SEVENTH AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY

This Seventh Amendment to Agreement for Services of City Attorney is made with
respect to that certain Agreement for Services of City Attorney ("Agreement") dated
and 2016, by and between the City of Menlo Park ("City") and William L. McClure
("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement
as follows:

1. Effective with the first pay period commencing after March 1, 2019, Attorney's
salary shall be increased to Eleven Thousand Dollars ($11,000.00) per month.

2. Effective March 1, 2019, except for legal services on development projects where
the costs are reimbursed by applicants as provided in paragraph 3 of this Amendment,
Attorney's firm shall be paid $250.00 per hour for legal services provided by Attorney,
other partners and "of counsel" attorneys within Attorney's firm, $225.00 per hour for legal
services performed by associates of the firm, $275.00 per hour for services performed by paralegals, law clerks and legal assistants, after City is credited the sum of
$11,000 per month against billings for the month for Attorney's salary.

3. Effective March 1, 2019, with respect to legal services provided to City for
development projects processed by the Community Development Department for which
City is reimbursed by the applicant/property owner (other than single family home projects
involving a single housing unit), Attorney's firm shall be paid $400.00 per hour for legal
services provided by Attorney, other partners and "of counsel" attorneys within Attorney's
firm, $275.00 per hour for legal services performed by associates of the firm, and $145.00
per hour for services performed by paralegals, law clerks and legal assistants.

4. Except as modified herein, all of the remaining terms and provisions as previously
modified, shall remain in full force and effect.

CITY OF MENLO PARK

By: __________________________
   Mayor

Attest:

City Clerk

William L. McClure
SIXTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Sixth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as previously amended in 2000, 2002, 2005, 2007 and 2011, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Effective with the pay period commencing October 2, 2016, Attorney's salary shall be increased to $10,000.00 per month.

2. Effective October 1, 2016, except for legal services on development projects where the costs are reimbursed by applicants as provided in paragraph 3 of this Amendment, Attorney's firm shall be paid $225.00 per hour for legal services provided by Attorney and other partners within Attorney's firm, $200.00 per hour for legal services performed by associates of the firm, and $110.00 per hour for services performed by paralegals, law clerks and legal assistants, after City is credited the sum of $11,500 per month against billings for the month as a partial for salary and benefit costs.

3. Effective October 1, 2016, with respect to legal services provided to City for development projects processed by the Community Development Department for which City is reimbursed by the applicant/property owner (other than single family home projects involving a single housing unit), Attorney's firm shall be paid $350.00 per hour for legal services provided by Attorney and other partners within Attorney's firm, $240.00 hour for legal services performed by associates of the firm, and $125.00 per hour for services performed by paralegals, law clerks and legal assistants.

4. Except as modified herein, all of the remaining terms and provisions, shall remain in full force and effect.

Dated: October 11, 2016

CITY OF MENLO PARK

Attest: 
City Clerk

By: 
Mayor

William L. McClure
FIFTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Fifth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as previously amended in 2000, 2002, 2005 and 2007, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Effective with the pay period ending July 2, 2011, City shall deduct as an after tax item from Attorney's Monthly Salary/Retainer, one half of the amount by which City's Public Employees' Retirement System (CalPERS) employer rate for miscellaneous employees exceeds a 15.850% threshold in accordance with the City's Management Benefit Plan for other non-represented management employees of the City. For 2011-2012 this share is calculated as 16.090% - 15.850% / 2 = 0.11% of earnings subject to CalPERS. The amount of Attorney's contribution/deduction to the City's CalPERS rate shall be adjusted annually without further amendment of this Agreement when the City's CalPERS employer rate for miscellaneous employees is adjusted.

2. Effective July 1, 2011, solely with respect to legal services provided to City for development projects processed by the Community Development Department for which City is reimbursed by the applicant/property owner (other than single family home projects involving a single housing unit), Attorney's firm shall be paid $300 per hour for legal services provided by Attorney and other partners within Attorney's firm, $240 per hour for other attorneys in Attorney's firm and $100 per hour for law clerks/paralegals/legal assistants.

3. Except as modified herein, all of the remaining terms and provisions, including but not limited to the hourly rates paid for other legal services and the monthly credit for the monthly retainer as set forth in the Fourth Amendment, shall remain in full force and effect.

