

**SERVICES AGREEMENT (PROFESSIONAL SERVICES)**  
*Interim City Attorney Legal Services*

City Agreement No. C2024-697

City Budget Code: 10014100-53214

This Services Agreement (Professional Services) for Interim City Attorney Legal Services (“**Agreement**”) by and between the City of Napa, a California charter city (“**City**”), and Best Best & Krieger LLP (“**Consultant**”), is effective on the date last signed by the City, which is identified on the signature page as the “Effective Date.”

**RECITALS**

A. The City desires to obtain the services more particularly described in this Agreement and Exhibit “A,” and generally including interim city attorney legal services.

B. Since April 2024, Consultant has been providing interim assistant city attorney services to the City Attorney’s Office pursuant to a Legal Services Agreement (City Agreement No. C2024-591) to backfill the vacancies in the City Attorney’s Office. Since that time, Consultant attorneys have been working closely with City staff and providing legal advice on a variety of issues

C. City now requires interim city attorney services until the City Council appoints a permanent City Attorney, and that City Attorney begins their service for the City.

D. Consultant is a full-service municipal law firm with the expertise and experience required to provide the Services.

E. Given that staff has been working with Consultant over the past several months, the need and desire for continuity of legal services, and the short time frame for appointing an Interim City Attorney, the City obtained an updated proposal from Consultant for Interim City Attorney services, dated August 12, 2024, which proposed Christopher Diaz of Consultant as the Interim City Attorney.

F. On August 20, 2024, the City Council adopted Resolution No. 2024-085 authorizing the City Manager to negotiate and execute an agreement for interim city attorney legal services with Consultant at the rates set forth in Consultant’s August 12, 2024 proposal and appointing Christopher Diaz as Interim City Attorney effective September 7, 2023.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. Consultant, acting in its capacity as a municipal law firm licensed and in good standing under California law, will perform the services described in the Scope of Services and Schedule of Performance, attached hereto as **Exhibit “A”** and incorporated herein by reference (“**Services**”), in accordance with the terms and conditions of this Agreement and to the satisfaction of the City’s authorized representative, Steve Potter, City Manager (“**City’s Authorized Representative**”).

1.2. Standard of Care. In performing the Services, Consultant will meet or exceed the applicable standard of care for, and exercise the degree of skill and diligence ordinarily used by reputable professionals within the greater San Francisco Bay Area who provide the same or similar type of professional services as the Services required under this Agreement. Consultant will require and ensure that all of its employees, subconsultants, or agents performing or contributing to the Services will comply with the requirements of this Agreement.

1.3. Independent Contractor. Consultant will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the City. Consultant will not be entitled to any of the benefits that the City provides to its employees, including, but not limited to, health or retirement benefits.

1.4. Subcontracting. If Consultant subcontracts with a subconsultant to perform any of the Services, the City is deemed an intended beneficiary of that subcontract and the subconsultant will owe a duty of due care to the City. City reserves the right to approve or reject any proposed subconsultant, based on the subconsultant's qualifications, relevant experience, or reputation.

1.5. Third Party Beneficiaries. Except to the extent expressly stated herein, this Agreement will not be construed to create any rights in third parties.

1.6. Time for Performance. Time is of the essence for the performance of all Services and duties under this Agreement. Consultant will commence and complete all Services by the date and within any timeframes set forth in Exhibit "A." Services for which times for performance are not specified in this Agreement will be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction from the City's Authorized Representative. Consultant will submit all requests for extensions of time to the City in writing no later than ten days after the start of the circumstances or events giving rise to the delay, and no later than the time by which performance is due. The City's approval of any extension of time for performance of the Services will not operate to waive the City's rights or remedies with respect to damages caused by Consultant's delay.

1.7. Errors and Omissions. Consultant is solely responsible for costs arising from its errors and omissions, including increased construction costs or delay costs. Upon City's request, Consultant will promptly correct its errors and omissions, at no cost to the City.

