM hereby represents the firm has the knowledge, skills, resources, necessary licenses, and professional expertise to perform the services called for by this Agreement.

AGREEMENT

In consideration of the above recitals, which recitals are part of this Agreement and the mutual promises herein contained, the parties agree as follows:

1. **Term.** This Agreement shall be effective from the date first set above and shall continue in full force and effect until complete rendition of services subject to termination rights as set forth below.

2. **Scope of Work.**

a. The LAW FIRM, in full compliance of all applicable laws, agrees to perform legal services on an as needed basis as determined by the City Attorney or designee of the City Attorney (hereafter referenced as "Supervising Attorney") as follows:

Legal services related to the defense of Council President Nelson Esparza in the matter entitled *The People of the State of California v. Nelson Orlando Esparza*, Fresno Superior Court Case No. F22905037. LAW FIRM is appointed to represent Council President Esparza individually and in his official capacity.

b. The LAW FIRM is authorized to perform the services hereunder only in those cases, or other matters, that are or have been assigned to the LAW FIRM by the Supervising Attorney, and such related actions as are agreed to and so assigned by the City Attorney on a case-by-case basis. It is understood this is not an exclusive services agreement, and the discretion as to any case assignment shall rest exclusively with the City Attorney. That the LAW FIRM will endeavor, during the life of this Agreement, to avoid practice likely to cause conflicts that would impair its ability to represent the CITY.

c. The LAW FIRM further agrees:

i) To provide all assigned services under this Agreement including the exhibits to this Agreement to the best of its ability.

ii) To provide the professional services of Mark Coleman, Esq., who shall be the primary attorney assigned for these matters. It is understood other attorneys employed or associated by the LAW FIRM may be assigned with prior approval of the

Supervising Attorney.

iii) To provide in connection with its services, through its facilities, all necessary secretarial, stenographic, computer and other customary office services and supplies.

d. No officer or employee of the CITY shall have the authority to alter the scope of work other than the City Attorney or Supervising Attorney.

3. Compensation.

a. the CITY shall pay the LAW FIRM compensation for services actually rendered as follows:

Attorney\$350.00 per hour
Associated Attorney\$250.00 per hour

b. The CITY shall reimburse the LAW FIRM for certain expenses reasonably and necessarily incurred in connection with work assigned by the City Attorney's Office. The CITY endeavors to pay all billings in a timely manner, however, as a public entity, the CITY does not pay interest on outside services, including legal services. The CITY will not reimburse for clerical costs, word processing, office overhead, electronic research (Westlaw, Lexis/Nexis, etc.), and/or for office supplies. The CITY will reimburse for reasonable travel costs and expenses outside the City of Fresno limits. The allowance for meals shall be calculated under either the per diem option or the actual reasonable cost option. The per diem allowable amounts are those established by the U.S. General Services Administration (GSA) for the locality in which the business is conducted, found on the GSA website at www.gsa.gov/perdiem (City of Fresno Administrative Order 1-4.) The LAW FIRM must attach to each billing a copy of the page from the GSA website used to calculate the reimbursement rate for each allowance under the per diem option. Receipts must be provided for meals for reimbursement to be provided under the actual cost allowance.

c. To account regularly, on or before the 10th day of each month, for time expended in performance of its services and for expenses incurred during the previous month. Each bill shall include an invoice showing the services rendered during the billing period, the fee for such services, and the amount of reimbursable expenses. The invoice shall describe each item of work performed, the identity of the person who performed the work and itemized reimbursable expenses. The invoice shall be marked "Confidential – Attorney-Client Privilege." The invoice may be subject to disclosure pursuant to the California Public Records Act. The accounting shall be presented to the Supervising Attorney for approval, consistent with §§ III and V of Exhibit "1," Contract Counsel Guidelines. Further, all costs submitted for payment with the LAW FIRM'S billings must be substantiated by documentation of the actual costs.

