

AGREEMENT FOR CITY ATTORNEY RECRUITING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 9th day of July 2024, between the City of Paramount, a municipal corporation in Los Angeles County, California, (hereinafter "CITY") and Tripepi Smith & Associates, Inc., a licensed California firm, with its primary office located at 15642 Sand Canyon Ave #52512, Irvine, CA 92619, (hereinafter "CONSULTANT") (singularly a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, CITY and CONSULTANT each desire to enter into an Agreement whereby CONSULTANT will provide City Attorney recruiting services; and

WHEREAS, CITY staff does not have the expertise or capacity to perform this work in-house; and

WHEREAS, this Agreement is in addition to and separate from any other Agreements with the CONSULTANT.

NOW, THEREFORE, BE IT RESOLVED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. DESCRIPTION OF SERVICES

CONSULTANT shall perform the recruiting services as more particularly described in CONSULTANT'S proposal attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth. In the event of any conflict between CONSULTANT'S proposals and this Agreement, the terms of this Agreement shall apply.

2. COMPENSATION

- (a) Except as otherwise provided herein, CITY agrees to pay CONSULTANT as full compensation for all services and duties performed. The total compensation to be paid under this Agreement shall not exceed \$22,360. Work is to be performed on a time and materials basis using the negotiated ad hoc compensation terms that exist within the City's existing retainer communications agreement with the CONSULTANT.

- (b) CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the last business day of each month, or as soon thereafter as practical,

for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees, it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

3. MATERIALS AND SUPPLIES

Without modifying or waiving those provisions under Section 4 below, CITY agrees to provide office space, supplies, equipment, and support services required to maintain all records and correspondence connected with the services. No personal use of CITY equipment, supplies or services is allowed and CONSULTANT shall comply with all CITY policies regarding use of CITY resources.

4. INDEPENDENT CONTRACTOR

- A. CITY and CONSULTANT agree and represent this Agreement is entered into with the understanding CONSULTANT is not an employee of CITY and is intended, for all purposes, to have the status of independent contractor under Labor Code Section 2776.

In the event the CITY determines a legal, judicial, or administrative determination has a material effect upon the status of CONSULTANT as an independent contractor, the CITY shall have the right, with or without notice, to automatically terminate the Agreement. In the CITY's sole discretion, the CITY may propose modification of the Agreement's terms to permit CONSULTANT's continued provision of services.

- B. CONSULTANT is and shall at all times remain as to the CITY a wholly independent contractor. CONSULTANT shall be free from control and direction of the CITY in connection with the performance of duties, and CONSULTANT retains exclusive discretion in how to perform duties, subject to other terms and conditions of this Agreement. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement.
- C. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatsoever against CITY, or bind CITY in any manner.

- D. No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

5. TERM OF AGREEMENT

The term of this Agreement shall be for six months effective from **July 10, 2024** or upon Council appointment of a new City Attorney. Notwithstanding, the Parties may agree to extend the agreement in writing by at least thirty (30) days before the end of the term. This Agreement may be terminated by either Party as set out in Sections 6 or 7 below.

6. TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. Either Party may terminate this Agreement, or any portion hereof, by serving upon the other Party at least ten (10) days prior written notice. Service shall be as set out under Section 13 below. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. If a portion of this Agreement is terminated, such termination shall not make void or invalidate the remainder of this Agreement.
- B. In the event this Agreement is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination. Upon termination of the Agreement, pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 2 of this Agreement.

7. DEFAULT

- A. Either Party's failure to comply with the provisions of this Agreement shall constitute a default. In the event that either party is in default for cause under the terms of this Agreement, the affected Party shall promptly notify the deficient Party of such default and following such notice shall have no obligation or duty to continue compensating or providing any work after the date of default and can terminate this Agreement immediately by written notice to the other Party. If such failure hereunder arises out of causes beyond either Party's control, and without fault or negligence, it shall not be considered a default.
- B. If CITY determines the CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, the CITY shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service of default notice to cure the default as directed by the CITY in the notice. In the event the CONSULTANT fails to cure its default

within such period of time, the CITY shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. AMENDMENT

Except as otherwise stated herein, any and all obligations of CITY and CONSULTANT are fully set forth and described in this Agreement. Any changes in this Agreement, including any increase or decrease in the amount of compensation or any change in the term, which shall be mutually agreed upon by and between CITY and CONSULTANT, shall be set forth in written amendments to this Agreement.

