

AGREEMENT

This Agreement (“Agreement”) is entered into by and between Even/Odd, LLC (“**Even/Odd**”), Compound, LLC (“**Compound**”), and the City and County of San Francisco (the “City”), acting by and through the Office of the San Francisco Public Defender (“**PD Office**”). The term of this Agreement shall commence on full execution and expire five years thereafter, unless earlier terminated as provided herein or mutually extended by the parties hereto in writing, and in no event shall the term of the Agreement exceed 10 years.

Background

PD Office, in collaboration with Even/Odd and Compound, has developed a documentary media project called the Adachi Fund (the “Project”) in memory and tribute to the legacy of Jeff Adachi. The Project is designed for Even/Odd to produce and deliver to the PD Office short films with proposed visions for reform of the criminal legal system, and media in all forms known or unknown, including sentencing videos, photography, social media and website content, and print materials (collectively, “Media”), that can be used by PD Office’s public defenders during sentencing (sentencing videos) and other client advocacy, and disseminated to the public to inform a greater understanding of the legal system as described herein.

This Agreement sets forth the responsibilities of the parties for creation, distribution, licensing and ownership of the Media for the purposes of carrying out the Project.

The Board of Supervisors has approved this Agreement by Resolution Number [insert number] on [insert date].

Therefore, for good and valuable consideration, the acceptance of which is hereby acknowledged, the parties agree as follows:

1. Access. PD Office agrees to grant Even/Odd, Compound and filmmakers contracted by Even/Odd, which may include photographers, producers, project managers, and other freelance media professionals, to produce the Media (collectively referred to herein as “Producers”) non-exclusive right of access to and cooperation by the PD Office during the term of this Agreement to film and record for the Project. Footage captured by Even/Odd, Compound and Producers to produce the Media for the Project is referred to herein as “the Recordings.”
 - a. Even/Odd will notify or will ensure Producers notify PD Office in advance of filming, by e-mailing or calling the Managing Attorney on the Project, the Policy Director, and/or the Public Information Officer. In PD Office’s sole discretion, it may limit or restrict the number of crew on site and the crew shall stop filming when requested to do so by PD Office.
 - b. Even/Odd and Compound agree and shall have all Producers agree to sign the City’s USE AGREEMENT FOR CITY PROPERTY FOR FILM PRODUCTION AND RELATED ACTIVITIES (a sample of which is attached to this Agreement and labeled **Attachment 1**); the PD Office Non-disclosure Agreement attached to this Agreement as **Attachment 2**; and any additional liability waivers reasonably requested by PD Office and agreed to by Even/Odd and Compound arising out of the

activities contemplated herein. The parties will consult on all liability waivers and each party will be responsible for obtaining waivers for the people they contact.

2. Responsibilities.
 - a. Pursuant to the terms set forth in this Agreement, Even/Odd will produce and deliver the Media to the PD Office.
 - b. For an agreed upon percentage of the individual production budget for each Media asset to be delivered by Even/Odd to the PD Office, Even/Odd will manage and contract with Producers, and provide administrative services for the Project, including managing crew, contracts, payroll, production insurance, distribution and licensing. Even/Odd shall include terms in the Producers' agreements that allow Even/Odd to transfer all rights as herein, and have Producers comply to the same terms.
 - c. Compound will provide at-cost (i.e. reimbursement of costs incurred at standard market-rate and without profit) communications assistance for the Project.
 - d. PD Office is responsible for the governance of the Project.
3. Funding. PD Office, Even Odd and Compound agree to work together in good faith to fundraise for the Project. PD Office may reject funding from sources that PD Office reasonably believes do not align with the PD Office's mission or the mission of the Project and/or would adversely affect the public's confidence in the integrity of the PD Office or the Project. Fundraising for the Project will be mutually agreed on between the parties in compliance with all applicable laws and regulations including conflict of interest and ethics laws and regulations governing donations to the City. All parties will track where Project funds are spent and share that information with the other parties on a quarterly basis as determined by the parties.
4. Founding Credit. In recognition of the founding contributions of PD Office, Even/Odd and Compound to the Project, the parties agree that the "Founders" of the Project will always and only be PD Office, Even/Odd and Compound, regardless of future events and/or collaborators. The following credit line will be utilized, as appropriate, on Media and materials related to the Project: *"Produced by the Adachi Fund, a project of the PD Office created in partnership with Even/Odd and Compound."*
5. Use of the Media. The parties anticipate that in addition to the use of the Media to assist the PD Office in sentencing and other client advocacy, the Media produced through the Project may be distributed through any and all current or future media channels including film festivals, theatrical and community screenings, online and digital streaming, broadcast television, airlines, or other transportation. Any and all gross revenues received from the distribution of the Media less customary distribution expenses and any deferred costs will be reinvested in the Project to support additional Media productions, such that no entity will receive profit from the distribution of the Media. PD Office will use reasonable efforts to consult with Compound and Even/Odd on the use and distribution of the Media for the Project, including any license grant to a third party to use the Media or Recordings, however, the ultimate distribution of the Media including, but not limited to, the timing of when Media is released, where Media is released, and whether Media is distributed at all, will be made in PD Office's sole discretion.