4. Professional Skill. It is mutually understood and agreed by and between the parties that inasmuch as the LAW FIRM represents to the CITY that the LAW FIRM is skilled in the profession and shall perform in accordance with the standards of such profession necessary to perform the work agreed to be done under this Agreement, the CITY relies upon the expertise of the LAW FIRM to do and perform its work in a skillful and professional manner, and the LAW FIRM agrees to thus perform his/her work. The acceptance of the LAW FIRM'S work by the CITY shall not operate as a release of the LAW FIRM from such standards required by the legal profession.

5. Non Assignment. The LAW FIRM hereby agrees not to assign this Agreement

the payment of any sums due the LAW FIRM from the CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The CITY retains the right to pay any and all monies due the LAW FIRM directly to the LAW FIRM.

6. Insurance. Throughout the life of this Agreement, the LAW FIRM shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by the CITY'S Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance that shall include Broad Form Comprehensive Personal Liability Coverage including personal injury, advertising liability, libel, slander blanket, contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.

c. PROFESSIONAL LIABILITY insurance (Errors and Omissions) with a limit of liability of not less than \$1,000,000 per occurrence.

d. WORKERS' COMPENSATION insurance as required under the California Labor Code.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy that shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, the LAW FIRM shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the LAW FIRM shall file with the CITY a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the CITY, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so the LAW FIRM'S insurance shall be primary and no contribution shall be required of the CITY. In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. The LAW FIRM shall furnish the CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to the CITY'S execution of the Agreement. The LAW FIRM shall furnish the CITY with copies of the actual policies upon the request of the CITY'S Risk Manager at any time during the life of the Agreement or any extension.

If at any time during the life of the Agreement or any extension, the LAW FIRM fails to

maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to the LAW FIRM shall be withheld until notice is received by the CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Agreement.

If the LAW FIRM should subcontract with the consent of the City all or any portion of the work to be performed under this Agreement, the LAW FIRM shall require each subcontractor to provide insurance protection in favor of the CITY, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with the LAW FIRM and the CITY prior to the commencement of any work by the subcontractor.

7. **Indemnification.**

a. Except with regard to professional negligence, as provided in Paragraph (b) below, the LAW FIRM shall indemnify, hold harmless, and defend the CITY, its officers, officials and employees from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, the LAW FIRM or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) incurred by the CITY, the LAW FIRM or any other person, arising out of the active or passive negligence or willful misconduct of the LAW FIRM or any of its employees, agents or in connection with this Agreement. The LAW FIRM's obligations under the preceding sentence shall apply regardless of whether the CITY or any of its officers, officials, employees or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs and damages caused solely by the active negligence, or willful misconduct of the CITY, its officials, officers, employees or agents.

b. Specifically regarding professional negligent errors or omissions, the LAW FIRM shall indemnify, hold harmless, and defend the CITY, its officers, officials and employees from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, the LAW FIRM or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) incurred by the CITY, the LAW FIRM or any other person, to the proportionate extent it arises out of or in connection with the professional negligent errors or omissions of the LAW FIRM in the performance of this Agreement.

8. **Independent Contractor Relationship.** The relationship to the CITY of the LAW FIRM and each of its partners, associates and employees in the performance of services hereunder is an independent contractor and not an employee of the CITY, and no other wording of this agreement shall stand in derogation of this paragraph; the fees and expenses paid to the LAW FIRM hereunder shall be deemed revenues of its practice and not as a remuneration for individual employment apart from the business of its office.

9. **Termination.**

a. The City Attorney reserves the right to discharge the LAW FIRM and terminate this Agreement at any time. In the event of such discharge or termination, the CITY shall compensate the LAW FIRM for its services rendered and expenses necessarily incurred up to and including the date of discharge and expenses unavoidably incurred by the LAW FIRM thereafter.

b. The LAW FIRM may terminate this Agreement at any time by giving to the City Attorney not less than thirty (30) days prior written notice of termination. The notice shall specify the effective date of and reason for the termination.

c. This Agreement is personal to the LAW FIRM and any attempted assignment including by successors or assigns, shall be void, unless approved in writing by the CITY.

d. Upon any termination, the LAW FIRM shall immediately return to the CITY the file and all materials owned by the CITY and cooperate fully in necessary completion and filing of Substitution of Counsel documents.

