

**AGREEMENT BETWEEN
CITY OF NEW HAVEN POLICEMEN AND FIREMEN'S PENSION FUND
BRENNER, SALTZMAN & WALLMAN LLP
FOR
LEGAL SERVICES AS PENSION FUND COUNSEL**

This agreement (the "Agreement") is made this ____ day of _____, 2020 and effective as of _____, 2020, by and between the City of New Haven Policemen and Firemen's Pension Fund ("P&F"), a pension fund created by Special Acts of the Connecticut General Assembly, with an address of 200 Orange Street, New Haven, CT 06510 and Brenner, Saltzman & Wallman LLP, a Connecticut limited liability partnership with an address of 271 Whitney Avenue, New Haven, CT 06511 (the "Contractor"). Hereinafter P&F and the Contractor may be referred to as the "Parties" and each may be referred to as a "Party."

Recitals

WHEREAS, P&F requires the services of a law firm to act as pension fund legal counsel; and

WHEREAS, P&F issued a Request for Proposal for Pension Fund Legal Counsel # 2018-08-1193 (the "RFP") for legal services to be rendered to P&F; and

WHEREAS, the legal services to be performed by the Contractor (the "Services") are described in **Exhibit A** hereto, which exhibit is incorporated herein by this reference; and

WHEREAS, the Contractor responded to the RFP; and

WHEREAS, the Board of Trustees of P&F (the "Board") selected the Contractor to provide the Services; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the Services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Effective Date and Term of Agreement.

This Agreement commences as of _____, 2020 and shall continue until _____ [three years later] unless sooner terminated in accordance with the provisions herein.

2. Persons in Charge.

- (a) The person in charge of administering receipt of the Services on behalf of P&F shall be Leanna Ambersley, the Pension Administrator of the City of New Haven (the "Pension Administrator") or such other person or persons as may be designated by P&F in writing.
- (b) The person responsible on behalf of the Contractor for provision of the Services shall be Carolyn W. Kone, Esquire, or such other qualified person as may be designated in writing by the Contractor.

3. Provision of Services.

The Contractor shall furnish the Services as directed by the Pension Administrator or the Board. The Contractor shall perform the services in accordance with the professional and ethical standards of its profession and with due diligence, skill and prudence and solely in the best interests of P&F. The Services shall be performed in a timely manner. In performing the Services, the Contractor shall consult as necessary with the Pension Administrator and the P&F administrative staff.

4. Assigned Personnel.

- (a) The Services to be performed by the Contractor under this Agreement shall be performed primarily by the following attorneys:

Carolyn W. Kone, Esq.
Jack F. Strother, Esq.
Jill J. Rendeiro, Esq.

The Contractor may substitute other of its attorneys for such attorneys.

- (b) Paralegal services to be performed by the Contractor under this Agreement shall be performed primarily by the following paralegal:

Jeanie M. Cosgrove

- (c) From time to time, the Contractor may call upon other of its attorneys or paralegals to assist in providing the Services.

(d) Contractor represents that each person who will render the Services pursuant to this Agreement is duly qualified to perform the Services, holds all necessary licenses and credentials to perform the Services and that each such person is experienced and skilled in the areas for which he or she will render the Services.

5. Substitution of Personnel.

Upon request of the Pension Administrator or the Board, which request may be made in their sole discretion, Contractor will replace or substitute any of its personnel assigned to perform the Services under this Agreement with another qualified individual.

6. No Employment Relationship.

No contract for employment is intended or implemented by this Agreement. The Contractor shall at all times be acting in the capacity of an independent contractor. For all purposes, including but not limited to Workers' Compensation liability, the Contractor understands and agrees that all persons furnishing the Services pursuant to this Agreement are deemed employees or agents solely of the Contractor and not of P&F or of the City of New Haven (the "City").

7. No Assignment or Transfer.

Nothing contained herein shall be construed to permit assignment, transfer or subcontracting by the Contractor of any rights, obligations or liabilities created by this Agreement, and such assignment or transfer is prohibited and void, unless expressly approved in writing in advance by P&F.

8. Compliance with Laws and Code of Conduct.

(a) When performing its duties, responsibilities and obligations pursuant to this Agreement, the Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances.

(b) The Contractor and its agents shall comply with the provisions with respect to Legal Counsel and Service Providers set forth in the Code of Ethical Standards and Conduct, City of New Haven Policemen and Firemen's Pension Fund (P&F), Trustees, Administrative Staff and

Service Providers adopted by P&F on October 8, 2019 (the “Code of Conduct”).

