

LEGAL SERVICES AGREEMENT

BETWEEN

THE CITY OF CAPITOLA AND BURKE, WILLIAMS & SORENSEN, LLP

This LEGAL SERVICES AGREEMENT ("Agreement") is effective as of Sept 1, 2024 and is between the CITY OF CAPITOLA, a City in the State of California ("CITY"), and BURKE, WILLIAMS & SORENSEN, LLP, a limited liability partnership ("BWS", or "Consultant") (collectively, the "Parties").

RECITALS

I. **RECITALS.** This Agreement is entered into with respect to the following:

A. This Agreement is a written legal services agreement containing the terms under which BWS has been retained by CITY to serve as its City Attorney.

B. California Business and Professions Code section 6148 requires a written fee agreement between attorneys and their clients setting forth the scope of services and fees to be charged. When executed by CITY and BWS, this Agreement will satisfy the requirements of Section 6148.

II. **APPOINTMENT OF CITY ATTORNEY.** By this Agreement, CITY appoints BWS as CITY's City Attorney, and BWS undertakes the responsibility of that appointment. BWS will serve at the pleasure of CITY's City Council ("Council") and may be replaced at any time, with or without cause, without amending this Agreement. The designated City Attorney or an approved successor will be responsible for providing or causing to be provided the legal services contemplated by this Agreement.

III. **DESIGNATED CITY ATTORNEY.** Samantha W. Zutler will perform the functions of BWS as CITY's City Attorney. No changes in this assignment may be made without the consent of CITY. BWS retains authority to assign from time to time such of its attorneys, paralegals, or law clerks as may be necessary to perform other legal services called for by this Agreement.

IV. **TERM OF AGREEMENT.** This Agreement shall be effective on September 1, 2024, and shall expire on August 31, 2029, unless extended by written agreement signed by both parties.

V. **LEGAL SERVICES.** The scope of BWS's appointment as City Attorney includes without limitation the following basic legal services and those special legal services as requested by CITY.

A. **Basic Legal Services.** BWS will perform the following "**Basic Legal Services**" to serve CITY:

(1) Attendance at meetings of the Capitola City Council (including regular sessions, closed sessions, special meetings, and as needed work sessions).

(2) Attendance, as needed and as directed by the City Council and/or City Manager, at meetings of the City's Commissions or other City committees.

(3) Review and/or preparation of ordinances, resolutions, orders, agreements, forms, notices, declarations, certificates, deeds, leases, and other documents as required by CITY.

(4) Consultation with the City Council and CITY staff as needed, as well as rendering of legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions. Performance of research and interpretation of laws, court decisions, and other legal authorities in order to prepare legal opinions and to advise the Council and management staff on legal matters pertaining to CITY operations.

(5) Legal work pertaining to routine issues related to property acquisition, zoning, property disposal, public improvements, public rights-of-way and easements, and matters relating to public utilities.

(6) Coordination and management of the work of outside legal counsel as needed and as directed by the City Council and/or City Manager.

(7) Office hours at City Hall as requested by the City Council or City Manager.

B. **Special Legal Services.** Services not defined as Basic Legal Services in Section IV(A) will be considered "**Special Legal Services**" and will be undertaken as such upon agreement of BWS and the CITY, through the Council or Manager. Special Legal Services generally are complex in nature (as opposed to routine), and require significant amounts of work, and/ or engagement of Special Counsel. Special Legal Services may include, but are not limited to:

(1) **Litigation.** Any litigation, arbitration, mediation, code enforcement, criminal prosecution commenced or defended by CITY, including disciplinary appeals and/ or grievances;

(2) **Personnel.** Counsel and representation regarding employment and labor matters;

(3) **Eminent Domain.** Counsel and representation in matters involving the CITY's attempted or actual exercise of its powers of eminent domain;

(4) **Development and/ or Real Estate.** All advice, counsel and representation of CITY in matters involving complex and ongoing real estate and development transactions, including drafting and negotiating purchase and sale agreements, leases, development agreements, deed restrictions, regulatory agreements, loan/ financing agreements, subordination agreements, public improvement agreements, and water use agreements.

(5) **Land Use.** All advice, counsel and representation of CITY in land use permitting and entitlement of property and related environmental review as required by California Environmental Quality Act or National Environmental Policy Act;

(6) **Environmental Matters.** All advice, counsel and representation of CITY in environmental matters, including issues related to the Endangered Species Act, environmental permitting and regulations, Clean Water Act, and NDPE compliance.

(7) **Other:** Legal advice or representation regarding any project or issue that is particularly complex and requires the ongoing assistance of special counsel within BWS, and other duties as assigned by the Council or Manager as Special Legal Services.

VI. **COMPENSATION.** BWS will be compensated as follows:

A. **Basic Legal Services.** For Basic City Attorney Services, CITY shall pay to BWS \$295 per hour. Paralegals shall be billed at a rate of \$155 per hour.

B. **Special Legal Services.** Fees for Special Legal Services, as described in Section IV(B) of this Agreement will be charged at a rate of \$325 per hour for partners and \$300 for associates. Paralegals shall be billed at a rate of \$155 per hour. .

C. **Cost Recovery Matters.** BWS will charge its current standard private client rates (as opposed to the public entity client rates provided in this Agreement or charged other public agencies) for work that is reimbursed by private parties pursuant to litigation, conditions of approval, pass through agreements, or other authorization. Current standard private client rates are \$405 for associates, \$505 for partners, and \$550 for senior partners.

D. **Compensation of Hours Billed by City Attorney and Designated Assistant City Attorney.** All hours billed by the City Attorney and the designated Assistant City Attorney shall be billed at the Basic Legal Services rate, regardless of the subject of the work, with the following exceptions: a) any hours billed on a Cost Recovery Matter, as described in Section V(C), shall be billed as described in that Section; and b) any hours billed on Development/ Real Estate, Land Use, or Environmental matters, as described in Section IV(B)(4), shall be billed at the Special Legal Services rate.

E. **Travel Time.** BWS shall not charge CITY for travel by the City Attorney, or any other attorney from BWS, to and from up to twenty-six (26) City Council or appointed Commission or Committee meetings, regardless of whether those meetings are regularly scheduled or special. Any travel by attorneys providing Special Legal Services, as defined in Section IV(B), or by any attorney (including the City Attorney) to meetings in excess of 26 per year shall be compensated at the rate of \$170 per hour for associates and \$200 per hour for partners.

F. **Fee Adjustments.** BWS's billing rates will be increased annually by \$5, on the anniversary date of the execution of this Agreement.

G. **Cost and Expense Reimbursement.** CITY will reimburse BWS for costs and expenses reasonably incurred by BWS in performance of the services provided under this Agreement. CITY preauthorizes routine costs including but not limited to postage, courier services, copying charges, long distance telephone charges, cost of producing and reproducing photographs, and court, county, recording and other filing fees. CITY will reimburse BWS for any attorney's automobile mileage at the standard rate for business use as announced periodically by the Internal Revenue Service to and from the CITY, or other locations as CITY business may

require, from the attorney's residence or office. BWS will not request reimbursement from CITY for hotel expenses incurred before or after regularly scheduled City Council meetings.

H. **Reimbursable Extraordinary Expenses.** With prior approval from the City Council or City Manager, CITY will reimburse other non-routine costs and expenses incurred by BWS for or on behalf of, including but not limited to outside counsel, consultants, expert witnesses, travel outside Santa Cruz County, and outside investigative services.

I. **Billing.** BWS will bill CITY monthly for the services provided pursuant to this Agreement, as well as all reimbursable costs and expenses. All bills for legal fees will set forth in detail the work performed during the billing period in line item format, so that each task is separately described and has specific time recorded. BWS attorneys bill in 1/10th of one hour increments. Bills for reimbursable costs and expenses will set forth the cost for each category of such expenses incurred during the billing period in addition to the total cost of the expenses. Reimbursement for expenses incurred by an outside vendor will include the vendor's invoice.

J. **Payment.** CITY will pay BWS for all of BWS's services, costs and expenses provided or incurred pursuant to this Agreement following receipt and approval of the bill. Payment is due within 30 days of receipt of bill by CITY.

K. **Taxpayer Information.** BWS will provide a completed W-9 Form to facilitate tax reporting for payments made by CITY to BWS under this Agreement.

VII. **CITY'S OBLIGATIONS.** CITY agrees to cooperate and keep BWS advised of information and developments pertaining to this engagement. CITY also agrees to promptly pay the fees, costs and other sums incurred under this Agreement when due.

VIII. **REVIEW OF CITY ATTORNEY.** CITY will review BWS's performance under this Agreement approximately six (6) months after execution of this Agreement, and thereafter on an, at least, an annual basis. In advance of each review, City Attorney will provide to City Manager and City Council a memorandum summarizing the work of BWS on behalf of CITY during the time period that is the subject of the review. Reviews shall be conducted in closed session following proper notice.

IX. **CONFLICTS OF INTEREST.**

A. BWS represents that neither BWS nor any of the attorneys or other persons employed by BWS have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of CITY that may be affected by the services to be provided to CITY pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. BWS further agrees that no attorney or other person having any such interest will be employed by BWS while this Agreement remains in effect. If BWS or an attorney or other person employed by BWS acquires such an interest while this Agreement remains in effect, BWS will immediately disclose such interest to CITY, and the interested individual will not participate in or influence the performance of the services to be provided to CITY pursuant to this Agreement.

B. The California Rules of Professional Conduct, as promulgated by the California State Bar, require that an attorney receive informed written consent from a client prior to undertaking work where there is a potential for conflicts between existing or future clients (Rule 1.7). BWS represents numerous cities, school CITYs, and public agencies, which from time-to-

time may be adverse to CITY. Should an actual conflict occur between any one of these clients and CITY, BWS will attempt to resolve the conflict in a manner that protects our ability to continue our concurrent representation of all our clients. However, that may not be possible or practical under the applicable ethical rules. By signing below, CITY represents that it is fully informed regarding the potential conflict of interests between it and existing and future clients of BWS, and it waives all rights regarding such conflicts and consents to the BWS's representation in this regard.

X. **INSURANCE.** BWS shall procure and maintain for the duration of the contract and for 2 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

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| 1. | General Liability:
(including operations, products and completed operations) | \$1,000,000 per occurrence and \$2,000,000 in aggregate (including operations, for bodily injury, personal and property damage. |
| 2. | Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. | Employer's Liability Insurance | \$1,000,000 per accident for bodily injury and property damage. |
| 4. | Errors and Omissions Liability Claims: | \$1,000,000 per claim and \$2,000,000 in the aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.

(2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

XI. **WAIVER OF SUBROGATION.** Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitols** for all work performed by the Consultant, its employees, agents and subcontractors.

XII. **INDEMNIFICATION.** To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from any negligence or misconduct of Consultant or its agents in any way related to the obligations or in the performance of services under this Agreement, except where caused by the sole or active negligence or willful misconduct of the City.

XIII. **TERMINATION OF SERVICES.**

A. CITY may terminate this Agreement with or without cause at any time by written notice of such termination.

B. BWS may terminate this Agreement with or without cause upon 60 days' written notice to CITY. BWS may terminate this Agreement immediately in the event that BWS determines that to continue services to CITY would be illegal, unethical, impractical, or improper.

C. CITY will compensate BWS for its services and reimburse it for costs rendered through the effective date of any termination.

XIV. **DOCUMENT RETENTION.** CITY is entitled upon written request to any files in BWS's possession relating to the legal services performed by BWS for CITY, excluding BWS's internal accounting records and other documents not reasonably necessary to CITY's representation, subject to BWS's right to make copies of any files withdrawn by CITY. Once a CITY matter is concluded, BWS will close the file. The physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, BWS recommends that CITY request the return of a file at the conclusion of any individual matter. BWS will retain and destroy files consistent with the CITY's records retention schedule. BWS will work

with CITY to provide or preserve any documents that may be subject to the California Public Records Act.

XV. **FEE DISPUTES.** If a dispute between CITY and BWS arises over fees or other amounts charged to CITY for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code sections 6200 through 6206. The arbitrator or arbitration panel will have the authority to award to the prevailing party in such arbitration attorney's fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service will not be required.

XVI. **NOTICES.** Notices required under this Agreement must be given by personal service or by first class mail, postage prepaid, and addressed as follows:

To BWS: BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Attn: John Welsh, Esq.

To City: City of Capitola
420 Capitola Ave.
Capitola, CA 95010
Attn: City Manager

Service of notice by personal service is deemed to be given as of the date of service. Notices by mail are deemed to have been given two consecutive business days after deposit into the U.S. Postal Service. Either party may, from time to time, by written notice to the other, designate a different address or person to be substituted for that specified above.

XVII. **INDEPENDENT CONTRACTOR.** CITY and BWS agree that BWS will act as an independent contractor and will have control of all work and the manner in which is it performed. BWS will be free to contract for similar service to be performed for other clients while under contract with CITY. BWS is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct BWS as to the details of doing the work or to exercise a measure of control over the work means that BWS will follow the direction of the CITY as to end results of the work only.

XVIII. **MISCELLANEOUS.** This Agreement sets forth the entire understanding of the Parties and will be governed by the laws of the State of California. The terms of this Agreement are not set by law but are the result of negotiation between the Parties. CITY has the right to consult with another attorney regarding this Agreement before signing it. This Agreement may be modified only by a written amendment signed by both Parties.

The undersigned authorized representatives of the Parties have executed this Agreement effective as the day and year first set forth above.

CITY OF CAPITOLA

By: _____

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

Samantha W. Zutler
Shareholder