10. Non Discrimination. In the performance of this Agreement, the LAW FIRM shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, physical or mental disability, medical condition, marital status, sexual orientation, age, genetic information, military or veteran status, or any other classification protected by state and/or federal law.

11. Conflict of Interest. The LAW FIRM warrants and guarantees that rendering of the services herein specified does not presently constitute an actual conflict of interest under any professional ethical rules of conflict to which the LAW FIRM or any of its related entities, predecessors, successors, heirs, assigns, officers, managers, administrators, agents, employees, representatives, attorneys, affiliates, and all persons acting by, under, through or in concert with are subject. The LAW FIRM hereby agrees that, during the life of this Agreement, it will avoid an actual material conflict of interest under any professional ethical rules of conflict to which the LAW FIRM is subject.

a. The LAW FIRM shall complete a CITY "Disclosure of Conflict of Interest" statement. Said statement is attached as part of Exhibit "2," Conflict of Interest Policy and Guidelines for former City Attorneys and Contract Attorneys; and incorporated by reference. During the term of this Agreement, the LAW FIRM shall have the obligation and duty to immediately notify the CITY in writing of any change.

b. The LAW FIRM shall comply with the requirements of the California Political Reform Act (Government Code Sections 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Sections 18700 et seq.).

12. Miscellaneous Provisions.

a. This Agreement, including any conflicts of law issues, shall be governed by, construed and enforced in accordance with, the laws of the State of California.

b. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining part, terms or provisions shall not be affected and the illegal or invalid part, term or provision shall be deemed not a part of

this Agreement.

c. This Agreement constitutes and exhibits thereto the entire Agreement between the parties with respect to the subject matter hereof, and all other prior agreements, arrangements or understandings, oral or written, are merged into and superseded by the terms of this Agreement that may not be altered, amended, modified or otherwise changed except in a writing executed by the duly authorized representatives of the parties to this Agreement.

d. If any action, at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief to which it may be entitled.

e. Any action, at law or in equity, including without limitation, an action for declaratory relief, brought to enforce or interpret any provision of this Agreement, shall only be filed in the Superior Court in and for the County of Fresno. The parties agree venue, personal jurisdiction and subject matter jurisdiction shall be proper in the Superior Court in and for the County of Fresno.

f. The parties agree no action, at law or equity, including an action for declaratory relief, shall be brought unless the underlying claim and/or cause of action has been submitted to non-binding arbitration before a mutually acceptable arbitrator.

g. Any notice required pursuant to this Agreement shall be deemed delivered if given in writing, mailed with postage prepaid, addressed and directed as follows (or at such other address as the parties may from time to time designate by written notice):

For the CITY:

Tina R. Griffin, Chief Assistant City Attorney
Office of the City Attorney
2600 Fresno Street, Room 2031
Fresno, CA 93721-3602
Telephone: (559) 621-7500
Facsimile: (559) 457-1084
E-mail: tina.griffin@fresno.gov

For LAW FIRM:

Mark W. Coleman, Esq.
The Law Office of Mark W. Coleman
2344 Tulare Street, Suite 200
Fresno, CA 93721
Telephone: (559) 552-8800
Facsimile: (559) 475-9328
Email: mark@mcolemanlaw.com

h. The Supervising Attorney for these matters shall be: James C. Sanchez, Special Counsel for the City Attorney's Office who shall be assigned to coordinate with the LAW FIRM.

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13. This Agreement shall remain in force and effect, unless otherwise terminated sooner under the provisions hereof.

