

**AGREEMENT
BETWEEN
THE CITY OF MENLO PARK AND THE CITY OF SAN JOSE
FOR MINIMUM WAGE ENFORCEMENT SERVICES**

THIS AGREEMENT is between the City of Menlo Park, a municipal corporation ("City"), and the City of San Jose, a municipal corporation ("San Jose"). City and San Jose are sometimes hereinafter referred to as a "Party" and collectively as the "Parties".

WHEREAS, San Jose has a local minimum wage ordinance; and

WHEREAS, San Jose's Office of Equality Assurance ("OEA") implements and enforces San Jose's local minimum wage ordinance; and

WHEREAS, City has a local minimum wage ordinance that is substantially like San Jose's local minimum wage ordinance; and

WHEREAS, City's local minimum wage ordinance authorizes the use of third parties to assist in implementing and enforcing ordinance; and

WHEREAS, City and San Jose desire to enter into an agreement whereby San Jose provides certain services related to implementing and enforcing City's minimum wage ordinance.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Services by San Jose:** San Jose will provide the services described in Exhibit "A," which is attached hereto and incorporated by reference. (Collectively "Services.") San Jose will determine the method, details and means of performing the Services in consultation with City.
 - 1.1 San Jose will perform the Services in the same manner that it administers and enforces its own minimum wage ordinance.
 - 1.2 San Jose will direct any questions or issues regarding the interpretation, administration or enforcement of City's minimum wage ordinance to City. City must provide timely and appropriate direction responding to San Jose's question or issue. San Jose will provide the Services in accordance with such direction.
2. **Term of Agreement/Option to Extend:** The Agreement is effective on July 1, 2020 and expires on June 30, 2023, unless terminated earlier in accordance with Section 14 ("Initial Term"). City has the option of extending the Initial Term from July 1, 2023 to June 30, 2025 ("Option Term"). To exercise its option, City must notify San Jose in writing by January 30, 2023 of its desire to extend the Agreement for the Option Term.

3. **Duties of City:** City must provide San Jose with all documents, materials and information (collectively "Written Materials") needed for San Jose to properly perform the Services. Once it has completed the Services for which the Written Materials were needed, San Jose will return them to City.
4. **Compensation:** San Jose will submit annual invoices to City for Services performed in the following year. City will provide San Jose with the address and person to whom San Jose must submit its invoices. City will pay San Jose at the rates specified in 4.1 and 4.2 of this section. Option and any future escalations begin each July 1 upon mutual written agreement by the Parties.
 - 4.1 **Maximum Compensation – Initial Term:** The maximum compensation the City will pay San Jose for the Initial Term is Forty-Five Thousand Dollars (\$45,000).
 - 4.2 **Maximum Compensation – Option Term:** The maximum compensation the City will pay San Jose for each year of the Option Term is Fifteen Thousand Dollars (\$15,000).
5. **Ownership of San Jose's Work Product:** Upon reasonable written notice, City will have full access to all working papers, drawings, photographs, recordings and other documents created or obtained by San Jose in performing the Services (collectively "Work Product"). Work Product is the property of City at the time it is created or obtained by San Jose. San Jose may retain a copy of Work Product provided to City.
6. **Conflict of Interest:** San Jose will avoid all conflicts of interest, or appearance of conflict, in performance of this Agreement and agrees to immediately notify City in writing of any facts that may give rise to a conflict of interest. San Jose is aware of the prohibition that no officer of City shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, San Jose will not accept an obligation that is inconsistent or incompatible with San Jose's obligations under this Agreement.
7. **Proprietary/Confidential Information:** San Jose will immediately give City a copy of any Work Product that City or some third-party claims is proprietary, confidential, or otherwise not publicly disclosable. City is responsible for making determinations regarding the disclosure of Work Product, for any litigation resulting from its determination, and for providing the City with appropriate direction regarding the disclosure of Work Product.
8. **Independent Contractor:** San Jose is acting as an independent contractor in performing the Services required by this Agreement and is not an agent, servant or employee of City. Nothing in this Agreement creates an employer and employee relationship between City and San Jose. San Jose will pay all required state and federal taxes.

To SAN JOSE: Christopher Hickey
Office of Equality Assurance
City of San José
200 East Santa Clara Street, Fifth Floor
San José, CA 95113

Each Party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of five (5) days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

13. **Assignment:** The expertise and experience of San Jose are material considerations for this Agreement. Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other Party.
14. **Termination:**
 - 14.1 Either Party may terminate this Agreement for cause based on a material breach by the other party by giving the breaching party thirty (30) calendar days written notice.
 - 14.2 Either party may terminate this Agreement without cause by giving the other party at least ten (10) calendar day's written notice.
 - 14.3 If this Agreement is terminated, City will compensate San Jose in proportion to the percentage of Services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of the termination notice. San Jose will present City with any work product completed at that point in time.
15. **Entire Agreement/Amendment:** This writing constitutes the entire agreement between the parties relating to the Services. No prior oral or written understanding is of any force or effect with respect to those matters covered hereunder. Modifications to this Agreement must be by written amendment signed by both parties.
16. **Miscellaneous:** Time is of the essence in this Agreement. Failure of either party to enforce any provision of this Agreement is not a waiver of that party's right to compel future enforcement of the provision or any other provision. This Agreement will be governed and construed in accordance with the laws of the State of California.
17. **San Jose's Books and Records:** San Jose will maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements

charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to San Jose.

