

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services ("Agreement") is made and entered into this 1st day of March 2021, by and between the City of Menlo Park, a municipal corporation, ("City") and Jorgenson, Siegel, McClure & Flegel, LLP ("Consultant").

RECITALS

A. The City desires to retain as-needed legal services from Consultant.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:

1. SCOPE AND LEVEL OF SERVICES. The nature, scope and level of the specific services to be performed by Consultant are as set forth in detail in Exhibit A attached hereto.

2. TIME OF PERFORMANCE. Time is of the essence. The services shall be performed on a timely basis.

3. STANDARD OF PERFORMANCE. As a material inducement to the City to enter into this Agreement, Consultant hereby represents and warrants that it has the qualifications and experience necessary to undertake the services to be provided pursuant to this Agreement. Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the City. Consultant hereby covenants that it shall follow the highest professional standards in performing all services required hereunder and will perform the services to a standard of reasonable professional care.

4. PRIOR AGREEMENTS. All prior agreements between the parties are hereby terminated, except for obligations that survive the termination of the prior agreement, e.g., payment for services rendered and expenses incurred pursuant to such agreement prior to the termination date of such agreement, confidentiality, indemnity, and similar provisions.

5. COMPLIANCE WITH LAW. All services rendered hereunder by Consultant shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City, and any federal, state or local governmental agency having jurisdiction in effect at the time the service is rendered.

6. TERM. This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect until the services required hereunder have been satisfactorily completed by Consultant, unless earlier terminated pursuant to Section 17, below.

7. COMPENSATION. The City agrees to compensate Consultant for its services according to the fees and minor expenses identified in Exhibit A, to an amount not to exceed Ninety Thousand Dollars (\$90,000) for attorney services and reimbursement expenses. It is understood by the parties, that the Consultant will invoice only for actual hours and expenses incurred performing the work.

8. METHOD OF PAYMENT. Consultant shall invoice the City for work performed after each task is completed. Payments to Consultant by City shall be made within thirty (30) days after receipt by City of Consultant's itemized invoices.

9. REPRESENTATIVE. Cara Silver is hereby designated as the representative of Consultant authorized to act on its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of Cara Silver were a substantial inducement for City to enter into this Agreement. Therefore, Cara Silver shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The representative may not be changed by Consultant without the express written approval of the City.

10. INDEPENDENT CONTRACTOR. Consultant is, and shall at all times remain as to the City, a wholly independent contractor and not an agent or employee of City. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Consultant receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Consultant shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Agreement. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City, nor any of its agents shall have control over the conduct of Consultant or any of Consultant's partners or employees, except as set forth in this Agreement. Consultant shall at no time, or in any manner, represent that it or any of its partners, agents or employees are in any manner employees of the City. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the worker's compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the City harmless from any failure of Consultant to comply with applicable worker's compensation laws. The City shall not have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay the City any reimbursement or indemnification arising under this Section.

11. CONFIDENTIALITY. Consultant, in the course of its duties, may have access to financial, accounting, statistical and personal data of private individuals and employees of the City. Consultant covenants that all data, documents, discussion, or other information developed and received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by the City. The City shall grant such authorization if disclosure is required by law. Upon request, all City data shall be returned to the City or destroyed upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

12. OWNERSHIP OF MATERIAL. All reports, documents, or other written materials developed or discovered by Consultant or any other person engaged directly or indirectly by Consultant in the performance of this Agreement shall be and remain the property of the City without restriction or limitation upon its use or dissemination by the City.

13. CONFLICT OF INTEREST. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant

shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the City on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with the City or representing clients residing or owning property in the City.

14. ASSIGNABILITY; SUBCONTRACTING. The parties agree that the expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of Consultant's obligations hereunder, without the prior written consent of the City Council, and any attempt by Consultant to do so shall be void and of no effect and a breach of this Agreement. Notwithstanding the foregoing, nothing herein shall preclude other attorneys or staff associated with Consultant from performing services for City pursuant to the terms of this Agreement under the supervision and direction of Representative.

15. INDEMNIFICATION.

14.1 To the fullest extent permitted by law, Consultant shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its elective or appointive boards, officers, employees agents and volunteers against any claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Agreement due to the acts or omissions of Consultant or Consultant's officers, employees, partners, agents or subcontractors. The provisions of this Section survive completion of the services or the termination of this Agreement. The acceptance of such services shall not operate as a waiver of such right of indemnification.

