

**AGREEMENT FOR LEGAL SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
MATTEONI, O'LAUGHLIN & HECHTMAN**

THIS AGREEMENT is made and entered into this 14TH day of December 2020, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and Matteoni, O'Laughlin & Hechtman, APC (hereinafter "ATTORNEY").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

ATTORNEY shall perform those services specified in detail in EXHIBIT A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from July 8, 2020 through December 31, 2021, inclusive, subject to the provisions of Section 10 of this AGREEMENT.

SECTION 3. COMPENSATION.

- A. The compensation to be paid to ATTORNEY, including both payment for professional services and reimbursable expenses, shall not exceed Three Hundred and Twenty Thousand Dollars (\$320,000.00). The rate and schedule of payment is set out in EXHIBIT B, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. ATTORNEY acknowledges and agrees that any and all compensation to be paid under this AGREEMENT shall only be due and payable by CITY if there is a corresponding reimbursement from SJ CityView, LLC and/or Jay Paul Company (collectively, hereinafter "Developer") as provided in the separate Real Property Purchase and Sale and Cost Payments Agreement between CITY and

Developer dated the effective date of this AGREEMENT. The parties agree that any additional COMPENSATION that does not have a corresponding reimbursement, as specified above, shall not be owed or paid by CITY nor shall it be a liability to CITY.

C. ATTORNEY agrees that in the performance of this AGREEMENT, ATTORNEY shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:

1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.
2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. ATTORNEY acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.

SECTION 4. METHOD OF PAYMENT.

Each month, ATTORNEY shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 5. INDEPENDENT CONTRACTOR.

It is understood and agreed that ATTORNEY, in the performance of the work and services agreed to be performed by ATTORNEY, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, ATTORNEY shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and ATTORNEY hereby expressly waives any claim it may have to any such rights.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of ATTORNEY are material considerations for this AGREEMENT. ATTORNEY shall not assign or transfer any interest in this AGREEMENT nor the performance of any of ATTORNEY's obligations hereunder, without the prior written consent of CITY, and any attempt by ATTORNEY to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 7. INDEMNIFICATION.

ATTORNEY shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by ATTORNEY's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 8. INSURANCE REQUIREMENTS.

ATTORNEY agrees to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. ATTORNEY agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 9. NONDISCRIMINATION.

ATTORNEY shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 10. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If ATTORNEY fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's City Attorney is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, ATTORNEY shall deliver to CITY copies of all reports, documents, and other work performed by ATTORNEY under this AGREEMENT, and upon receipt thereof, CITY shall pay ATTORNEY for services performed and reimbursable expenses incurred to the date of termination.

- E. ATTORNEY also has the right to terminate its services to CITY upon written notice and provided ATTORNEY gives CITY reasonable time to arrange alternative representation, in the event CITY fails to pay in full its monthly statements as submitted, fails to cooperate on a reasonable request, or ATTORNEY determines in its reasonable discretion that to continue representing CITY would be unethical, impractical, or improper.

SECTION 11. GOVERNING LAW.

CITY and ATTORNEY agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 12. COMPLIANCE WITH LAWS.

ATTORNEY shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, ATTORNEY shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 13. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

ATTORNEY agrees that, in the performance of this Agreement, ATTORNEY shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the CITY'S website at the following link: <http://www.sanjoseca.gov/?nid=1774>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- A. Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- B. Use of Energy Star Compliant equipment.

- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for ATTORNEY in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by ATTORNEY or any other person engaged directly or indirectly by ATTORNEY to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

ATTORNEY agrees that waiver by CITY of any breach or violation of any term or condition 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. The acceptance by CITY of the performance of any work or services by ATTORNEY shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. ATTORNEY'S BOOKS AND RECORDS.

- A. ATTORNEY shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or

relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to ATTORNEY pursuant to this AGREEMENT.

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

- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at ATTORNEY's address indicated for receipt of notices in this AGREEMENT. ATTORNEY acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ATTORNEY's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by ATTORNEY, ATTORNEY's representatives, or ATTORNEY's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

ATTORNEY shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. As of the date of entering into this AGREEMENT, ATTORNEY's employees assigned to perform services as specified in EXHIBIT A of this AGREEMENT ("ATTORNEY's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require ATTORNEY's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify ATTORNEY in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). ATTORNEY shall cause ATTORNEY's Assigned Employees to complete and file the Form 700 with CITY's Clerk and to submit a copy to CITY, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 19. GIFTS.