CITY OF MENLO PARK

By: [Signature]
Mayor

Attest:

MARGARET ROBERTS
City Clerk

[Signature]
William L. McClure
FOURTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Fourth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended in 2000, 2002 and 2005, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and hereby agree to, amend said Agreement as follows:

1. Attorney is hereby granted a salary increase of 4.7% to $9,000 per month retroactive to July 1, 2007.

2. Effective August 1, 2007, Attorney's firm shall be paid $200 per hour for all legal services provided by Attorney and other partners within Attorney’s firm, $185 per hour for other legal attorneys in Attorney’s firm and $85 per hour for law clerks/paralegal/legal assistants, after City is credited $10,650 per month for the retainer paid to Attorney each month. These rates shall be utilized for all billings to the City for Retainer Services and Non-Retainer Services alike.

3. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

Dated: August 28, 2007

CITY OF MENLO PARK

By

Kelly Ferguson, Mayor

ATTEST

Silya Vonderlieder, City Clerk

Dated: August 28, 2007

William L. McClure
THIRD AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Third Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended in 2000 and 2002, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Attorney is hereby granted a salary increase of 2.5% retroactive to July 1, 2005.

2. Effective December 1, 2005, Attorney's firm shall be paid $185 per hour for all legal services provided by Attorney and other partners within Attorney's firm, $170 per hour for other attorneys in Attorney's firm and $80 per hour for law clerks/paralegals/legal assistants, after City is credited $9,850 per month for the retainer paid to Attorney each month. These rates shall be utilized for all billings to the City for Retainer Services and Non-Retainer Services alike.

3. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

Dated: December 19, 2005

CITY OF MENLO PARK
By: Mayor

ATTEST
City Clerk

Dated: December 19, 2005

William L. McClure
SECOND AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Second Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended effective June 1, 2000, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Attorney is hereby granted a salary increase of 4.5% retroactive to January 1, 2002.
2. Effective April 1, 2002, Attorney's firm shall be paid $165 per hour for Attorney and other attorneys within Attorney's firm and $80 per hour for law clerks/paralegals/legal assistants for Retainer Services, after City is credited $9,000 per month for the first 60 hours of Retainer Services per month provided by Attorney and/or others within his firm.
3. Effective April 1, 2002, Attorney's firm shall be paid $175 per hour for Attorney and/or Attorney's partners and $155 per hour for other attorneys in Attorney's firm, and $80 per hour for law clerks/paralegals/legal assistants for Non-Retainer Services provided to City.
4. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

CITY OF MENLO PARK

By __________________________
Mayor

Attest:

______________________________
City Clerk

______________________________
William L. McClure
AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY

This Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney").

Whereas, the Agreement between City and Attorney has not been amended or updated since 1993; and

Whereas, the compensation of Attorney set forth in the Agreement has not been modified since the effective date of the Agreement; and

Whereas, the services and time commitment required of Attorney have increased over the term of the Agreement without a commensurate increase in compensation; and

Whereas, the parties desire to modify and amend the Agreement as herein after set forth.

NOW, THEREFORE, THE PARTIES AGREE TO AMEND THE AGREEMENT EFFECTIVE JUNE 1, 2000, AS FOLLOWS:

1. Paragraph 4 a. of the Agreement is amended to provide that Attorney shall be paid a monthly salary of Seven Thousand Five Hundred Dollars ($7,500) for providing the first (sixty) 60 hours of basic Retainer Services each month. All of the remaining terms and provisions of that Paragraph shall remain the same.

2. A new Paragraph 4 b. is hereby added to the Agreement (with the remaining subparagraphs re-lettered), as follows:

   "4 b. In the event Attorney (and/or other attorneys or law clerks/paralegal staff under Attorney's direction) put in more than a total of sixty (60) hours for Retainer Services in a month, Attorney's firm shall be paid for such additional time on the basis of the following rates: $160 per hour for Attorney and other attorneys in Attorney's firm and $75 per hour for law clerks/paralegal staff. Such services shall be paid for as independent contractor services and not as employment compensation."

3. Paragraph 4 c. (formerly 4 b) is amended to provide that Non-Retainer Services will be compensated at the regular discounted government rate for Attorney's Firm, as those rates may be adjusted from time to time with not less than thirty (30) day's prior written notice to the City Manager and City Council. As of the effective date of this Amendment, such rates are as follows: $170 per hour for Attorney and/or Attorney's partners; $150 per hour for other attorneys in Attorney's Firm (associates and of-counsel); $100 per hour for research attorneys; and $75 per hour for law clerks/paralegal staff.
4. Paragraph 7 is amended to provide that Attorney shall use his discretion in delegating work to be performed by attorneys and staff within his firm to provide the best and most cost effective service to the City. Attorney may utilize the services of other attorneys to attend Planning Commission and certain other meetings on a routine basis with the approval of the City Manager. Notwithstanding the foregoing, all services shall be performed under the direction and control and shall be the responsibility of Attorney.