14.2 With regard to Consultant's professional services, Consultant agrees to use that degree of care and skill ordinarily exercised under similar circumstances by members of Consultant's profession, including without limitation adherence to all applicable safety standards. To the fullest extent permitted by law, Consultant shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its elected or appointed boards, officers, and employees from and against all liabilities, including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs and costs of alternative dispute resolution regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of Consultant or Consultant's officers, employees, agents or subcontractors. The provisions of this Section survive completion of the services or the termination of this Agreement. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.

14.3 The City does not and shall not waive any rights that they may possess against Consultant because of the acceptance by the City or the deposit with the City of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

16. INSURANCE REQUIREMENTS. Consultant agrees to have and maintain the policies set forth in Exhibit B entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. Consultant agrees to provide City with a copy of said policies,

certificates, and/or endorsements before work commences under this Agreement. A lapse in any required amount or type of insurance coverage during this Agreement shall be a breach of this Agreement.

17. TERMINATION.

17.1 This Agreement may be terminated by either the City or Consultant following thirty (30) days written notice of intention to terminate. In the event the Agreement is terminated, Consultant shall be paid for any services properly performed and expenses incurred to the last working day the Agreement is in effect. Consultant shall substantiate the final cost of services and expenses by an itemized, written statement submitted to the City. The City's right of termination shall be in addition to all other remedies available under law to the City.

17.2 In the event of termination, at the request of City, Consultant shall deliver to the City copies of all reports, documents, electronic files, and other work prepared by Consultant under this Agreement, if any. City shall not pay Consultant for services performed by Consultant through the last working day the Agreement is in effect unless and until Consultant has delivered the above-described items to the City.

18. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, supplies, materials, or equipment provided 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 Consultant pursuant to this Agreement.

19. NON-WAIVER OF TERMS, RIGHTS AND REMEDIES. Waiver by either party of any breach or violation of any one or more terms or conditions of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the City of the performance of any work or services by Consultant shall not be deemed to be a waiver of any term or condition of this Agreement. In no event shall the City's making of any payment to Consultant constitute or be construed as a waiver by the City of any breach of this Agreement, or any default which may then exist on the part of Consultant, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

20. NOTICES. Any notices, bills, invoices, reports or other communications required or permitted to be given under this Agreement shall be given in writing by personal delivery, by facsimile transmission with verification of receipt or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City:

City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

To Consultant:

Cara Silver
Jorgenson, Siegel, McClure & Flegel



Notice shall be deemed communicated on the earlier of actual receipt or forty-eight (48) hours after deposit in the U.S. mail, the date of delivery shown on deliverer's receipt, or by acknowledgment of facsimile transmission.

21. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Consultant will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition.

22. ATTORNEYS' FEES; VENUE. In the event that any party to this Agreement commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

23. COOPERATION. In the event any claim or action is brought against the City relating to Consultant's performance or services under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

24. EXHIBITS, PRECEDENCE. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement.

25. PRIOR AGREEMENTS AND AMENDMENTS; ENTIRE AGREEMENT. This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between the City and Consultant. This Agreement supersedes all prior oral and written negotiations, representations or agreements. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement effective as of the date written above.

CITY OF MENLO PARK:

DocuSigned by:
By: Starla Jerome-Robinson
69D907BD061744C
Starla Jerome-Robinson
City Manager

JORGENSON, SIEGEL, McCLURE & FLEGEL LLP:

DocuSigned by:
By: Cara E. Silver
CDB053C794F6491...
Cara Silver
Partner

ATTEST:

DocuSigned by:
[Signature]
39280A2000BE491...
City Clerk

EXHIBIT A

SCOPE OF SERVICES

To assist in the transition to a new city attorney, Consultant shall provide legal services to the City on an as-needed and as-requested basis. The parties anticipate these services shall primarily consist of legal work Consultant is currently performing for the City and which is nearing completion, legal work which must be completed on an expedited basis or legal work where Consultant's knowledge and background on the matter would best serve the City. In addition, Consultant shall provide the new city attorney Burke Williams & Sorenson (Burke) background and strategic advice as requested by Burke and the City.

