

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into as of the 1st day of June, 2022, by and between the CITY OF SAN BRUNO ("City"), a municipal corporation, and RICHARDS, WATSON AND GERSHON, A Professional Corporation ("Consultant").

RECITALS

WHEREAS, City desires to engage Consultant to provide city attorney services;

WHEREAS, Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement; and

WHEREAS, Consultant has affirmed its willingness and ability to perform such work.

It is agreed between the City of San Bruno, California, and Consultant as follows:

1. **Term.** The term of this Agreement shall commence on June 6, 2022, and shall terminate on the 16th day of December, 2022, unless the term of the Agreement is otherwise extended or terminated, as provided for in Section 14. The effective date of this Agreement is as first stated above and it shall terminate after final completion of the project as determined by the City. Services are to be performed on an as-needed basis as set forth in **Exhibit A**. The time provided to Consultant to complete services required by this Agreement shall not affect the City's right to terminate the agreement as provided in Section 14. The time for completion of the contracted work shall only be extended by written approval of the City Council.
2. **Scope of Services to be performed.** Consultant shall diligently perform all the services described in the Project Description & Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference (the "Services"). In summary, the Services are city attorney services. The City may elect to delete certain tasks of the Services at its sole discretion.
3. **Time is of the Essence.** Time is of the essence for each and every provision of this Agreement. The time for completion of the contracted work shall only be extended by written approval of the City Manager as provided for in Section 1. The failure of Consultant to strictly adhere to the project schedule to or complete duties in a timely fashion as determined by the City may result in termination of this Agreement by the City.
4. **Compensation to Consultant.** City shall pay Consultant for the Services on a time and expense basis in accordance with the provisions of this Section and the Compensation Schedule attached hereto as **Exhibit B** and incorporated herein by reference. No billing rate changes shall be made during the term of this Agreement without the prior written approval of the City Manager. In the event of a conflict between this Agreement and Consultant's proposal regarding the amount of compensation, this Agreement shall prevail.

4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on

all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

(a) The actual costs of sub consultants for performance of any of the services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.

(b) Approved reproduction charges.

(c) Actual costs and/or other costs and/or payments specifically authorized in advance by the City Manager in writing and incurred by Consultant in the performance of this Agreement.

4.3 Consultant shall meet and confer with the City Manager, and consult with the City Council, to establish a monthly budget for the Services. As part of the monthly invoice for Services, Consultant shall provide a summary of the actual amount of Services billed and a comparison with the budget for the Services.

4.4 Consultant is solely responsible for all of its recurring business costs, including, but not limited to the payment of all taxes, business permit fees, professional licenses and overhead and shall not separately charge those costs to the City.

5. **Designated Staff Contact.** The City Manager will be the designated staff contact for performance of this agreement.

6. **Standard of Performance.** All of the services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the services required by this agreement and that it will perform all services in a manner commensurate with community professional standards. Qualified and experienced personnel who are not employed by the City shall perform all services, nor have any contractual relationship with the City.

7. **Relationship of the Parties.** Consultant agrees and understands that the work/services performed under this Agreement are performed as an Independent Consultant and not as an employee of the City and that Consultant acquires none of the rights, privileges, powers or advantages of City employees. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever.

8. **Insurance.** Consultant shall return an executed copy of this Agreement with proof of insurance and endorsements to insurance coverage satisfactory to the City that shows that on or before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement

insurance coverage as follows: a) statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits not less than \$2,000,000, b) Commercial General and Automobile Liability insurance in an amount not less than two million dollars per occurrence, naming the City, its officers, officials and employees as additional insureds, and c) professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than \$2,000,000 covering the licensed professionals' errors and omissions. Consultant shall not allow any sub Consultant to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the sub Consultant.

9. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless City and its Council, officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, suits, actions, losses, costs, damages, injuries (including, without limitation, economic harm, injury to or death of an employee of Consultant or its sub Consultants), expenses and liabilities of every kind, nature and description, at law or equity (including, without limitation, incidental and consequential damages), and reasonable attorneys' fees and costs, litigation expenses, court costs, and fees of expert consultants or expert witnesses, and costs of investigation (collectively "Defense Costs") that arise from, relate to or pertain to, directly or indirectly, in whole or in part, any negligent or reckless act or omission or any willful misconduct of Consultant, any sub Consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnitees except to the extent that liability is caused by the Indemnitees' sole negligence, active negligence, or willful misconduct, but shall apply to all other Liabilities.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to defend or indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence, or willful misconduct of the Indemnified Parties. This Section 9 shall be interpreted and applied to be consistent with the limitations in Civil Code sections 2782 and 2782.8. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. **Advice and Status Reporting.** Consultant shall provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder. Such reporting will include, at a minimum, a monthly summary of the Services for each City department, or a summary of the Services categorized by other subject matter, as deemed appropriate by City Manager, in consultation with Consultant.