CITY OF FRESNO

By: 
Tina R. Griffin
Chief Assistant City Attorney

Date: 9/14/2022

THE LAW OFFICE OF MARK W. COLEMAN

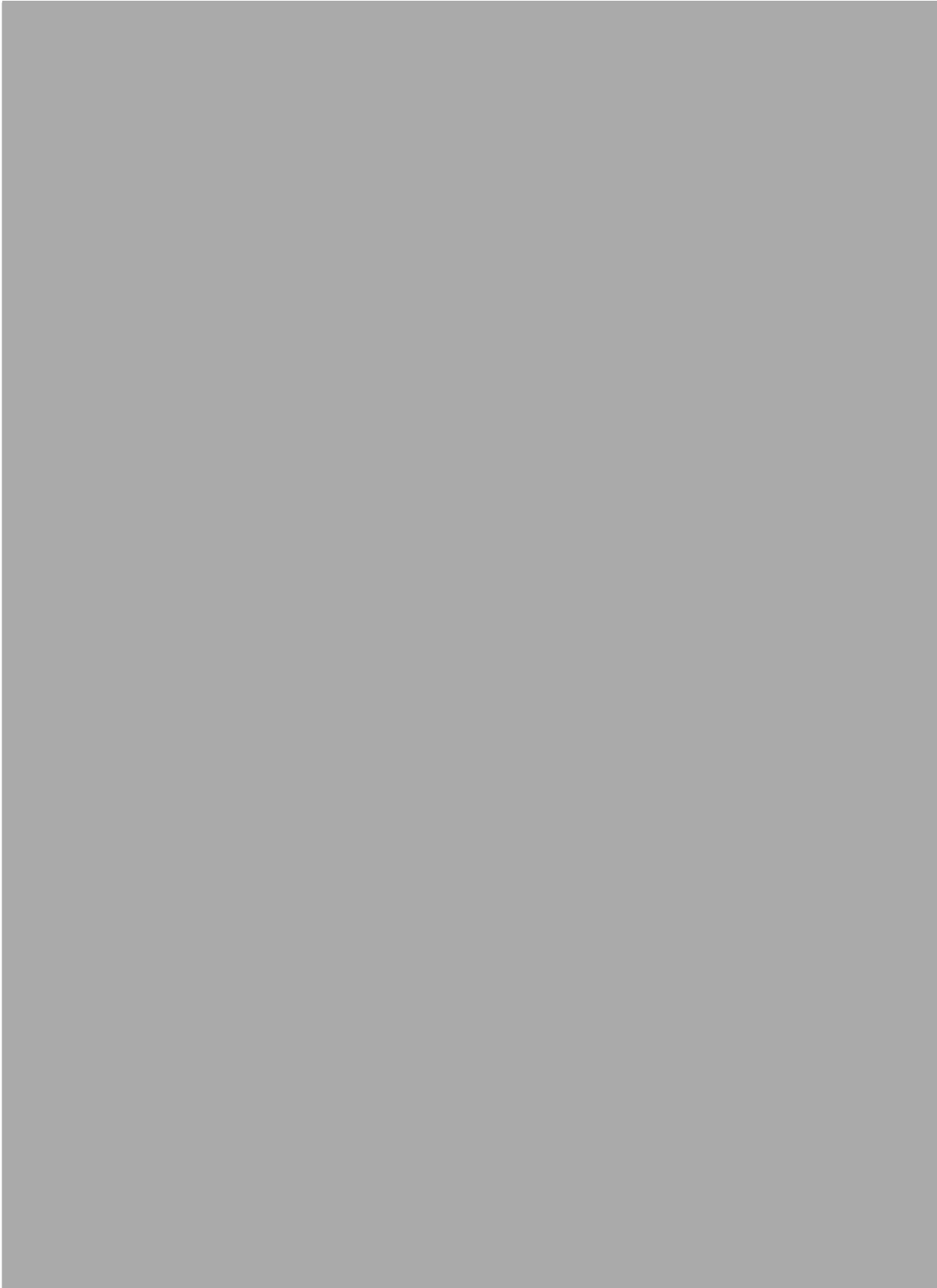
By: 
Mark W. Coleman, Esq.