FEES

Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth below:

- A. **General City Attorney Services.** Fees for General Legal Services, as described in Section H below of this Exhibit A, will be charged at a rate of \$265 for all attorneys. Paralegals shall be billed at a rate of \$135 per hour.
- B. **Special Legal Services.** Fees for Special Legal Services, as described in Section H of this Exhibit A, will be charged at a rate of \$305 per hour for partners and \$270 for associates. Paralegals shall be billed at a rate of \$135 per hour.
- C. **Cost Recovery Matters.** Fees for work that is reimbursed by private parties pursuant to litigation, conditions of approval, pass through agreements, reimbursement agreements, or other authorization will be charged at \$475 for partners and \$425 for associates.
- D. **Costs and Expense Reimbursement.** In addition to payment of attorney's fees as set forth above, the City will reimburse Consultant for costs and expenses reasonably incurred by Consultant in performance of the services provided under this Agreement. City preauthorizes routine costs including but not limited to courier services, cost of producing and reproducing photographs, and court, county, recording and other filing fees.
- E. **Reimbursable Extraordinary Expenses** In addition to payment of attorney's fees as set forth above, and with prior approval from the City Council or City Manager, City will reimburse other non-routine costs and expenses incurred by Consultant for or on behalf of, including but not limited to outside counsel, consultants, appraisers, expert witnesses, travel outside San Mateo County, and outside investigative services.
- F. **Adjustment to Hourly Rates.** The hourly rates set forth above shall remain in effect until June 30, 2022. Thereafter, unless otherwise negotiated, the hourly rates will be increased by \$5 annually, which the parties agree represents a fair and reasonable approximation of the increase in the cost of providing services (Cost of Living).

Any increase in compensation beyond the compensation amount set forth in this Agreement must be authorized in advance by the City Council. The City shall not be liable to pay additional compensation to Burke for any additional services performed without written authorization from the City Manager or City Council issued prior to proceeding with amended services.

G. **Records, Monthly Statements, and Audit.** Consultant shall maintain accurate records of all time spent by all members of the firm to the closest 1/10th of an hour and all reimbursable costs advanced by the Consultant in conjunction with City business. Consultant shall provide monthly statements to the City for the performance of all 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 Consultant is 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 the Consultant within thirty (30) days after approval. Books of account and the time records of the Consultant pertaining to business transacted for the City shall be open to audit by the City Council, City Manager, or their designee.

H. **Definitions.** For purposes of this Agreement the below terms shall have the following meanings.

General City Attorney Services. General City Attorney Services may encompass the following work:

1. Advice for the City Council, City Manager, Boards and Commissions, and City staff as directed/requested, in matters pertaining to their role in the organization and regarding the legality of matters under their consideration;
2. Attendance at Council meetings and closed sessions, Council subcommittee meetings, and Planning Commission meetings, as directed/requested;
3. Consultation with new City Attorney;
4. Legal opinions, assistance, consultation and routine legal advice and consultation;
5. Services related to the update of City ordinances, procedures and practices;
6. Review and analyze local, state and federal pending legislation, laws, and court decisions, and provide updates, as directed/requested;
7. If requested/directed, review, approve, and/or prepare ordinances, resolutions and staff reports in connection with preparation of agenda items, including preliminary research and analysis, and review of standard contracts, forms, notices, declarations, certificates, deeds, leases, and other supporting documents required by the City;
8. Analysis of Public Records Act responses and conflict of interest advice including Government Code 1090 and Political Reform Act issues, if requested/directed.
9. The areas of municipal law included within the range of basic services include:
 - a. Brown Act Compliance
 - b. Public Records Act
 - c. Conflicts of Interest
 - d. Election law
 - e. Contracts and franchises
 - f. Americans with Disabilities Act (ADA)

Special Counsel Services. Services not included in General City Attorney Services, above, will be considered "Special Counsel Services." Special Counsel Services generally are complex in nature (as opposed to routine), and require significant amounts of work. Special Counsel Services include but are not limited to, all litigation, arbitration, and mediation activities (including appellate work); municipal code enforcement, complex construction; eminent domain; legal analysis and advice regarding complex environmental matters, including Endangered Species Act issues, environmental permitting and regulatory issues, Clean Water Act compliance issues, NPDES compliance, and the application of and compliance with the California Environmental Quality Act and National Environmental Policy Act; initiatives and referenda; wage and hour determinations by the DIR; imposition of fees and taxes pursuant to

Propositions 26 and 218; complex housing matters; and contested conflict of interest matters, including the defense of public officials in response to FPPC investigations and charges. Special Legal Services also include legal advice or representation regarding any project or issue that is particularly complex and other duties as assigned by the City Council or City Manager as Special Counsel Services.

EXHIBIT B

(INSURANCE REQUIREMENTS)

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to or interference with property which may arise from, or in connection with, the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees or subcontractors.

A. CONSULTANT 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 CONSULTANT's coverage to include the contractual liability assumed by the CONSULTANT 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. CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT is a Sole Proprietor).

2. Liability insurance:

The CONSULTANT 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 CONSULTANT's operations under this agreement, whether such operations be by CONSULTANT 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. CONSULTANT shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. CONSULTANT 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:

CONSULTANT shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of CONSULTANT 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.