1.8. Unsatisfactory Services. Upon written notice from the City that any of the Services are unsatisfactory or fail to comply with the requirements of this Agreement (collectively, "**Unsatisfactory Services**"), Consultant will promptly correct or cure any such Unsatisfactory Services as specified in the City's written notice. Consultant will not be entitled to any additional compensation or extension of time to correct or cure the Unsatisfactory Services. Consultant's correction or cure of Unsatisfactory Services will not operate to waive the City's rights or remedies with respect to any damages caused by the Unsatisfactory Services, the cost of which may be recovered by the City as an offset from payment otherwise due or to become due to Consultant.

## 2. COMPENSATION.

2.1. Payment. The City will pay Consultant for Consultant's time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit "B"** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. Consultant's total compensation for performing the Services may not exceed \$350,000, without prior written authorization from the City. If the City authorizes Consultant to perform services in addition to the Scope of Services set forth in Exhibit "A," Consultant will be compensated in accordance with the rates and charges in Exhibit "B." Consultant will not be entitled to any compensation for additional services performed without the City's prior written consent, or which exceed the scope of the City's written consent.

2.2. Invoices. By no later than the last day of each month, Consultant will provide to City an invoice for Services performed for the prior month in two parts: (a) a statement of the total costs, disbursements, fees, and expenses charged by the Consultant to the City for the prior month; and (b) a confidential invoice support statement (marked "Confidential – Attorney-Client Privilege") that briefly describes each item of Services performed, the identity of the person who performed the Services (with an identified hourly rate), and itemized reimbursable expenses. If the City's Authorized Representative determines that an invoice does not completely and legibly support the requested payment, upon request from the City's Authorized Representative, Consultant shall supplement or replace the invoice prior to

payment from the City. The City will pay Consultant within thirty days after approval of each invoice, with the exception of any disputed amounts.

3. AUTHORIZED REPRESENTATIVE. Consultant hereby assigns Christopher Diaz, Partner, to serve as the Consultant's authorized representative ("**Consultant's Authorized Representative**"), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

3.1. Substitutions. As a material inducement to entering into this Agreement, the City has relied upon Consultant's representations regarding Consultant's qualifications (including the qualifications of Consultant's Authorized Representative, its personnel, and its subconsultants, if any, as identified on Exhibits "A" and "B"). Consultant will not replace Consultant's Authorized Representative (or any of its personnel or its subconsultants, if any, as identified on Exhibits "A" and "B") without the City's prior written consent.

4. NOTICES. All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY:	Steve Potter, City Manager CITY OF NAPA P.O. Box 660 NAPA, CA 94559-0660 spotter@cityofnapa.org
TO CONSULTANT:	Christopher Diaz, Partner BEST BEST & KRIEGER LLP 1333 N. California Blvd., Suite 220 Walnut Creek, California 94596 <a href="mailto:christopher.diaz@bbklaw.com">christopher.diaz@bbklaw.com</a>

5. TERM. The term of this Agreement begins on the Effective Date, and ends upon Consultant's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7.2 (Dispute Resolution), Section 8.1 (Confidentiality), Section 8.4 (Records of Performance), Section 10 (Indemnification), Section 11.4 (Professional Liability), Section 13.3 (Taxes), and Section 14 (General Provisions).

6. CITY'S RIGHT TO TERMINATE. The City may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Consultant, effective upon the date stated in the notice. If the City terminates the Agreement it will pay Consultant for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Sections 2 and 8.2.

#### 7. DEFAULT AND DISPUTE RESOLUTION.

7.1. Default. Consultant will be deemed in default of this Agreement if Consultant is not complying with the terms of this Agreement, or the City has reason to believe that Consultant's ability to perform the Services has been or will be impaired. If either of these circumstances exist, the City may give written notice of default to Consultant and demand that the default be cured or corrected within ten days of the notice, unless the City determines that additional time is reasonably necessary to cure the default. If Consultant fails to cure the default within of the time specified in the notice, and the Consultant fails to give adequate written assurance of due performance within the specified time, then the City may terminate this Agreement

in accordance with Section 6, or the City may pursue dispute resolution in accordance with Section 7.2.