9. NONDISCRIMINATION

(a) CONSULTANT shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with CITY's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

10. INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its officers, employees, and agents ("Indemnitees"), from and against any and all losses, causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorney's fees and costs of litigation, arising out of the CONSULTANT's performance under this Agreement or out of the work performed by CONSULTANT, including the CITY's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY. In the event the Indemnitees are made a Party to any action, lawsuit, or other adversarial proceeding arising from CONSULTANT's performance of this Agreement, the CONSULTANT shall provide a defense to the indemnitees or at the CITY's option, reimburse the Indemnitees their costs of defense, including reasonable attorney's fees, incurred in defense of such claims.

Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises

from the sole negligence of the CITY or its officers, employees, or agents, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

11. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep informed of state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

12. INSURANCE

(a) Required Coverage. Without limiting CONSULTANT's indemnification, it is agreed that CONSULTANT shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the CITY as additional insureds and evidence of said insurance shall be delivered to CITY in certificate and endorsement forms acceptable to the CITY prior to execution of this Agreement. Such insurance provisions may be satisfied by evidence of insurance Consultant already has provided to City.

IZI Commercial general liability and property damage insurance. Coverage: \$1,000,000 per occurrence. The general aggregate limit shall be twice the required occurrence limit.

IZI Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. CONSULTANT's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation Statutes, the CONSULTANT shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

IZI E&O/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage: \$1,000,000 per Claim.

(b) General Provisions.

(i) CONSULTANT shall obtain insurance acceptable to the CITY in a company or companies admitted in California and with a Best rating of no less than

A VII or as acceptable to the CITY. The endorsements, naming the CITY as an additional insured, are to be signed by a person authorized by CONSULTANT's insurer to bind coverage on its behalf.

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

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the CITY (if agreed to in a written contract) before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the CITY.

(c) Additional Insured. The CITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language: *The City of Paramount, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured*

(ii) This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

14. ASSIGNMENT

(a) CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Due to the personal nature of the services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the services described in this Agreement.

(b) CONSULTANT may use assistants, under CONSULTANT's direct supervision, to perform some of the services under this Agreement. CONSULTANT hereby agrees to be solely responsible for any assistant used under this Agreement and each assistant is bound by the terms of this Agreement. CONSULTANT shall have each assistant confirm in writing they are familiar with the terms of this Agreement and agrees to be bound by the terms and conditions set forth herein.

15. PERMITS AND LICENSES

CONSULTANT will obtain and maintain during the term of this Agreement all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

16. CITY BUSINESS LICENSE

In addition to any other permits or licenses, CONSULTANT shall obtain, maintain and comply with the requirements for a current City business license during the term of this Agreement.

17. GOVERNING LAW

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the CITY.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreement, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further independent force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

19. SEVERABILITY

Any part, provision, or representation of this Agreement or any of its exhibits, including, but not limited to Exhibit "A", which is prohibited or which is held to be void or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

20. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that it has the authority to execute this Agreement on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

21. This Agreement shall be deemed to have been executed and entered into in the City of Paramount, County of Los Angeles, and State of California.

IN WITNESS WHEREOF, the undersigned execute this Agreement on the date first written above.

CITY OF PARAMOUNT

TRIPEPI SMITH

By: _____
John Moreno, City Manager

By: _____
Ryder Todd Smith, President

ATTEST:

By: _____
Heidi Luce, City Clerk

APPROVED AS TO FORM:

By: _____
John E. Cavanaugh, City Attorney

EXHIBIT A

Scope of work consists of the following duties and responsibilities:

Phase 1: Stakeholder Interviews

- **Conduct Interviews with City Council and Key City Staff:**
 1. **City Council Interviews:** Arrange and conduct one-on-one interviews with all City Council members to gather their input on the desired qualities, expectations, and fit for the next City Attorney. Topics should include:
 - Preferred legal expertise and experience
 - Desired personal qualities and professional attributes
 - Expectations for the City Attorney's role in supporting the City Council and city governance
 2. **City Staff Interviews:** Conduct interviews with key city staff, including the City Manager, Assistant City Manager, City Clerk, and Directors, to gain insights on operational needs, working relationships, and specific challenges that the new City Attorney should be prepared to address.
 3. **Summary of Findings:** Compile and analyze the feedback from all interviews to identify common themes and specific requirements. Prepare a summary report outlining the desired qualities and attributes for the new City Attorney as expressed by stakeholders.