5. Attorney and City shall endeavor to review the terms of this Agreement at least every two years. Either party may request a review at any time.

6. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

CITY OF MENLO PARK

By: Mary Jo Borak, Mayor

Attest:

City Clerk

William L. McClure
AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Agreement is effective on Sept. 7, 1993, and is made by and between the CITY OF MENLO PARK, a Municipal corporation ("CITY") and WILLIAM L. McCLURE ("Attorney").

RECITALS

WHEREAS, pursuant to California Government Code section 36505, the City Council of CITY may appoint a City attorney; and

WHEREAS, pursuant to Resolution No. 4435, the City Council of CITY appointed Attorney to act as the Interim City Attorney with full power and authority to act as City Attorney until the appointment of a City Attorney; and

WHEREAS, the City Council of CITY wishes to retain and appoint Attorney to act as the City Attorney and to provide legal services to CITY in accordance with the terms and provisions of this Agreement; and

WHEREAS, Attorney wishes to act as the City Attorney and to provide such legal services in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Designation of City Attorney. Attorney is hereby appointed as the City Attorney for the CITY. Attorney is also appointed as counsel for the Community Development Agency of the CITY ("Agency").

2. Scope of Legal Services to be Provided by Attorney.

a. The following legal services shall be provided to CITY by Attorney or under the direction and supervision of Attorney without additional compensation as a part of the monthly CITY retainer to be paid to Attorney ("Retainer Services"): 

(1) Attendance at all regular and special City Council meetings, study sessions, and Agency Board meetings;

(2) Attendance at all Planning Commission meetings (attendance at Planning Commission study sessions upon request only);

(3) Attendance on occasion at other Board and Commission meetings upon request;

(4) Routine legal advice, consultation and opinions to the City Council, City Manager, and Staff on general municipal
matters, including but not limited to areas such as land use, CEQA, general municipal law, civil and criminal enforcement, tort liability, and risk management;

(5) Preparation/review of all proposed ordinances, resolutions, contracts, and related documents pertaining to CITY's business except M.O.U.'s and except as otherwise provided in Paragraph 2b;

(6) Review and advice regarding notices of preparation, draft negative declarations and administrative drafts of EIR's for CITY/Agency projects;

(7) Review of Staff Reports and review/preparation of Findings for CITY projects;

(8) Attendance at meetings with the City Manager and other CITY staff and members of the public as needed regarding routine CITY business;

(9) Telephone and correspondence with members of the public and press regarding routine CITY business;

(10) Assistance/advice to the City Manager and senior management of CITY regarding general personnel matters related to CITY's Personnel Rules & Regulations;

(11) Assistance/advice/correspondence regarding code enforcement and enforcement of state and local laws and codes up to the point of litigation (criminal and civil);

(12) Assistance/preparation of documents in connection with land acquisition or easements up to the point that the City Council authorizes the commencement of eminent domain proceedings;

(13) Review of/assistance with drafting minor General Plan Amendments;

(14) General advice on workers' compensation matters;

(15) Legal advice on general, non-specialized, redevelopment issues; and

(16) Approve selection of outside legal counsel and manage/supervise in conjunction with the City Manager specialized legal services as required in various matters, e.g., bond/assessment proceedings, collective bargaining, personnel, disability and workers' compensation claims.
b. The following legal services shall be provided to CITY by Attorney or under the direction and supervision of Attorney ("Non-Retainer Services"), and Attorney shall be entitled to additional compensation as more particularly set forth in Paragraph 4b of this Agreement for such Non-Retainer Services:

(1) Legal representation for all general liability claims and litigation including investigation, negotiation, and/or settlement of such claims and litigation;

(2) Legal representation in all civil and criminal litigation or arbitration proceedings involving CITY;

(3) Eminent domain proceedings;

(4) Legal services relating to updates and/or major amendments to the General Plan and/or Elements of the General Plan (questions as to whether an amendment is major shall be resolved pursuant to Paragraph 10);

(5) Municipal code review and/or recodification of CITY's Municipal Code;

(6) Negotiation/preparation of Disposition and Development Agreements, Development Agreements, Fiscal Agreements relating to the Agency, and other major agreements that occur from time to time (questions as to whether an agreement is major or minor shall be resolved pursuant to Paragraph 10); and

(7) The negotiation, review, and/or preparation of other documents or agreements where the cost of such negotiation, review, and/or preparation is reimbursed by the applicant.

3. Limitation of Duties. Attorney shall not be required to provide the following services:

a. Administration and legal representation of workers' compensation claims and litigation, except for general legal advice in the area of workers' compensation and review of settlements recommended by the CITY's contract administrators;

b. Negotiation and interpretation of M.O.U.'s and other labor related matters, including disciplinary proceedings, except to provide general legal advice on personnel matters related to the CITY's Personnel Rules & Regulations, and at the request of the CITY, review recommendations of the CITY's contract labor attorneys; and
c. Legal services related to the issuance of municipal bonds, certificates of participation, or other types of capital improvement financing and assessment proceedings, and specialized redevelopment proceedings, including updates and/or major amendments to the Agency Plan.


a. Attorney shall be paid a monthly salary of Four Thousand Six Hundred Seventy-Four and 59/100 Dollars ($4,674.59) for providing the Retainer Services set forth in Paragraph 2a of this Agreement ("Monthly Salary/Retainer"). The Monthly Salary/Retainer shall be considered full compensation for the purposes of contributions and withholdings with respect to PERS, income tax withholding, etc., and shall be paid bi-weekly as part of the CITY's regular payroll. In addition, CITY shall provide: Health insurance for Attorney and his spouse and family with Attorney's choice of PERS Health Plans; participation in CITY's dental reimbursement plan for Attorney and Attorney's spouse and family with a maximum reimbursement of One Thousand Six Hundred Dollars ($1,600.00) per fiscal year; participation in the PERS Retirement System with CITY paying the employee's seven percent (7%) contribution; life insurance of Ten Thousand Dollars ($10,000.00) for Attorney and One Thousand Five Hundred Dollars ($1,500.00) for Attorney's spouse. Attorney shall not participate in any other CITY benefits provided to other employees of CITY.

b. For all Non-Retainer Services provided by Attorney or under the supervision and direction of Attorney by other members of Attorney's law firm, Attorney and/or Attorney's firm shall be compensated on the basis of the following reduced/discounted hourly rates: $150 per hour for Attorney and/or Attorney's partners; $110-125 per hour for associates of the firm; $100 per hour for research attorneys; and $75.00 for paralegals. Charges for Non-Retainer Services shall be billed and paid monthly following review and approval by the City Manager or the City Manager's designee. Any questions about billings that cannot be resolved between the City Manager and Attorney shall be referred to the City Council for resolution in accordance with Paragraph 10.

c. If in the opinion of Attorney and the City Manager it is determined that Attorney's membership in the National
Institute of Municipal Law Offices ("NIMLO") and/or Attorney's attendance at the City Attorney's section of the League of California Cities Spring and Fall Conferences would be in the best interest of the City, City shall reimburse Attorney the actual out-of-pocket expenses reasonably and necessarily incurred by Attorney in joining NIMLO and/or attending such conferences. Reimbursement shall be in accordance with City policies as may be in effect from time to time as adopted by the City Council for reimbursement of such expenses by Councilmembers and/or the City Manager.

5. **Litigation Costs.** Attorney shall be entitled to be reimbursed by the CITY for all costs advanced on CITY's behalf, such as court costs, filing fees, service of process fees, deposition transcript fees, jurors' fees, witness' fees, investigators' fees, appraisers' fees, or other costs or expenses in connection with litigation involving CITY, except overhead as provided in Paragraph 6.

6. **Overhead.** Except as expressly provided in this Agreement, Attorney shall pay all overhead incurred in providing legal services to CITY including but not limited to reasonable and necessary office facilities, equipment, books, supplies, secretarial services, word processing, faxes, telephone usage, insurance, office supplies, copying, telephone, etc., (except for CITY stationery and CITY business cards, which shall be provided by CITY).

7. **Performance of Services.**
   a. To the extent possible, all Retainer Services set forth in Paragraph 2a shall be provided by Attorney with the exception of legal research or drafting documents which may be performed by other members of Attorney's firm or when Attorney is unable to act due to illness, vacation, or non-availability. In the event of the non-availability of Attorney for any reason, Attorney shall designate another member of Attorney's firm to act in his absence, subject to consultation with the City Manager and/or the Mayor. Any Retainer Services provided by any member of Attorney's firm shall be compensated by Attorney at his own expense and shall not be billed or charged to CITY.
b. With respect to Non-Retainer Services, such services may be provided by Attorney or by other members of Attorney's firm under the direction and supervision of Attorney.