9. Information to Be Furnished to the Contractor.

P&F will provide the Contractor with all documents, data, and other materials in its possession or control appropriate to performance of the Services and will endeavor to secure information from the City and other sources as requested by the Contractor to facilitate such performance.

10. Fees.

The fees and costs to be charged by the Contractor for the Services are set forth in **Exhibit B**. The fees and costs to be charged during the first year of this Agreement shall be those set forth in paragraphs 1 and 3 of **Exhibit B**. Prior to the conclusion of the first year of this Agreement, the Board shall determine whether to continue to compensate the Contractor in accordance with the fee arrangement set forth in paragraphs 1 and 3 of **Exhibit B**, or, in the alternative, whether to compensate the Contractor in accordance with the fee arrangement set forth in paragraphs 2 and 3 of **Exhibit B** for the remaining two years of this Agreement, and shall notify the Contractor in writing which fee arrangement it has selected for the duration of the Agreement. The amounts payable under **Exhibit B** shall be the sole compensation owed by P&F to the Contractor for the Services. Payments to the Contractor under this Agreement shall be made by P&F upon approval by the Board of written invoices submitted by the Contractor on a monthly basis. Such invoices shall detail the tasks performed by the Contractor, the name of the legal professional performing the tasks, the time spent by the legal professional performing the tasks, and the costs incurred in performing the Services.

11. Insurance.

The Contractor will maintain insurance as provided in **Exhibit C**. The Contractor is responsible for the payment of all premiums. Upon the signing of this Agreement, the Contractor shall provide a certificate of insurance evidencing said insurance coverage. Upon request, the Contractor will promptly provide P&F with a copy of the insurance policy. It is understood that the Contractor shall not lower the levels of coverage of such insurance policy except upon the prior written approval of P&F, which approval shall not be unreasonably withheld.

12. Amendment.

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Contractor and P&F.

13. Termination.

This Agreement may be terminated by P&F or the Contractor without specified cause or reason at any time during the term of this Agreement upon thirty (30) calendar days' written notice. The Contractor shall be compensated in accordance with **Exhibit B** for services rendered prior to the effective date of termination. Upon termination or expiration of this Agreement, unless P&F continues to engage the Contractor to provide legal services subsequent to the expiration of this Agreement, P&F shall promptly retrieve all files relating to the provision of the services (both prior to and during the term of this Agreement) from the Contractor's office or instruct the Contractor to destroy some or all of such files, P&F acknowledging that because the Contractor has provided legal services to P&F for over thirty-five (35) years, such files are voluminous.

14. Prevailing Law.

This Agreement, the engagement and any cause of action arising hereunder or related hereto shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut and the United States of America and without regard to Connecticut's conflicts of laws principles. The Parties agree that the federal and state courts located in Connecticut shall have exclusive jurisdiction with respect to any disputes, claims or causes of action arising under or in connection with this Agreement.

15. Severability.

If any provision of this Agreement is held by any court to be invalid, void or unenforceable, in whole or in part, the other provisions shall remain unaffected and shall continue in full force and effect.

16. Counterparts.

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

17. Binding on Successors.

This Agreement shall inure to the benefits of and be binding on the parties hereto and on each of their respective successors and permitted assigns.

18. Notices.

Any notices or other communications required or permitted by this Agreement shall be in writing and shall be sent (a) via email, (b) hand delivery, or (c) overnight carrier and shall be considered to have been given when sent. Notices and other communications shall be addressed to the following:

CONTRACTOR:

Brenner, Saltzman & Wallman LLP
271 Whitney Avenue
New Haven, CT 06511
Attn: Carolyn W. Kone, Esq.
ckone@bswlaw.com

P&F:

City of New Haven Policemen and Firemen's Pension Fund
200 Orange Street
New Haven, CT 06510
Attn: Leanna Ambersley, Pension Administrator

Each Party may change the place or person to whom notices shall be sent by sending a written notice to the other Party of the change in the place or person to whom notices shall be sent.

19. Prior Agreements.

This Agreement, including the exhibits hereto, incorporates all of the understandings of the Parties as to the matters contained herein and supersedes any and all proposals and agreements reached by the Parties prior to the execution of this Agreement, whether oral or written as to such matters.

20. Waiver

Any waiver of the terms and conditions of this Agreement by either of the Parties hereto shall not be construed to be a waiver of any other term or condition of this Agreement.

21. Article Headings.

Section headings herein are for the convenience of the parties only and do not describe or limit the contents of the section.