Date: 9/13/2022

- Exhibits:
- 1 – Contract Counsel Guidelines
 - 2 – Disclosure of Conflict of Interest; Conflict of Interest Policy and Guidelines for Former City Attorneys and Contract Attorneys

**EXHIBIT 1 TO LEGAL SERVICES AGREEMENT
CONTRACT COUNSEL GUIDELINES**







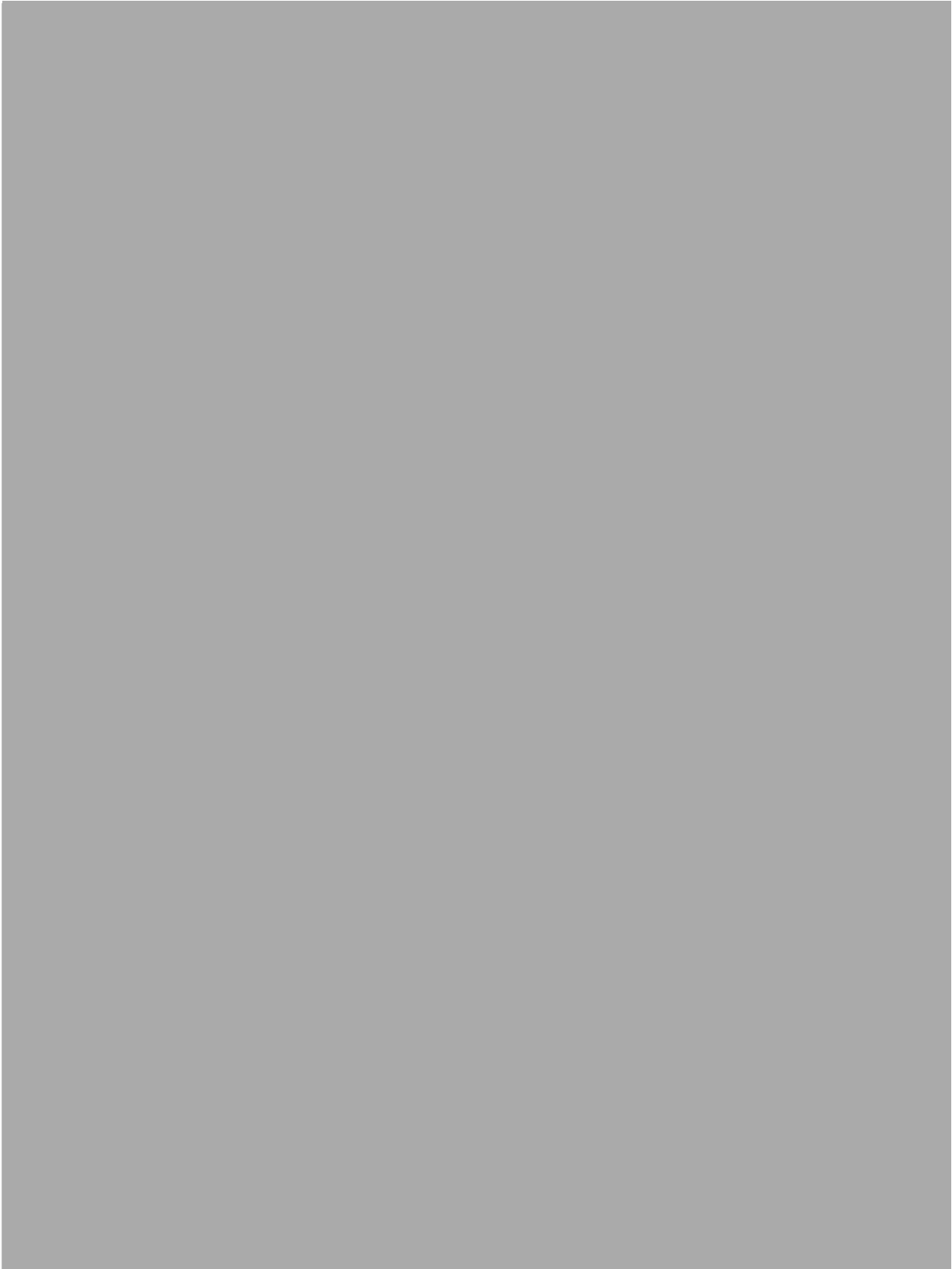




EXHIBIT A



**EXHIBIT 2 TO LEGAL SERVICES AGREEMENT
DISCLOSURE OF CONFLICT OF INTEREST**



**Conflict of Interest Policy and Guidelines for
Former City Attorneys and Contract Attorneys**