6. Use of PD Office Name and Logo(s). PD Office grants Even/Odd, Compound and Producers the right and license to use PD Office name and logo(s) in the Project as incidentally captured while filming, and in any publicity or distribution of the Project within the context of what is being filmed. Any use of the PD Office name and logo that may be used to endorse the Project shall only be with written approval from PD Office. Even/Odd, Compound and Producers do not have the right to manufacture or sell merchandise regarding the Project, except pursuant to a separate merchandise license, which, if entered into, among other things, would grant PD Office the right to approve each type and item of merchandise. Pursuant to Administrative Code Section 1.6 governing use of the City's Corporate Seal, if Even/Odd, Compound or any Producers wish to seek permission to use the City's Corporate Seal for commercial purposes, they must follow the procedures set forth in Section 1.6 and seek the City and County of San Francisco's Board of Supervisors approval.
7. Creative Decisions. Even/Odd and Compound, in collaboration with PD Office, will provide creative oversight for the Project. Subject to Section 10 (Consultation) of this Agreement and provided that Even/Odd shall have meaningful consultation with the PD Office during the creation of the Media, PD Office agrees that Even/Odd will have ultimate creative authority over each Media asset delivered by Even/Odd to the PD Office, including final cut on films, and that the credits set forth in **Attachment 3** will be given to each party for each delivered Media asset. Additional credits shall be mutually agreed upon by PD Office, Even/Odd and Compound.
8. Ownership. PD Office is and shall at all times remain the owner of the Media and the Recordings. PD Office shall at all times own any and all trademarks related to the Project. Prior to any filming and/or recording at PD Office or otherwise for the Project, Even/Odd shall require Producers to grant ownership rights of the Recordings to the PD Office and waive, to the extent permissible pursuant to applicable law, any moral rights, 'droit moral' or other similar rights arising under the laws of any jurisdiction in the form of **Attachment 4**. Subject to the terms set forth in this Agreement, PD Office grants to Even/Odd the non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, sub-licensable, worldwide license to make, have made, use, sell, offer for sale, import, reproduce, distribute, publicly perform, publicly display and otherwise exploit the Media or Recordings in whole or in part, and in any and all media, as part of or in connection with the Project and waiving to the extent permissible pursuant to applicable law any moral rights, 'droit moral' or other similar rights arising under the laws of any jurisdiction. As a condition of the above license, Even/Odd and Compound agree not to use the Recordings or Media for commercial purposes or to receive profit from the distribution of the Media or Recordings. Notwithstanding the foregoing, Even/Odd will own the rights in and to, and have the right to create ancillary and derivative works based on the Media and Recordings, including without limitation remakes, sequels, spinoffs, and dramatizations, and Even/Odd will own the intellectual property to any such ancillary and/or derivative works that it creates. To be clear, Even/Odd shall not use any of the Media and/or Recordings from the Project in such ancillary and/or derivative works without prior written approval from PD Office, not to be unreasonably withheld, and with a standard license fee to be negotiated in good faith. It shall be Even/Odd's sole responsibility to secure any additional rights necessary for any ancillary or derivative works including without limitation from any individual portrayed in the work. Even/Odd shall inform PD Office in writing or by email when Even/Odd or any of its affiliates or agents contact one of PD Office's clients or former clients about using the individual's story in any type of media.