IN WITNESS WHEREOF, the parties have executed two (2) counterparts of this Agreement as of the day and year first above written

CITY OF NEW HAVEN POLICEMEN AND
FIREMEN'S PENSION FUND

Date: _____

By: _____

Justin Elicker
President, Board of Trustees
Duly Authorized

BRENNER, SALTZMAN & WALLMAN LLP

Date: _____

By: _____

Carolyn W. Kone, Esq.
Partner
Duly Authorized

EXHIBIT A

LEGAL SERVICES

The Services to be provided by the Contractor include:

- Legal review and/or drafting of contracts with investment consultants, custodians, investment managers and other investment-related service providers, and interpretations of the same;
- Advice on various issues relating to the operation and administration of P&F including but not limited to:
 - advice on tax issues including federal pension plan tax qualification requirements, updating of plan documents for compliance and obtaining tax rulings;
 - real or potential conflict of interest situations and the Code of Conduct;
 - governmental and legislative matters;
 - compliance with federal and state laws and regulations pertaining to municipal pension funds;
 - fiduciary obligations;
 - plan interpretation;
 - the Connecticut Freedom of Information Act;
 - acceptability of domestic relations court orders;
 - response to subpoenas;
 - assistance to the Pension Administrator in responding to plan member inquiries;
 - procedural matters;
- Interactions with the City of New Haven's Labor Relations Director and with representatives of other federal, state and municipal governmental entities;
- Representation before administrative agencies and in judicial proceedings;
- Drafting of contracts with service providers, such as P&F's actuary and its medical consultant;
- Attendance at regular and special meetings of the Board;
- Drafting of policies, bylaws, and regulations; and
- Such other legal services as may be requested by the Pension Administrator or the Board from time to time.

EXHIBIT B

FEEES

1. Hourly Rate Basis

The Contractor shall invoice for all Services at the blended hourly rate of \$300/hour for attorneys and \$100/hour for paralegals.

2. Flat Fee Basis with Certain Exceptions

A. Monthly Retainer for Routine Matters

For routine matters, P&F shall pay the Contractor a monthly flat fee of \$6,000.

Routine matters covered by the monthly retainer shall include responding to day-to-day questions and providing legal opinions. Such matters include questions related to plan eligibility, service crediting, benefit determinations, handling of overpayments, drafting administrative regulations, drafting of amendments to bylaws, drafting resolutions, reviewing agendas, reviewing amendments to documents for existing investments, updating administrative forms, reviewing and negotiating agreements for service providers (e.g., actuary, consultant, custodian, etc.), advice regarding routine Freedom of Information matters (matters that take four hours or less of attorney/paralegal time to resolve), and attending monthly meetings of the Board.

B. Flat Fee for QDRO Review

For legal review of court-issued qualified domestic relations orders ("QDROs") directing the payment of all or any portion of a P&F member's pension benefits to an Alternate Payee, P&F shall pay the Contractor a flat fee of \$500 per QDRO.

Review of QDROs shall consist of a legal review of QDROs provided to P&F, whether in draft or final form, in order to determine whether they are consistent with the governing plan documents and with Internal Revenue Code requirements for the continued federal tax qualification of P&F. The Contractor shall advise the Plan Administrator if a QDRO is acceptable for implementation by P&F, or, if not, what changes are necessary to make the QDRO acceptable.

C. Investment Transaction Document Review

The Contractor will invoice P&F for document review of new investment managers and first time investments at a blended hourly rate of \$300 per hour for attorney time and \$100 per hour for paralegal time.

D. Litigation/Administrative Agency Matters

For litigation matters and administrative proceedings, including responding to investigatory and other subpoenas and FOIA requests requiring in excess of four hours, the Contractor will invoice P&F for such matters at a blended hourly rate of \$300 per hour for attorney time and \$100 per hour for paralegal time.

E. Extraordinary Projects

Extraordinary matters include matters such as the development of new codes, and stipulations; and proceedings or matters involving extensive interaction with federal, state or local governmental entities, such as requesting federal tax rulings from the Internal Revenue Service.

3. Reimbursement for Costs

In addition to the legal fees described in paragraphs 1 and 2, P&F will reimburse the Contractor for the actual Invoice cost of expert witness fees, marshal's fees, filing fees, transcript costs, deposition fees, out-of-state-travel expense, printing graphics, or reproduction costs, special delivery costs, courier service costs, overnight delivery, and computerized legal research.

EXHIBIT C

INSURANCE

The Contractor shall purchase from and maintain in a company or companies with an A or greater A.M. Best & Co. rating, for those companies that have an A.M. Best & Co. rating, and lawfully authorized to do business in Connecticut, professional liability/errors and omissions insurance in the amount of \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate.