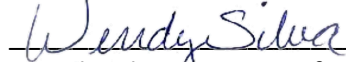





REPORT TO CITY COUNCIL

Approved by:


Wendy Silva, Director of Human Resources


Arnaldo Rodriguez, City Manager

Council Meeting of: August 2, 2023

Agenda Number: D-3

SUBJECT:

Legal Services Agreement for City Attorney Services

RECOMMENDATION:

Adopt a Resolution approving a Legal Services Agreement with Aleshire & Wynder, LP, to provide City Attorney Services

SUMMARY:

The City Attorney is a direct report of the City Council. Since 2019, the City has contracted with Montoy Law Corporation, and specifically Hilda Cantú Montoy, to provide City Attorney services. Ms. Montoy announced her retirement, with City Attorney services to the City of Madera ceasing mid-July 2023. At Council's direction, a Request for Proposals (RFP) was published for contract City Attorney services. Based on the outcome of the RFP process, Council selected the firm of Aleshire & Wynder, LP, as the most preferred provider of services and directed staff to negotiate an agreement to provide City Attorney services. The requested action is to approve the agreement for services.

DISCUSSION:

Prior to 2019, the City utilized an in-house City Attorney service delivery model. Over time, this model consisted of one to two attorneys on staff and one paralegal. In 2019, the City moved to a contract service delivery model for City Attorney services. The services were provided by Montoy Law Corporation, with Hilda Cantú Montoy designated as City Attorney for the City of Madera. Ms. Montoy advised the City Council of her intent to retire and staff was directed to publish an RFP for contract City Attorney services.

The RFP was published on the City's Planet Bids portal May 19, 2023, for a period of four (4) weeks. In addition to using functionality within the Planet Bids system to announce the RFP, staff

identified firms known to provide contract City Attorney services and sent direct letters inviting participation in the RFP process. At the conclusion of the publication period, the City received fifteen (15) proposals for services. All proposals were reviewed by the City Council, and the top four (4) proposals were invited to interview in-person with the Council. At the conclusion of those interviews, the firm Aleshire & Wynder, LP, was the preferred provider of services. Staff was directed to negotiate an agreement for Council's consideration with the preferred firm.

A Legal Services Agreement has been prepared for Council's consideration, provided as Exhibit A to the resolution contemplated herein. Key provisions of the proposed agreement include the following.

1. Term
 - a. The Agreement will be effective August 3, 2023, for a period of two (2) years.
 - b. The agreement will renew annually thereafter based on satisfactory performance reviews of firm by the City Council.
2. Termination
 - a. The City may terminate the agreement at any time.
 - b. Firm may terminate the agreement with seventy-five (75) days' notice to City.
3. Assignment of Personnel
 - a. Shannon Chaffin will be the designated City Attorney.
 - b. Any changes to the designated City Attorney or any attorneys assigned to work on City matters must be approved by the City Manager.
4. Fee Schedule
 - a. An introductory partner rate of \$250 per hour was negotiated through June 30, 2024. All other rates will be as proposed by firm in their RFP submission. The partner rate will revert to the originally proposed rate of \$265 per hour effective July 1, 2024. No other rate adjustments will occur between commencement of the agreement and December 31, 2024.
 - b. Beginning January 2025, and annually thereafter, rates will be subject to an adjustment based on Consumer Price Index West Region for All Urban Consumers (CPI) October release. Firm may choose to not apply the CPI adjustment.
 - c. Firm must notify City in writing by November 30 of each applicable year of any proposed CPI increase to the rates.

FINANCIAL IMPACT:

All work to be performed under the Agreement is to be billed by hourly rate or cost-recovery of actual expenses incurred by firm. The total financial impact of the new Legal Services Agreement will be determined by work assigned to the firm. Council will continue to be provided with informational reports on the published meeting agenda advising of expenses incurred and year-to-date total expenditures. Funds are included in the proposed Fiscal Year 2023-34 operating budget to pay for contract legal services.

ALTERNATIVES:

Council could:

- Direct staff to further negotiate with the preferred firm on contract terms;
- Direct staff to negotiate with a different firm; or
- Direct staff to publish a new RFP.