9. Appearance Release Forms. PD Office will endeavor to assist Even/Odd, Compound and Producers in obtaining the cooperation of and releases from clients of the PD Office, assistant public defenders, other PD Office employees, judges, and bailiffs in the form of **Attachments 5 and 6**, but PD Office does not warrant that it can obtain cooperation and releases from any person. In that regard, the PD Office's cooperation with Even/Odd, Compound and Producers is at all times subject to its obligations to its clients, the courts, and the law.
10. Consultation. PD Office has the right to screen and provide comment on the rough cuts of all Recordings created for the Project, to assure that such content does not contain any information or materials that, in the good faith opinion of the PD Office, would (i) violate any confidentiality, privacy or safety obligations of the PD Office with respect to its cases and clients, (ii) jeopardize any client's right to a fair trial, or (iii) would jeopardize public safety or any city agency's performance of its legal duties or obligations (collectively, "**Sensitive Material**"). Any such comments from PD Office shall be returned to Even/Odd, Compound or Producers, as applicable, within a set period of time, to be determined by the parties within the schedule of each project. Even/Odd shall ensure that Producers adhere to the same terms herein regarding editing the applicable content so as to remove or obscure any Sensitive Material identified by PD Office. Additionally, the final work product will not include any content that was not previously provided to the PD Office for review and comment as set forth above.
11. Insurance.
 - a. Required Coverages. Without in any way limiting Even/Odd or Compound's liability pursuant to the "Indemnification" section of this Agreement, Even/Odd and Compound and any Producer as necessary, must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
 - i. (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - ii. (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, provided that PD Office does not require Even/Odd's Commercial General Liability Insurance to cover COVID-19 related claims; and
 - iii. (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

- ii. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. Even/Odd and Compound shall provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages.
- d. Should any of the required insurance be provided under a claims-made form, Even/Odd and Compound shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed and no filming or work shall take place on City property until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated within 10 business days, the City may, at its sole option and upon at least 5 days prior written notice to either Even/Odd or Compound, as applicable, terminate this Agreement effective on the date of such lapse of insurance. If insurance is reinstated within the 5-day termination notice period, the City's notice of termination will have no further force or effect and the Agreement will not terminate.
- g. Before commencing any work, Even/Odd and Compound shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Even/Odd or Compound liability hereunder.
- h. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Even/Odd and Compound, and their respective employees, agents and subcontractors.
- i. If Even/Odd and Compound will use any subcontractor (s) to provide services, Even/Odd and Compound shall require the subcontractor (s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Even/Odd and Compound as additional insureds.

- j. Even/Odd shall insure Producers or shall require Producers to obtain insurance in the amounts and coverages required by the San Francisco Film Commission and the City's Risk Manager.

12. Indemnification.

- a. Even/Odd and Compound shall indemnify and hold harmless City and its officers, agents and employees (the "City Indemnified Parties") from, and, if requested, shall defend them from and against any and all third party claims, demands, losses, damages, reasonable costs and expenses, and liability (legal, contractual, or otherwise) (the "Claims") arising from or in any way connected with any: (i) failure of Even/Odd or Compound, or their respective subcontractors, or either's agent or employee to observe or comply with any provision of this Agreement, or (ii) losses arising directly or indirectly from the negligent acts or willful misconduct of Even/Odd or Compound, their subcontractors, or either's agent or employee, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of the City Indemnified Parties, provided that the City Indemnified Parties shall not be responsible for the portion of such loss, damage, injury or liability or claim that is caused by any act of, or by any omission to perform some duty imposed by law or agreement on, Even/Odd and Compound, their subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs.
- b. In addition to Even/Odd and Compound's obligation to indemnify City, Even/Odd and Compound specifically acknowledge and agree that they have an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Even/Odd or Compound, as the case may be, by City and continues at all times thereafter. Even/Odd and Compound shall each be independently responsible for its obligations set forth in this Section 12. For clarity, Even/Odd will not be responsible for any Claims that are caused by Compound and Compound will not be responsible for any Claims that are caused by Even/Odd. This indemnity shall survive the expiration or earlier termination of the agreement.
- c. City shall indemnify and hold harmless Even/Odd and Compound and its officers, agents and employees (the "E/O&C Indemnified Parties") from, and, if requested, shall defend them from and against any and all third party claims, demands, losses, damages, reasonable costs and expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) failure of City, PD Office, or their respective subcontractors, or either's agent or employee to observe or comply with any provision of this Agreement, or (ii) losses arising directly or indirectly from the negligent acts or willful misconduct of City, PD Office, their subcontractors, or either's agent or employee, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of the E/O&C Indemnified Parties, provided that the E/O&C Indemnified Parties shall not be responsible for the portion of such loss, damage, injury or liability or claim that is caused by any act of, or by any omission to perform some duty