11. **Designation of Interim City Attorney; Assignment of Personnel.** Trisha Ortiz shall be designated as Interim City Attorney for the City. Ms. Ortiz shall be the attorney with responsibility for providing legal services for the City, and shall be the principal contact for the City. Ms. Ortiz may assign other Consultant attorneys to perform services pursuant to this agreement. If City asks Consultant to remove a person assigned to the work called for under this

Agreement, Consultant agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

12. **Assignment and Subcontracting.** Consultant shall not assign this Agreement or any portion thereof to a third party without the prior written consent of City, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement. Unless otherwise specified in **Exhibit A**, Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City.

13. **Ownership of Documents.** All final work product produced by Consultant or its agents, employees, and sub Consultants pursuant to this Agreement is the property of the City. In the event this Agreement is terminated, all final work product produced by Consultant or its agents, employees or sub Consultants shall be delivered at once to the City.

14. **Termination of Agreement.** The City may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the City, by giving written notice specifying the effective date and scope of such termination. Consultant may, in its discretion, terminate this Agreement by giving written notice specifying the effective date of such termination; provided, however, that the date of termination shall be at least 60 days following the date of such notice. In the event of termination, all final work product shall immediately become the property of the City and shall be promptly delivered to the City as per above. In the event of termination, Consultant shall be paid for all work satisfactorily performed until termination.

15. **Standard of Care and Payment of Permits/Licenses.** Consultant represents and warrants it has or shall obtain all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to practice its profession and to perform said work/services or forfeit any right to compensation under this Agreement. Consultant shall maintain a City of San Bruno business license during the term of this Agreement.

16. **Discrimination and Harassment Prohibited.** Consultant will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

17. **Retention of Records.** Consultant shall maintain all records related to this Agreement for no less than three years after the City makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the City, the State of California and/or Federal grantor agencies.

18. **Merger Clause.** This Agreement, including any exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the City Manager. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in the exhibits attached hereto, the terms, conditions, or

specifications set forth herein shall prevail. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between City and Consultant.

19. **Waiver, Severability, Choice of Law, Venue.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement can be reasonably interpreted to give effect to the intentions of the parties. The laws of the State of California shall govern this Agreement and all matters relating to it and venue for state court shall be in San Mateo County Superior Court, Redwood City and for federal court in San Francisco.

20. **Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, the County of San Mateo, and the San Bruno Municipal Code. To the extent this Agreement calls for a “public work” as defined by state law, prevailing wages shall be paid pursuant to Cal. Labor Code 1720, et seq.

21. **Conflict of Interest.**

(a) **In general.** Consultant represents and warrants that, to the best of the Contractor’s knowledge and belief, there are no relevant facts or circumstances that could give rise to a “conflict of interest,” as that term is defined in the Political Reform Act, as codified at California Government Code Section 81000, et seq., on the part of the Consultant, or that Consultant has already disclosed all such relevant information in writing.

(b) **Subsequent Conflict of Interest.** Consultant agrees that if an actual or potential conflict of interest in the part of the Consultant is discovered afterward, the Consultant will make a full disclosure in writing to the City. This disclosure shall include a description of the actions, which the Consultant has taken or proposes to take, after consultation with the City to avoid, mitigate, or neutralize the actual or potential conflict and shall take all such steps within thirty (30) days.

(c) **Interests of City officers and staff.** No officer, member or employee of City and no member of the City Council shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither Consultant nor any member of the Consultant’s family shall serve on any City board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Consultant’s operations or authorizes funding Consultant.

22. **Confidentiality.** All communications and documents, including drafts, preliminary drawings, or plans, notes that result from the services under this Agreement, shall be kept confidential unless City authorizes in writing to release the information or document. Consultant

understands the City is a public agency and is subject to laws that may compel it to disclose information about Consultant's business.

23. **Independent Contractor.** City is retaining Consultant on an independent contractor basis and Consultant is not an employee of City. Anything in this Agreement that may appear to give the City the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

24. **Consultant.** Notices required by this Agreement, and invoices for payments due shall be mailed to:

City of San Bruno
Attention: City Manager
567 El Camino Real
San Bruno, CA 94066

Notices to Consultant shall be mailed to:

Trisha A. Ortiz
Richards, Watson & Gershon
One Sansome Street, Suite 2850
San Francisco, CA 94104

25. **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed materials on recycled paper, and to use recycled products, where possible and economically feasible, for the work subject to this Agreement.

26. **Solicitation.** Consultant agrees not to solicit any business at any meeting, focus group or interview related to this Agreement, either orally or through any written materials.

27. **Alternative Dispute Resolution.** If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

(a) Each party shall designate a senior management or executive level representative to negotiate any dispute;

(b) The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority;

(c) If the issue remains unresolved after ten (10) days of good faith negotiations, the parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute;

(d) The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days and shall be concluded within 15 days from the commencement of the mediation;

(e) The parties shall equally bear the costs and fees of any third party in any alternative dispute resolution process;

(f) The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. Seq.