ATTACHMENTS:

1. Resolution
 - a. Exhibit A: Legal Services Agreement with Aleshire & Wynder, LP

Resolution No. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
APPROVING A LEGAL SERVICES AGREEMENT WITH ALESHIRE & WYNDER,
LP, TO PROVIDE CITY ATTORNEY SERVICES**

WHEREAS, the City of Madera (City) published a Request for Proposals (RFP) seeking qualified legal firms or individuals to provide contract City Attorney Services; and

WHEREAS, at the conclusion of the RFP publication period, the City received fifteen (15) proposals for services; and

WHEREAS, after review and ranking of submitted proposals and in-person interviews with the City Council, the firm Aleshire & Wynder, LP, was identified as the preferred service provider for City Attorney services; and

WHEREAS, Aleshire & Wynder, LP, is qualified to provide City Attorney Services and desires to enter into an agreement with City to provide such services; and

WHEREAS, a Legal Services Agreement has been prepared that is in the best interests of both parties.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The Legal Services Agreement with Aleshire & Wynder, LP, attached hereto as Exhibit A and incorporated herein, is approved.
3. This resolution is effective immediately upon adoption.

* * * * *

Exhibit A

**CITY OF MADERA
LEGAL SERVICES AGREEMENT**

This Legal Services Agreement (“Agreement”) is made and entered into the 2nd day of August, 2023, by and between the CITY OF MADERA, a municipal corporation of the State of California, hereinafter called “City” and ALESHIRE & WYNDER, LP, hereinafter called “Firm”.

RECITALS

- A. City desires to obtain City Attorney Legal Services (“Services”) and issued a Request for Proposals for said Services.
- B. Firm has the legal competence, experience, and qualifications necessary to provide professional legal services to the City and is licensed to practice law in the State of California.
- C. City desires to retain Firm to provide said Services, as detailed further herein.
- D. City desires to retain Firm, and Firm desires to provide City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Firm agree as follows:

AGREEMENT

1. Scope of Services. Firm shall perform, to the satisfaction of City in accordance with this Agreement, the Services described in the “Scope of Services” attached hereto as **Exhibit A** and incorporated herein by reference. Firm shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all services described herein.
2. Commencement of Services; Term and Termination of Agreement. This agreement shall be effective on August 3, 2023, for a period of two (2) years after approval by the City Council at a duly scheduled meeting thereof. The agreement will renew in one-year (1-year) increments thereafter based on satisfactory annual performance reviews of Firm with the City Council. Firm may be contacted following termination of the Agreement for clarification and consultation on matters covered during performance of the Scope of Services. Any such contact will be billed in accordance with Section 4 of this Agreement.
 - (a) Termination by City. City reserves the right to discharge Firm and terminate this Agreement at any time. In the event of such discharge or termination, the City shall compensate Firm for services rendered and expenses necessarily incurred up to and including the date of termination. City shall terminate services and/or the Agreement by delivering to Firm a written notice specifying the extent to which services and/or the

Agreement are terminated and the effective date of the termination. Notice of termination shall be mailed and emailed as follows:

Aleshire & Winder, LP
Shannon Chaffin, Partner
2440 Tulare Street #410
Fresno, CA 93721
schaffin@awattorneys.com

(b) Termination by Firm. Firm may terminate this Agreement at any time by giving the City not less than seventy-five (75) days prior written notice. If Firm elects to terminate this Agreement, City's rights under any pending matter which may arise from Firm's services hereunder shall not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California. Notices required under this section shall be mailed and emailed as follows:

City of Madera
Arnoldo Rodriguez, City Manager
205 W. 4th Street
Madera, CA 93637
arodriguez@madera.gov

(c) Effect of Termination. Upon receipt of a termination notice, Firm shall: (i) promptly discontinue all Services affected (unless the notice directs otherwise); and (ii) deliver or otherwise make available to the City, without additional compensation, all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Firm in performing this Agreement, whether completed or in process. Following the termination of this Agreement for any reason whatsoever, City shall have the right to utilize such information and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by Firm. Firm may not refuse to provide such writings or materials for any reason whatsoever.

3. Assignment of Personnel.

(a) Assignment of Personnel. Firm shall make every reasonable effort to maintain the stability and continuity of Firm's staff and subcontractors assigned to perform the Services under this Agreement. Shannon Chaffin is designated as City Attorney for City. It is understood that from time-to-time, Firm may subcontract with other attorneys to provide services to City or designate other attorneys or support staff from within Firm's resources to provide services to City. Assignment to attorneys, support staff, or subcontractors other than the designated City Attorney is subject to consultation and confirmation of the City Manager. All work performed by other than the designated City Attorney will be performed under close

supervision of the City Attorney. Firm shall notify City of any changes in Firm's staff and subcontractors assigned to perform the Services under this Agreement as soon as is practicable to provide such notice.

(b) Cooperation with Special Counsel. It is understood that from time to time the City may wish to retain Special Counsel for certain specified services. Firm will cooperate and collaborate with Special Counsel.