17.1 San Jose shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

17.2 San Jose will make records or documents required to be maintained pursuant to this Agreement available for inspection or audit at no cost to City, during regular business hours, within a reasonable time following a written request by City's authorized representative. Unless an alternative is mutually agreed upon, San Jose will make the records available at San Jose's address indicated for receipt of notices in this Agreement.

18. **Venue:** In the event of a lawsuit by either Party, the venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first hereinabove written.

CITY OF MENLO PARK ("CITY ")

APPROVED AS TO FORM:

DocuSigned by:
Starla Jerome-Robinson
By _____
6BD907BD261744C...
Starla Jerome-Robinson
City Manager

DocuSigned by:
Cara E. Silver
By _____
CD6C53C794F6491...
Cara Silver
Interim City Attorney

CITY OF SAN JOSE ("SAN JOSE")

APPROVED AS TO FORM:

By _____
Leland Wilcox
Chief of Staff, Office of the City Manager

By _____
Glenn Schwarzbach
Sr. Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

San Jose's Office of Equality Assurance ("OEA") will provide the following Services. When providing the Services, OEA will identify itself as providing the Services on behalf of City.

Services do **not** include OEA providing any legal services. Nor do Services include OEA responding to any inquires or performing any work that requires or involves legal advice or interpreting City's Minimum Wage Ordinance.

- Task 1. OEA will answer general written and telephonic inquiries regarding City's Minimum Wage Ordinance. Examples of general inquiries include questions about wage rates, who is covered, how to file complaints, and the effective date of the Ordinance.
- Task 2. OEA will answer written and telephonic inquires, requiring research, regarding City's Minimum Wage Ordinance. Examples of these inquires include current minimum wage rate, coverage to employees and employers, and clarifications of regulations.
- Task 3. OEA will conduct complaint intake. OEA will prepare and issue notices of complaint and requests for documentation when it determines doing so is appropriate. OEA will copy City on all notices and requests.
- OEA will conduct complaint intake via telephone, in writing or in person, as it determines is warranted by the situation. Complaint intake will include obtaining the following information: complainant's name, address, phone number, company, manager, type of work performed, how/when paid, work schedule, rate of pay, copies of pay stubs, records of hours worked.
 - OEA will prepare and serve a written notice of complaint to the complainant's employer. In addition to notifying the employer of the complaint, the notice will request the employer to provide – within 10 business days of the notice date - documents relevant to establishing whether or not a violation occurred. Requested documents will include:
 - Original time cards, sign-in sheets, ledgers, electronic records and any payroll records which show actual hours worked each day for each employee for the relevant period.
 - Copies of payroll check stub details and/or itemized pay stubs for each employee for the relevant period.

- List of former and current employees with addresses, telephone numbers and job title/position, including employment start and end dates.
- OEA will review documents provided by an employer in response to a notice of complaint. OEA will notify City, in writing, if the employer does not respond, or responds incompletely, to the notice of complaint. The Services do not include OEA taking any enforcement action or other actions against an employer who does not respond, or responds incompletely, to the notice of complaint.

Task 4. If OEA will make a recommendation to City regarding whether further investigation is appropriate. If City directs OEA to conduct further investigation, OEA will do the following:

- OEA will visit the complainant's workplace for the purpose of on-site interviews and review of workplace conditions. OEA will document the visit.
- OEA will interview other workers for the purpose of determining current workforce and hourly rates of pay. OEA will document the interview(s).

Task 5. Based on the documents provided by the employer, the workplace visit and the worker interview(s), OEA will determine whether it believes a violation has occurred. If OEA concludes a violation has occurred, it will calculate any back wages owed. OEA will make a recommendation to City regarding whether to issue a notice of violation. If, and only if, City directs OEA to issue a notice of violation, OEA will perform Task 6.

Task 6. OEA will prepare and send to complainant's employer a written notice of violation and opportunity to correct. OEA will copy the notice to City. The notice will explain the basis of the violation, include all supporting evidence and set forth requirements for correcting the violation. The notice will also set forth a ten (10) business day time from the date of the notice for the complainant's employer to do the following: (1) submit additional documents or information establishing the employer's innocence, and/or (2) request a meeting with the OEA Director to contest the violation.

Task 7. If the complainant's employer contests the notice of violation, the OEA Director will do the following: (1) review any additional information and/or documentation submitted by the employer, and (2) meet with the employer if the employer requests a meeting. The OEA Director will issue a written final decision to the employer, with a copy to City, upholding, revising or

dismissing the notice of violation. The final decision will set forth the reasons supporting the OEA Director's decision. The final decision of the OEA Director also will include instructions on how the employer can appeal the decision to City. City must provide OEA with a standard appeals language to include in the OEA decisions.

- Task 8. The Services do not include San Jose taking any further enforcement action, except that, upon City's request, OEA staff involved in the enforcement action will testify at a City Administrative Hearing and at any court proceedings.
- Task 9. OEA will annually update minimum wage rates based on Consumer Price Index as identified in City's Minimum Wage Ordinance.
- OEA will perform annual wage updates in October of each year.
 - OEA will notify City of any changes to the minimum wage by November 15 of each year.
 - OEA will transmit documentation of the future increases to City by December 1 of each year.
- Task 10. OEA will attend meetings as requested by City pertaining to any minimum wage complaints completed, in an open and active investigation, or during the intake complaint process.
- Task 11. OEA will prepare quarterly reports of the number of complaints, violations, employees affected, wages restituted back to employees, and penalties assessed.
- Task 12. One (1) hour Minimum Wage Training to employees, businesses, stakeholders, etc. as requested by City.