7.2. Dispute Resolution. If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the parties are unable to resolve the dispute, in whole or in part, through informal discussions, the parties agree to participate in mediation. Notwithstanding the existence of a dispute, the Consultant will continue providing the Services during the course of any dispute, unless otherwise directed by the City.

7.2.1. Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session will take place within 60 days of the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

7.2.2. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Consultant arising from or related to this Agreement, are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

## 8. INFORMATION AND RECORDS.

8.1. Confidentiality. Consultant will not disclose any information or records related to the performance of this Agreement, including information and records received from the City, as well as information and records created by the Consultant, to any person other than a City employee, unless and only to the extent that the City provides the Consultant with prior written consent to make a disclosure. Consultant will notify the City's Authorized Representative of any request for disclosure of information, or any actual or potential disclosure of information, under this Agreement. Consultant's obligations under this section will survive the termination of this Agreement.

8.2. Title to Records. All original documents or records ("**work product**"), whether paper or electronic, required by this Agreement to be prepared by Consultant (including its employees and subconsultants), whether complete or in progress, are the property of the City. Consultant will promptly deliver all such work product to the City at the completion of the Services, upon termination, or upon demand by the City. However, Consultant may make and keep copies of the work product.

8.3. Contract Cost Disclosure. For any document or report prepared in whole or in part by Consultant pursuant to this Agreement, Consultant will include the numbers and dollar amounts of related contracts or subcontracts as further specified by Government Code Section 7550.

8.4. Records of Performance. Consultant will maintain adequate records of performance under this Agreement (including Services provided, invoices for payment, and payments received) and make these records available to the City for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

8.5. Electronic Communications. Consultant will use reasonable good faith efforts to avoid transmitting electronic viruses or other damaging coding, and will promptly advise the City if Consultant discovers that an electronic virus or similar destructive coding may have been transmitted to the City.

8.6. Copyrights/Patents. In performing the Services under this Agreement, Consultant will not unlawfully infringe on any copyrighted or patented work. Consultant is solely responsible for the cost of any authorizations necessary to use any copyrighted or patented work.

9. ACCIDENT REPORT. If any death, personal injury, or property damage occurs in connection with the performance of the Services, Consultant will promptly submit to the City Clerk's Office a written notice of the incident of damage with the following information:

9.1. A description of the damage including date, time, and location, and whether any City property was involved;

9.2. Name and contact information of any witness;

9.3. Name and address of the injured or deceased person(s); and

9.4. Name and address of Consultant's insurance company.

10. **INDEMNIFICATION.** To the full extent permitted by law, Consultant will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "**Liability**") of any nature, arising out of, pertaining to, or relating to Consultant's negligence, recklessness, or willful misconduct in the performance of this Agreement. Consistent with Civil Code Section 2782, Consultant will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. To the extent that Services are "design professional services," as defined by Civil Code Section 2782.8, the cost to defend charged to the Consultant will not exceed the Consultant's proportionate percentage of fault. Consultant's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers' compensation insurance.

11. **INSURANCE.** Without limiting Consultant's indemnification obligations in section 10, Consultant will procure and maintain throughout the period of this Agreement, the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Consultant, its agents, employees or subcontractors:

11.1. **Commercial General Liability Policy.** Commercial General Liability Insurance (CGL) at least as broad as CG 00 01, covering premises and operations and including but not limited to, owners and contractors protective, product and completed operations, personal and advertising injury and contractual liability coverage with a minimum per occurrence limit of \$1,000,000 covering bodily injury and property damage; General Aggregate limit of \$2,000,000; Products and Completed Operations Aggregate limit of \$2,000,000 and Personal & Advertising Injury limit of \$1,000,000, written on an occurrence form. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

11.2. **Automobile Liability Policy.** Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), covering use of all owned, non-owned, and hired automobiles and all vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability.

