

AGREEMENT AMENDMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Amendment #: 2829-1

AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND GOLDFARB & LIPMAN, LLP.

THIS FIRST AMENDMENT is made and entered into this 2/11/2020, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and GOLDFARB & LIPMAN, LLP., hereinafter referred to as "FIRST PARTY."

1. Pursuant to Section 4 Compensation and Payment of Agreement No. 2829, ("Agreement"), Section 4 Compensation and Payment [amendment to section] to read as follows"

"A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$130,000 as described in Exhibit "A, A-1, A-2," Scope of Services. This compensation shall be based on the rates described in Exhibit "A, A-1, A-2." All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable."

2. Pursuant to Section 24. TERM OF AGREEMENT of Agreement No. 2829, ("Agreement"), Section 24. TERM OF AGREEMENT [amendment to section] to read as follows"

"This agreement shall remain in effect for the period of July 1, 2019 through June 30, 2021 unless extended, amended, or terminated in writing by CITY."

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2829 remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SIGNATURE PAGE TO FOLLOW

FOR FIRST PARTY:

DocuSigned by:
Heather J. Gould
C5795AE98ED64DD...
Signature

2/10/2020
Date

Heather J. Gould
Printed name

Partner
Title

Tax ID
Tax ID#

APPROVED AS TO FORM:

DocuSigned by:
William L. McClure
E91EEAD3E3774E1...
William L. McClure, City Attorney

2/11/2020
Date

FOR CITY OF MENLO PARK:

DocuSigned by:
Starla Jerome-Robinson
6BD907BD261744C...
Starla Jerome-Robinson

2/11/2020
Date

ATTEST:

DocuSigned by:
Judi A. Herren
30280A20D0BE401...
Judi A. Herren, City Clerk

2/11/2020
Date

**goldfarb
lipman
attorneys**

1300 Clay Street, Eleventh Floor
Oakland, California 94612
510 836-6336

M David Kroot
Lynn Hutchins
Karen M. Tiedemann
Thomas H. Webber
Dianne Jackson McLean
Michelle D. Brewer
Jennifer K. Bell
Robert C. Mills
Isabel L. Brown
James T. Diamond, Jr.
Margaret F. Jung
Heather J. Gould
William F. DiCamillo
Amy DeVaudreuil
Barbara E. Kautz
Erica Williams Orcharton
Luis A. Rodriguez
Rafael Yaquián
Celia W. Lee
Dolores Bastian Dalton
Joshua J. Mason
Elizabeth R. Klueck
Jeffrey A. Streiffer
Jhaila R. Brown
Erik Ramakrishnan
Rye P. Murphy
Justin D. Bigelow
Aileen T. Nguyen
Katie Dahlinghaus

December 2, 2019

via e-mail only

Morad Fakhrai
Senior Project Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Legal Services – Middle Avenue Bicycle Tunnel

Dear Morad:

Goldfarb & Lipman, LLP ("Goldfarb & Lipman") would be pleased to represent the City of Menlo Park (the "City") with respect to the acquisition of land required for and the development of the Middle Avenue Bicycle Tunnel (the "Project"). Our scope of work for the Project would include providing advice, negotiating, and preparing documentation in connection with the acquisition of private land (or an interest therein) necessary for the Project. To the extent an eminent domain action or other litigation is needed, we would provide advice regarding any additional required governmental approvals pertaining to the action and lead the litigation efforts. We can also assist and advise in connection with any CEQA, land use or governmental permitting approvals needed for the Project. And, we can advise on any neighbor agreements arising in connection with the Project. This would include securing rights from Caltrain that are needed to develop the tunnel, and any additional negotiations that may arise with neighbors. Finally, we can assist and advise on other matters concerning the Project at your request. We would perform the work and any additional work at your direction or at the direction of the Assistant Public Works Director.

When signed by you or other authorized agent on behalf of the City, this letter will constitute the written fee agreement between the City and Goldfarb & Lipman with respect to these services.

I would be primarily responsible for the work requested, however Barbara Kautz in our office would lead the land use work. Celia Lee will lead the litigation efforts and I will handle the other components of the work. Our costs (excluding any litigation and land use work) are estimated to be approximately \$55,000.

Our billing policies and our hourly rates are set forth in a statement enclosed with this letter. We will bill costs advanced on your behalf (such as messenger and express delivery charges) in addition to our fees. We will bill you for fees and costs on a

San Francisco
415 788-6336
Los Angeles
213 627-6336
San Diego
619 239-6336

Goldfarb & Lipman LLP

Morad Fakhrai
December 2, 2019
Page 2

monthly basis as they are incurred, and we will expect payment on a monthly basis as well.

If you have any questions about this proposal, please contact me. If the arrangement described in this letter is satisfactory, please sign the engagement letter in the space provided below. Please return a copy to me and keep one for your records.

We appreciate the opportunity to assist you in this matter.

Sincerely,



HEATHER GOULD

HG:kss

Enclosures: Rate Schedule and Billing Policies

ACCEPTED AND AGREED:
CITY OF MENLO PARK

DATE: 2/12/2020

DocuSigned by:
Starla Jerome-Robinson
6BD907BD261744C...
Name: Starla Jerome-Robinson

Goldfarb & Lipman LLP Billing Rates

Non-Litigation

Partner	\$295-320
Senior Counsel	\$290-320
Associate	\$200-295
Senior Law Clerk	\$175
Law Clerk	\$140
Litigation Project Coordinator	\$160
Project Coordinator	\$160

General Litigation

Partner	\$330-345
Senior Counsel	\$325-345
Associate	\$190-325
Senior Law Clerk	\$180
Law Clerk	\$165
Litigation Project Coordinator	\$190
Project Coordinator	\$165

Appellate Litigation

Partner	\$375-395
Senior Counsel	\$365-385
Associate	\$215-370
Senior Law Clerk	\$200
Law Clerk	\$165
Litigation Project Coordinator	\$190
Project Coordinator	\$165

GOLDFARB & LIPMAN LLP
LEGAL REPRESENTATION POLICIES AND PROCEDURES

Dear Client:

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, this letter is intended to briefly explain our billing policies and procedures. We encourage you to discuss with us any questions you may have concerning these policies and procedures.

To determine the value of our services, we require each of our lawyers and legal assistants to maintain time records for each client and matter. The time records are reviewed monthly by the responsible billing attorney. Our billing rates for services rendered for partners, associates, and for paralegals are attached. Our hourly rates are adjusted from time-to-time (generally once a year) and may change during the course of our engagement upon 30 days prior written notice to you.

It is our policy to serve you with the most effective support systems available. Therefore, in addition to our fees for legal services, we may also charge the actual costs for messengers, delivery other than by US postal service, reproduction, court costs, third party document management, and other costs and expenses incurred on your behalf that are reasonably necessary for our representation of you.

Our billing statements are due and payable upon receipt. Clients whose statements are not paid within 30 days of the statement date may be assessed a late charge on the unpaid balance at the rate of one-and-a-half percent per month.

We carry professional liability insurance above the limits required by law.

It is our policy to retain and ultimately destroy all files, documents, records, and writings relating to each engagement for which we have been retained without notifying clients or former clients of the destruction of these items. At the termination of services and conclusion of a matter covered by this agreement, we will release promptly upon your request all of your client papers and property, subject to any protective order, state statute, or nondisclosure agreement. After seven years have passed since the conclusion of such matter, we may dispose of your client papers and property. If you wish to have us retain your papers and property beyond seven years after the conclusion of such matter, you must make separate written arrangements with us. Client papers and property include: electronic and hard copy versions of any correspondence, pleadings, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

In closing, let us assure you that it has always been and will continue to be our goal to provide legal services to you on the most efficient and cost effective bases possible. If you have any questions or comments regarding our billing policies, please feel free to contact us. Thank you for your continued cooperation.

Very truly yours,

GOLDFARB & LIPMAN LLP

CONSULTANT AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Agreement #: 2829
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND GOLDFARB & LIPMAN, LLP
THIS AGREEMENT made and entered into at Menlo Park, California, this <u>11/13/2019</u> , by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and GOLDFARB & LIPMAN, LLP, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Attorney service</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
3. PROSECUTION OF WORK
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$75,000 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Deanna Chow
 Planning Division
 City of Menlo Park
 701 Laurel St.
 Menlo Park, CA 94025
 650-330-6733
 dmchow@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Barbara Kautz
 Goldfarb & Lipman, LLP
 1300 Clay Street, 11th Floor
 Oakland, CA 94612
 (510) 836-6336
 bkautz@goldfarblipman.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability insurance:
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional liability insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

18. COMPLIANCE WITH LAWS

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

19. BREACH OF AGREEMENT

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

20. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

21. CAPTIONS

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

22. LITIGATION OR ARBITRATION

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

23. RETENTION OF RECORDS

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

24. TERM OF AGREEMENT

This agreement shall remain in effect for the period of July 1, 2019 through June 30, 2020 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

DocuSigned by:
Barbara Kautz
D92D576C9570440...

Signature

11/13/2019

Date

Barbara Kautz

Printed name

Partner

Title

94-2437210

Tax ID#

APPROVED AS TO FORM:

DocuSigned by:
William L. McClure
F91EFAD9E9774E1...

William L. McClure, City Attorney

11/13/2019

Date

FOR CITY OF MENLO PARK:

DocuSigned by:
Starla Jerome-Robinson
6BD907BD261744C...

Starla Jerome-Robinson, City Manager

11/13/2019

Date

ATTEST:

DocuSigned by:
Judi A. Herren
39280A20D0BE491...

Judi A. Herren, City Clerk

11/15/2019

Date

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Community Development. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Interim Community Development Director.

A5. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

EXHIBIT A-1

SCOPE OF WORK AND BILLING RATES

FIRST PARTY will provide legal assistance regarding various land use, housing, and related issues as specifically identified by the CITY. The City has previously requested our assistance regarding the following matters:

1. **1300 El Camino Real Development Application.** A mixed use office, retail, and residential development at 1300 El Camino Real has previously received City approval. At the City's direction, we will prepare and review any implementing documents associated with the completion of the project, including in particular a side agreement with the San Francisco Public Utilities Commission regarding the extension of Garwood Way.
2. **Complaint Regarding Haven Avenue Businesses.** The City has received a letter from an adjacent property owner requesting that it undertake nuisance abatement activities regarding Tyson Kennels and Menlo-Atherton Storage. At the City's direction, we will assist the City in taking any desired actions or responding to complaints.
3. **Sixth Cycle Housing Element and New State Legislation.** We will assist the City in describing state legislation affecting the sixth cycle housing element and processing of housing developments, and, at the City's direction, providing any other assistance desired.
4. **Santa Cruz/Merrill Development.** This small housing development has been approved by the City with certain affordable housing conditions. If requested, we will assist the City in implementing these provisions and others as needed.
5. **Downtown Specific Plan Implementation and Modifications.** If requested by the City, we will assist in implementation of the Downtown Specific Plan and in processing any desired modifications or amendments.
6. Any additional services desired by the City will be confirmed in writing.

BILLING RATES

Partner	\$295-320
Senior Counsel	\$290-320
Associates	\$200-275
Litigation Paralegal	\$160
Senior Law Clerks	\$175
Law Clerks	\$140
Project Coordinators	\$160