- A. ATTORNEY is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. ATTORNEY agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by ATTORNEY. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 10 of this AGREEMENT.

SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.

ATTORNEY is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code (“Revolving Door Ordinance”). ATTORNEY shall not utilize either directly or indirectly any officer, employee, or agent of ATTORNEY to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 21. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT D, entitled, “SPECIAL PROVISIONS”, which is attached hereto and incorporated herein.

SECTION 22. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:	Office of the City Attorney Attn: Real Estate Attorney City of San Jose 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113-1905
To ATTORNEY:	Peggy M. O’Laughlin, Esq. Matteoni, O’Laughlin & Hechtman 848 The Alameda San Jose, CA 95126

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 23. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 24. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.



Approved as to Form:

Company: Attorney
Name: Cameron Day
Title: Deputy City Attorney IV U
Email : cameron.day@sanjoseca.gov
Signature:

x Cameron Day
Cameron Day(cameron.day@sanjoseca.gov) (12/14/2020)

“CITY”

Company: Attorney
Name: Nora Frimann
Title: City Attorney U
Email : nora.frimann@sanjoseca.gov
Signature:

x Nora Frimann
Nora Frimann(nora.frimann@sanjoseca.gov) (12/14/2020)

“ATTORNEY”

Company: Matteoni, O’Laughlin & Hecl
Name: Peggy M. O’Laughlin
Title: Partner
Email: pmo@matteoni.com
Signature:

x Peggy O’Laughlin
pmo@matteoni.com(pmo@matteoni.com) (12/14/2020)

EXHIBIT A
SCOPE OF SERVICES

At the request of City Attorney or an authorized deputy of the City Attorney, ATTORNEY shall provide legal services pertaining to the CITY's proposed acquisition by eminent domain of private property presently burdened by a public street known as Park Avenue for the public purpose of the realigning and reconfiguring of a portion of Park Avenue and prosecuting the condemnation action to Judgment and Final Order in Condemnation with title to the subject property vesting in the City of San Jose.

EXHIBIT B
COMPENSATION

A. CITY agrees to compensate ATTORNEY for professional services performed in accordance with the terms and conditions of this AGREEMENT at the hourly rates listed below.

Peggy M. O’Laughlin	\$ 575.00
Bradley Matteoni	\$ 525.00
Gerald Houlihan	\$ 500.00

The parties agree that the rates and/or personnel set forth herein may be changed without formal amendment to this AGREEMENT. ATTORNEY shall submit any proposed changes and/or additions to the fee schedule to the City Attorney. The City Attorney must affirmatively accept said modifications in writing before it becomes binding under the terms of this AGREEMENT.

B. In addition to the above compensation, CITY shall reimburse ATTORNEY for actual out-of-pocket costs and expenses reasonably incurred in connection with providing to CITY the services specified in this AGREEMENT, including but not limited to long distance phone calls, photocopy expenses, mileage and travel-related expenses.

The maximum amount of compensation to be paid to ATTORNEY under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Three Hundred and Twenty Thousand Dollars (\$320,000.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY. ATTORNEY will notify the CITY of any proposed increase to this maximum amount of compensation as a result of additional legal services and seek the CITY’s prior approval, which it shall approve at City’s sole discretion, for any requested increase.

EXHIBIT C
INSURANCE

ATTORNEY, at ATTORNEY's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by ATTORNEY, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

ATTORNEY shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, ATTORNEY; products and completed operations of ATTORNEY; premises owned, leased or used by ATTORNEY; and automobiles owned, leased, hired or borrowed by ATTORNEY. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. ATTORNEY's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of ATTORNEY's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by ATTORNEY shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that ATTORNEY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

ATTORNEY shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to : Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose—Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

ATTORNEY shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D
SPECIAL PROVISIONS

Retroactive Services.

It is understood and agreed that ATTORNEY has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by ATTORNEY prior to the date of this AGREEMENT, CITY agrees to compensate ATTORNEY for those services in accordance with the terms of this AGREEMENT. However, in no event shall ATTORNEY be compensated for work performed for CITY prior to July 8, 2020.