11.3. **Workers' Compensation.** Workers' Compensation insurance meeting statutory limits of the Labor Code; and Employer's Liability insurance on an "occurrence" basis with a limit of not less than \$1,000,000. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

11.4. **Professional Liability.** Professional Liability Insurance covering liability imposed by law or contract arising out of an error, omission or negligent act in the performance, or lack thereof, of the Services and any physical property damage, bodily injury or death resulting therefrom, with a limit of not less than \$2,000,000 per claim and in the aggregate. The insurance shall include a vicarious liability endorsement to indemnify, defend, and hold harmless City for claims arising out of the Services and an extended reporting endorsement, for a period of not less than four years from the date of completion of the Services. The policy inception date or retroactive date shall coincide with or precede the Effective Date of this



Agreement (including subsequent policies purchased as renewals or replacements).

11.5. Endorsements. The CGL and automobile liability policies will contain or be endorsed with the following provisions:

11.5.1. The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of Consultant. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

11.5.2. The Consultant's insurance is primary and non-contributory with respect to all obligations assumed by Consultant pursuant to this Agreement or any other services provided. Any insurance carried by City shall not contribute to, or be excess of insurance maintained by Consultant, nor in any way provide benefit to Consultant, its affiliates, officers, directors, employees, subsidiaries, parent company, if any, or agents.

11.5.3 The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

11.6. All Policies.

11.6.1. For all insurance policies required under this Agreement, prior to the City's execution of this Agreement, Consultant will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of Consultant.

11.6.2. Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to the City's execution of this Agreement and is subject to approval by the City.

11.6.3. If Consultant does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

12. CONFLICTS OF INTEREST. Consultant warrants that as of the Effective Date of this Agreement it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. Consultant further warrants that in the performance of the Services, Consultant will not employ or enter into a subcontract with any person or entity having any such conflict of interest.

12.1. Financial Interest. Consultant will not make or participate in making or in any way attempt to use Consultant's position to influence a City decision in which Consultant knows, or has reason to know, Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that it has diligently conducted a search and inventory of its financial interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have a financial interest that would conflict with Consultant's duties under this Agreement. Consultant will immediately notify the City in writing if Consultant learns of a financial interest that may conflict with Consultant's obligations under this Agreement.

12.2. Covenant Against Contingent Fees. Consultant warrants that it has not employed, retained, or

entered into a contract with any person or entity, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or entity, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the making of this Agreement. For breach or violation of this warranty, the City may void this Agreement without liability or any further obligation to Consultant, or, alternatively, may elect to deduct from payments due or to become due to Consultant, the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

12.3. Statement of Economic Interest. If the City determines Consultant (or any of its employees or subconsultants) is subject to disclosure requirements under the Political Reform Act (Government Code section 87100 et seq.), Consultant (including any required employees or subconsultants) will complete and file a "Statement of Economic Interest" (Form 700) with the City Clerk's Office disclosing Consultant's financial interests.

### 13. COMPLIANCE WITH LAW.

13.1. Legal and Licensing Compliance. Consultant will comply with all applicable federal, state and local laws, rules, and regulations related to the Services under this Agreement. Consultant represents and warrants to City that Consultant has and will keep in effect during the term of this Agreement all licenses (including, but not limited to, the City of Napa business license), permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession or perform the Services.

13.2. Nondiscrimination. At all times during the term of this Agreement, Consultant will comply with all applicable federal, state, and local laws, rules, and regulations prohibiting discrimination based on race, ethnicity, color, national origin, religion, marital status, age, sex, sexual orientation, disability (including any physical or mental impairment that substantially limits a major life activity), medical condition, or any protected class.

13.3. Taxes. Consultant will file tax returns as required by law and pay all applicable taxes on amounts paid pursuant to this Agreement. Consultant will be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes.