Phase 2: Preparation of Request for Proposal (RFP)

- **Drafting the RFP:**
 1. **Standard Duties and Responsibilities:** Develop a comprehensive draft RFP that includes the standard duties and responsibilities of the City Attorney. This should encompass legal advisory roles, litigation management, contract review, ordinance drafting, and other relevant functions.
 2. **Incorporating Stakeholder Input:** Integrate the specific qualities and attributes identified during stakeholder interviews into the RFP. Highlight the expectations for professional expertise, interpersonal skills, and cultural fit.
 3. **Comparison Matrix:** Identify comparative information needed and ensure that information is requested in the RFP.
 4. **Review and Approval:** Present the draft RFP to the City Manager and Assistant City Manager for review and approval. Make any necessary revisions based on their feedback.

Phase 3: Release of RFP and Proposal Management

- **RFP Distribution:**
 1. **Publishing the RFP:** Release the approved RFP through appropriate channels, including the city's website, legal publications, professional associations, and other relevant platforms.

2. **Handling Inquiries:** Serve as the primary point of contact for interested firms, managing all inquiries and providing clarifications as needed. Maintain a log of all questions and responses to ensure transparency and consistency.
3. **Facilitating Communication:** Ensure that all potential proposers receive timely and accurate information. Schedule and host any necessary pre-proposal conferences or informational sessions.

Phase 4: Proposal Compilation and Evaluation

- **Compilation of Proposals:**
 1. **Receipt of Proposals:** Collect all proposals submitted by the deadline. Verify that each proposal meets the submission requirements and includes all necessary documentation.
 2. **Initial Screening:** Conduct an initial screening of proposals for completeness and compliance with the RFP specifications.
- **Analysis and Coordination:**
 1. **Detailed Analysis:** Perform a thorough analysis of each proposal, assessing qualifications, experience, proposed methodology, organizational fit, reputational considerations, practice expertise and cost. Prepare a comparison matrix to facilitate review.
 2. **Coordination of Evaluation:** Coordinate the proposal evaluation process with the City Manager and Assistant City Manager. Provide them with all relevant materials and the comparison matrix for review.
 3. **Proposal Rating Review:** Facilitate a collaborative review session where the Consultant, City Manager, and Assistant City Manager rank the proposals based on full consideration of all the relevant factors.
- **Part 4A – Scheduling Interviews (if necessary):**
 1. **Top Firms:** Depending on the number of proposals and their quality, identify the top firms for further consideration.
 2. **Interview Scheduling:** Arrange and schedule interviews with the top firms, to include the consultant, City Manager and Assistant City Manager.
 3. **Interview Preparation:** Develop interview questions to further assess the firms' suitability in more depth during the interview process.

Phase 5: Final Candidate Interviews with City Council

- **Coordination of Interviews:**
 1. **Finalist Selection:** Based on the proposal reviews and any preliminary interviews, select the final candidates to be interviewed by the City Council.
 2. **Scheduling:** Coordinate and schedule the final interviews, ensuring all City Council members are available.
 3. **Interview Logistics:** Arrange all logistics for the interviews, including interview schedules, and preparation of interview materials.
- **Facilitation and Support:**

1. **Interview Facilitation:** Provide support during the interviews, including facilitating the process, keeping time, and ensuring a smooth flow of questions and responses.
 2. **Evaluation Assistance:** Assist the City Council in evaluating the final candidates, providing any additional information or analysis as needed to support their decision-making process.
- **Selection and Appointment:**
 1. **Final Decision:** Support the City Council in making the final selection of the new City Attorney.
 2. **Contract Negotiation:** If requested, assist with contract negotiations and finalizing the terms of employment for the selected candidate.
 3. **Onboarding Support:** Provide onboarding support to ensure a smooth transition for the new City Attorney, including introductions to key staff and an overview of ongoing projects and priorities.

Tripepi Smith proposed the assignment of Mike Egan, Director, to lead and deliver the majority of this work including interfacing with the City Council and proposed entities. Mr. Egan is a retired City Manager with over 20 years of local city management experience serving multiple cities.