imposed by law or agreement on, City, PD Office, their subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs.

13. Publicity. Even/Odd and Compound will consult with PD Office and PD Office must approve any press releases related to the Project. Such approval will not be unreasonably withheld. PD Office acknowledges and agrees that nothing in this Section 13 prevents Even/Odd from independently pursuing press and public relations opportunities so long as Even/Odd obtains PD Office approval of any press releases related to the Project.
14. Assignment. The services to be performed by Even/Odd and Compound are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Even/Odd or Compound unless first approved by PD Office by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.
15. Relationship. Even/Odd and Compound shall be deemed to include each of their respective agents or employees. Even/Odd and Compound acknowledge and agree that at all times they and their agents or employees shall be deemed independent contractors, and they are wholly responsible for the manner in which they perform the services and work under this Agreement. Even/Odd and Compound, and their respective agents and employees will not represent or hold themselves out to be employees of the City at any time. Even/Odd and Compound or any of their respective agents or employees shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Even/Odd, Compound and their agents and employees are liable for the acts and omissions of themselves, their employees and their agents. Even/Odd and Compound shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to their respective work, or the work of any of their agents or employees. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Even/Odd or City and Compound or any of their agents or employees. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Even/Odd and Compound's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Even/Odd or Compound perform their work under this Agreement.

16. General Provisions

- a. Severability. In the event that any provision of this Agreement (or portion thereof) is determined to be invalid or otherwise unenforceable, such provision (or part thereof) shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force according to its stated terms and conditions.
- b. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

- c. Complete Agreement. This Agreement including the Attachments constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written.
- d. Termination for Convenience. PD Office, Even/Odd and Compound shall each have the option, in its sole discretion, to terminate its participation in this Agreement at any time for convenience and without cause, by providing at least 10 days written notice to the other parties hereto. The notice shall specify the date on which termination shall become effective. This section and the following sections of this Agreement shall survive termination or expiration of this Agreement: 5. (Use of the Media); 6. (Use of PD Office Name and Logo(s)); 7. (Creative Decisions); 8. (Ownership); 9. (Appearance Release Forms); 12. (Indemnification); 13 (Publicity); 15 (Relationship); 16 (General Provisions).
- e. Limitation on Liability. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.
- f. Nondisclosure of Private, Proprietary or Confidential Information. If this Agreement requires City to disclose "Private Information" to Even/Odd and/or Compound within the meaning of San Francisco Administrative Code Chapter 12M, Even/Odd and/or Compound shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement.

The parties hereto have executed this Agreement as of the date below:

 Mohammad Gorjestani for Even/Odd, LLC

 Malcolm Pullinger for Even/Odd, LLC

 Santhosh Daniel for Compound, LLC

_____ for the Office of the San Francisco Public Defender

Approved as to Form:
 Dennis J. Herrera
 City Attorney

By: _____
Lauren Curry
 Deputy City Attorney

Attachment 1

Use Agreement

Attachment 2

Non-Disclosure Agreement

Attachment 3

Credits

Attachment 4

Materials Release

Attachment 5

Appearance Release (City Employee)

Attachment 6

Appearance Release (Non-City Employee)