13.4. Provisions Deemed Inserted. Every provision of law required to be inserted or referenced in this Agreement will be deemed to be inserted or referenced.

### 14. GENERAL PROVISIONS.

14.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

14.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

14.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

14.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

14.5. Assignment and Delegation. This Agreement will not be assigned or transferred in whole or in part, nor will any of the Consultant's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Agreement, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation.

14.6. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

14.7. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

14.8. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

14.9. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

**15. SIGNATURES.**

15.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

15.2. Signatures; Electronic Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. The parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.

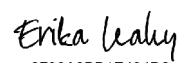
IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

**CITY:**  
**CITY OF** \_\_\_\_\_  
DocuSigned by: \_\_\_\_\_  
Steve Potter  
By: \_\_\_\_\_  
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Steve Potter

**CONSULTANT:**  
**Best Best & Krieger LLP**  
SIGNED BY: \_\_\_\_\_  
By: \_\_\_\_\_  
Christopher J. Diaz  
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CHRISTOPHER J. DIAZ

Date: September 3, 2024 | 12:48:07 PM PDT  
\_\_\_\_\_  
("Effective Date")



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SABRINA WOLFSON

## EXHIBIT "A"

## SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE

1.0. **SCOPE OF SERVICES.** Consultant will perform the Services described in this Exhibit "A," in accordance with the terms of the Agreement.

A. **Interim City Attorney Services.** Consultant shall provide Interim City Attorney services from September 7, 2024, until the City retains a permanent City Attorney, and that City Attorney begins their service for the City. Interim City Attorney services shall include attendance at meetings of the City Council and other City bodies as requested; provision of legal advice on City matters to the City Council and City staff; preparation, review and/or approval of ordinances, resolutions, contracts, and other legal documents; preparation of legal opinions regarding City matters as requested by the City Council and other City officials; general municipal advice to all departments in the City; and coordination and management of the work of in-house staff in the City Attorney's Office and outside legal counsel as needed and as directed by the City Council and/or City Manager.

B. **Interim City Attorney.** The designated Interim City Attorney shall be Christopher Diaz, Partner. Mr. Diaz shall be responsible for the performance of all Services under this Agreement, including the coordination and supervision of Services performed by other members of Consultant. If Mr. Diaz is unavailable to attend a City Council meeting, Mr. Diaz will arrange for another Consultant attorney to attend such meetings in his absence. Mr. Diaz shall exercise the duties and powers of the City Attorney as set forth in the City Charter and Napa Municipal Code Chapter 2.24, and as directed by the City Council through ordinances, resolutions, and minute actions. Mr. Diaz shall also serve as General Counsel to the Housing Authority of the City of Napa and General Counsel to the Public Financing Authority of the Napa Enhanced Infrastructure Financing District. No change in the designated Interim City Attorney shall be made without approval of the City Council.

C. **Additional Legal Services.** Upon request, Consultant will provide additional legal services after the permanent City Attorney begins service for the City. Such additional legal services shall be provided at the direction of the permanent City Attorney and in accordance with the rates set forth herein.

## EXHIBIT "B"

## COMPENSATION RATES AND CHARGES

**1. AUTHORIZED HOURLY RATES:**

Consultant will be compensated for time reasonably necessary to provide the Services based on the following, subject to the not-to-exceed limit in Section 2.1 of the Agreement:

1.1. Subject to the terms of the Agreement, the City will pay Consultant the hourly rates set forth below for each category of legal services:

**A. Hourly Rates for "Basic Legal Services"**

"Basic legal services" include all general counsel services provided to the City covering the usual day-to-day legal services, and that are not otherwise specifically identified below as other services. Basic legal services will be billed as follows:

Attorneys: \$295.00 per hour

Paralegals, Law Clerks and Analysts: \$175.00 per hour

**B. Hourly Rates for Legal Services provided by Consultant's Advanced Records Center ("ARC")**

Legal services provided by Consultants ARC team in connection with records requests under the California Public Records Act (Gov't Code sec. 7920.000 et seq.) and other records related issues shall be billed at the following blended rate:

Attorneys and Paralegals: \$225 per hour

**C. Hourly Rates for Special Legal Services**

Special legal services include the following types of services:

- Litigation and formal administrative or other adjudicatory hearing matters;
- Labor relations and employment matters;
- Non-routine real estate matters;
- Land acquisition and disposal matters (including pre-condemnation);
- Successor Agency and housing matters;
- Public construction disputes;
- Non-routine contract negotiation matters (including non-BBK model agreements and franchise agreements);
- Non-routine land use and development matters (including general plan updates, Williamson Act issues, annexations and development agreements);
- Non-routine election law matters, including election law litigation;
- Toxic substances matters (e.g., CERCLA, RCRA);
- Complex public utility matters (e.g., electric, natural gas, water, rail, or transit that involve state or federal regulatory issues); and
- Other matters mutually agreed upon between Consultant and the City in writing.

Special legal services will be billed as follows:

Partners and Of Counsel: \$350.00 per hour

Associates: \$275.00 per hour

Paralegals, Law Clerks and Analysts: \$175.00 per hour

**D. Hourly Rates for Complex Special Legal Services**

Complex and highly specialized services include the following types of services:

- Environmental matters (e.g., CEQA, NEPA, endangered species)
- Water law matters (e.g., water rights & quality)
- Renewable energy and energy efficiency project contracts and power purchase agreements
- Taxes, fees and charges matters (e.g., Prop. 218 & Mitigation Fee Act)
- Tax and ERISA related matters, employee and retirement benefits
- Intergovernmental relations and advocacy efforts (e.g., legislative and regulatory representation) at the federal and state level
- Other matters mutually agreed upon between Consultant and the City in writing.

Complex special legal services will be billed as follows:

Partners and Of Counsel: \$425.00 per hour

Associates: \$275.00 per hour

Paralegals, Law Clerks and Analysts: \$175.00 per hour

**E. Hourly Rates for Third Party Reimbursable Legal Services**

Third party reimbursable legal services shall include legal services provided to the City for which the City receives reimbursement from a developer or other third party. For third party reimbursable legal services, Consultant will charge its then-current published standard private client rates, minus 10 percent (10%). Upon execution of this Agreement, Consultant shall provide a copy of its published private client rate schedule to the City. Consultant shall also provide annual written updates to the City when changes are made to the published rate schedule.

1.2. Hourly rates charged under this Agreement will include all Consultant's costs for secretarial time, word processing, local telephone costs, time for preparing bills and other general overhead, unless provided otherwise in this Exhibit "A."

1.3. All time will be charged in increments of 1/10 of an hour (i.e., six-minute units).

1.4. Travel time spent commuting to any meeting, appearance, or to attend any other matter related to the Services shall be billed at fifty percent (50%) of the applicable hourly rate (with no separate charge for mileage).

1.5. The Consultant may propose reasonable changes to the hourly rates and, subject to approval by the City Council, to the not-to-exceed limit in Section 2.1 of the Agreement, to reflect increases in the relevant Consumer Price Index; provided that any such proposed change is: (a) made in writing at least thirty days prior to its requested effective date, (b) made no more than once per fiscal year (each July 1 to the following June 30), and (c) is effective only after the City's Authorized Representative provides written approval of the change. Notwithstanding the foregoing, in no event shall the first increase occur before the first anniversary of the

Effective Date.

**2. AUTHORIZED EXPENSES AND RATES:**

Consultant will be reimbursed for costs incurred to provide the Services only as follows and subject to the not-to-exceed limit in Section 2.1 of the Agreement:

- Photocopying at no more than \$.25 per page.
- Computerized legal research at the actual amount charged to Consultant (verification to be attached to invoice).
- Statutory fees, witness fees, reporter's per diem costs, stenographic transcription, service of process fees, courier fees and other charges directly related to the services rendered.