8. Records, Monthly Statements, and Audit. Attorney and members of Attorney's firm shall maintain accurate records of all time spent by Attorney and members of the firm to the closest 1/10th of an hour and all reimbursable costs advanced by the Attorney or his firm in conjunction with CITY business. Attorney shall keep such records with respect to both Retainer and Non-Retainer Services. Attorney shall render monthly statements to the CITY for the performance of all services showing both the Retainer and Non-Retainer Services performed (including where possible a reference to the person(s) and matter(s) involved for each service performed), the hours spent, the costs advanced, and the amount the Attorney and/or Attorney's firm are entitled to receive, if any, from the CITY for the month. If approved by the City Manager or City Manager's designee, the sums shown to be due by such statement shall be paid to Attorney or Attorney's firm within thirty (30) days after approval. Books of account and the time records of Attorney and other members of Attorney's firm pertaining to business transacted for the CITY shall be open to audit by the City Council, City Manager, or their designee. Time records which may be covered by attorney-client confidentiality shall not become public records, except as otherwise provided by state or federal law.

9. Reports. Attorney shall provide the City Manager and the City Council with reports no less frequently than three times per year on the status of any legal actions in which the CITY is a party. In addition, Attorney shall provide periodic reports on risk management and cost control analysis and recommendations on each as appropriate.

10. Dispute Resolution Regarding Retainer/Non-Retainer Services and/or Billings. In the event of any question or dispute regarding whether or not a specific legal service is covered by the CITY retainer, either the City Manager or the City Attorney may request that such matter be referred to the City Council for resolution. The determination of the City Council or a sub-
committee authorized by the City Council to review such matters shall be final and binding.

11. Outside Law Practice/Conflict of Interest. Attorney shall be allowed to conduct an outside law practice. Attorney shall be responsible to disclose any potential conflict of interest and/or appearance of a conflict of interest involving any matter appearing before the City Council. In the event of a conflict of interest between the CITY and any other outside client of Attorney, Attorney shall assist the CITY in obtaining outside legal counsel to advise the CITY with respect to any matter which might require legal services involving such conflict of interest.

12. Performance Review. The City Council shall review the performance of Attorney at least annually. The first review shall occur no later than August 1, 1994. At the request of Attorney or any member of the City Council, Attorney's performance and/or the terms and provisions of this Agreement may be reviewed and/or modified at any time prior to July 31, 1994.

13. Termination. This Agreement shall remain in effect until terminated by either party hereto. This Agreement may be terminated without cause upon either party giving the other party not less than sixty (60) days prior written notice and may be terminated by either party without notice for cause.

14. Entire Agreement. This Agreement contains the entire agreement between the parties.
AGENDA ITEM F-1
Human Resources

STAFF REPORT
City Council
Meeting Date: 3/12/2019
Staff Report Number: 19-047-CC
Regular Business: Approval of seventh amendment to the agreement of services for City Attorney William L. McClure

Recommendation
Staff recommends that the City Council approve of a seventh amendment to the agreement of services for City Attorney William L. McClure (hereinafter, "McClure.")

Policy Issues
There are no direct policy issues presented by the proposed amendment.

Background

Analysis
The City Council reviewed McClure's agreement and performance in closed session February 26 and March 5. Following the final closed session, the City Council desired to approve a contract amendment that increases the city attorney's part time salary by $1,000 per month to $11,000 per month and provide hourly rate increases for additional work to $250 per hour for retainer work and $400 per hour for legal services that are reimbursed by applicants for non-single family home development related work, with no changes in fringe benefits.

The City Council may also consider providing a cash bonus. This bonus would have to be approved in a separate action, as the current agreement does not include a bonus provision. If provided, the bonus would not be included in McClure's pensionable compensation.

Impact on City Resources
There is sufficient funding to cover McClure's agreement amendment provisions in the adopted 2018-19 budget.
Environmental Review
This action is not a project under the California Environmental Quality Act ("CEQA") and therefore not subject to the provisions of the CEQA Guidelines under Sections 15378 and 15061(b)(3).

Public Notice
Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments
A. Agreement and six amendments for City Attorney services between the City and William L. McClure
B. Proposed seventh amendment for City Attorney services between the City and William L. McClure

Report prepared by:
Lenka Diaz, Administrative Services Director