28. **Attorneys Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose. Attorneys fees and related costs incurred by the parties in conjunction with Section 27 shall be borne by the incurring party.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

Consultant's Signature Date

City Manager
City of San Bruno Date

APPROVED AS TO FORM

Consultant's Tax I.D./ Social Security number

City Attorney

Consultant's San Bruno Business License number

Contract Approved by City Council on _____(date)

ATTEST

City Clerk

Attachment: A — Project Description & Scope of Services

I. General Responsibilities. The general responsibilities of the City Attorney (or other firm personnel) include, but are not limited to, the following:

1. Assess the City Council's risk tolerance and adjust advice provided in accordance with City Council direction.
2. Provide pragmatic legal counsel by identifying the risks associated with various actions and options for City Council consideration.
3. Develop City ordinances and legislative documents in accordance with City Council direction and within City Council directed risk tolerance levels.
4. Provide clear, concise legal advice and consultation on a daily basis as requested by members of the City Council, the City Manager and staff.
5. Communicate responsively and clearly. Contacts are usually made via telephone and email, and generally same or next day response is expected. Set clear expectations regarding how long a response to questions will take.
6. Attend all City Council meetings in person or remotely as requested by the City Council and/or City Manager. Be prepared to advise the City Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting; Attendance at City Council subcommittee meetings, planning commission meetings, meetings of the City's Committees, Boards and Commissions, or joint meetings with outside agencies may be requested from time to time.
7. Provide guidance concerning requirements of the Brown Act, Conflict of Interest, the Political Reform Act, the Public Records Act, Meyers-Millais-Brown Act, CEQA, tort liability and risk, civil and criminal enforcement, due process and other legal requirements imposed by statute and common law.
8. Attend and participate as a collaborative member of the City's Senior Leadership Team (SLT). Attend at least two weekly meetings with SLT and internal agenda review meetings.
9. Prepare, review, and approve as to form, ordinances, contracts, resolutions, leases, deeds, city council staff reports, and other documents prepared by city staff with legal considerations.
10. Perform legal work in relation to land use matters. Review and approve as to form development-related City legislative actions including environmental impact reports, negative declarations, land use appeals, public improvement agreements, easements, and other related documents.
11. Keep the City Council, City Manager and Risk Manager informed of the status of litigation involving the City. submit a quarterly status report briefly outlining the status of each litigation. This status report shall be submitted between the first and fifteenth of the following

months (April, July, October and January). Advise the City Council and City Manager of significant developments in litigation involving the City as they occur.

12. Advise the City regarding legal constraints and authority regarding City financial matters (e.g., taxes, assessments, fees, Proposition 218, debt issuances).

13. Review and update the City's Municipal Code and Zoning Code, including updates required by state and federal housing legislation.

14. Represent the City in litigation for all actions and other proceedings brought against City, its elected officials, appointed officers and agents and oversee services provided by other outside legal counsel engaged by the City for specified legal matters.

15. Upon request by the City Manager or City Council, the City Attorney may be secondarily involved with outside legal counsel in matters related to employment law, workers' compensation, labor negotiations, bond counsel, government tort claims filed against the City and general liability litigation covered by PLAN JPA.

16. In cooperation with the City Manager's Office ensure that the City Council is kept apprised of pending and current state and federal legislation and court decisions, as appropriate. Provide written updates on those that have the potential to affect the City. Provide suggested action or changes in operations or procedures to assure compliance.

17. Coordinate recovery of all subrogation claims.

II. Specific Responsibilities. In addition to the above general responsibilities, the Interim City Attorney shall: (i) maintain office hours in City Hall at least two days per week, and (ii) attend City Council meetings in person, when such meetings are held with one or more City Councilmembers attending the meeting in City Council Chambers.

Attachment: B — Compensation Schedule

The hourly rates are listed in the following table, with the legal service categories described in detail below.

Hourly rates billed in six-minute increments		
General Services	All Attorneys	\$250
Special Services	Shareholders and Senior Attorneys	\$335
Special Services	Associates	\$295
Third-Party Services	All Attorneys	At then current standard hourly rates, reduced by ten percent
Bond Counsel Services	All Attorneys	\$395
All Services	Paralegals	\$175

General Services are all services that are not defined below as Special Services, Third-Party Services, or Bond Counsel Services. Special Services are defined to include litigation, specialized labor and employment, environmental (such as air and water quality and hazardous material matters), and water rights advisory services.

Third-Party Services are defined as any legal services provided in a matter where a third-party pays the City's legal costs.

Bond Counsel Services are defined as bond counsel, disclosure counsel, and issuer counsel services in connection with the issuance of bonds or other obligations by the City, or any entity created by the City. Consultant shall charge a composite hourly rate for all attorneys of \$395 per hour for any of these services. The maximum total fee charged for each issue or series shall not exceed an amount that the City Manager deems fair and reasonable. In the event the proceedings for issuance of the bonds or other obligations are terminated before closing, Consultant would expect to be paid for its services to the date of abandonment at the hourly rate set forth above, but the amount of that payment would not exceed an amount that the City Manager deems fair and reasonable.

Billing Method

Time incurred in providing legal services will be billed in six-minute increments to billing accounts set up as specified by staff.

Reimbursable expenses

Consultant shall be reimbursed for out-of-pocket expenses incident to services performed in addition to other payments for legal services described herein. Such out-of-pocket expenses include, without limitation, extraordinary reproduction costs, and automobile mileage expenses for legal services other than General Services as defined above.