(c) Additional Services. Firm shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in **Exhibit A** unless such additional services are authorized in advance and in writing by the City Manager of City. Firm shall be compensated for any such additional services in the amounts and in the manner agreed to by the City and Firm, not to exceed the established Fee Schedule in **Exhibit B**.

4. Compensation for Services. City shall compensate Firm for rendering the Services as follows:

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Firm by the amounts specified in the Fee Schedule attached hereto as **Exhibit B** and incorporated herein by this reference.

(b) No adjustments to the Fee Schedule will be made beyond those identified in **Exhibit B**.

(c) Each month Firm shall invoice City for all work performed and expenses incurred during the preceding month. Invoices shall be submitted by the fifteenth of the following month (i.e., invoice for the month of January will be submitted no later than February 15). The billing statements shall be prepared and organized in a manner that facilitates an efficient review of the services performed and expenses incurred in order to provide City with a clear and complete understanding of how time was devoted to specific tasks and the fees and costs associated therewith. Invoices shall be made directly to the following address:

City of Madera
Attn: City Manager's Office
205 W. 4th Street
Madera, CA 93637

(d) City shall independently review each invoice submitted by Firm to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. The invoiced amount shall be paid within 30 calendar days unless City disputes any charges or expenses. If any charges or expenses are disputed, City shall pay the undisputed amount, and notify Firm of the nature and amount of the disputed charge or expense via email to the designated City Attorney. The parties shall seek to resolve the disputed items(s) by mutual agreement as expeditiously as possible.

(e) Payment to Firm for work performed under this Agreement shall not be deemed to waive any defects in work performed by Firm.

5. Independent Contractor Status. Firm and its subcontractors shall perform the Services as independent contractors and not as officers, employees, agents, or volunteers of City. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Firm's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Firm's employees or subcontractors, any claim or right of action against City. Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Firm or its agents or employees perform the services under this Agreement.

6. Qualifications and Professional Standards. Firm represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. In meeting its obligations under this Agreement, Firm shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Firm under this Agreement. Firm represents that to the extent Firm utilizes subcontractors, such subcontractors are, and will be, qualified in their fields. Firm also expressly represents that both Firm and its subcontractors, if any, are now, and will be throughout their performance of the Services under this Agreement, properly licensed or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement. Firm and its subcontractors, if any, shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with and keep themselves informed of all applicable laws and regulations.

7. Identity of Subcontractors and Sub-Consultants. Firm shall before commencing any work under this Agreement provide to City in writing: (a) the identity of all subcontractors and sub-consultants (collectively referred to as "subcontractors"), if any, which Firm intends to utilize in Firm's performance of this Agreement; and (b) a detailed description of the full scope of work to be provided by such subcontractors. Firm shall only employ subcontractors pre-approved by the City Manager in writing and in no event shall Firm replace an approved subcontractor without the advance written permission of City through its City Manager, with the understanding that City's permission will not be unreasonably withheld. Notwithstanding any other provisions in this Agreement, Firm shall be liable to City for the performance of Firm's subcontractors.

8. Subcontractor Provisions. Firm shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Firm owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions, and other work product prepared and performed by subcontractors for Firm; and (c) compliance with all laws and certifications as required under this Agreement.

9. Power to Act on Behalf of City. Firm shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization. The designated City Attorney may act within any provisions of the City of Madera Municipal Code that provide authority or power to act on the City's behalf in the capacity of City Attorney within the parameters set forth therein.

10. Record Keeping; Reports. Firm shall keep complete records showing the type of Services performed for the City. Firm shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Firm and its subcontractors for inspection and audit purposes regarding Services rendered for the City. Firm shall provide City with an electronic draft of all reports and a copy of all final reports prepared by Firm under this Agreement.

11. Ownership and Inspection of Documents. All data, tests, reports, documents, conclusions, opinions, recommendations, and other work product generated by or produced for Firm or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Firm shall make available for inspection and copying all such Work Product and all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Firm shall not release any Work Product to third parties without prior written approval of the City Manager. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

12. Confidentiality. All data, reports, conclusions, opinions, recommendations, and other work product prepared and performed by and on behalf of Firm in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Firm shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees, affiliates, and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Firm shall also require its subcontractors to be bound to these confidentiality provisions.

13. City Name and Logo. Firm shall not use City's name or insignia, photographs relating to the City projects for which Firm's services are rendered, or any publicity pertaining to the Firm's services under this Agreement in any magazine, trade paper, newspaper, television, or radio production or other similar medium without the prior written consent of City through its City Manager.

14. Conflicts of Interest. Firm warrants that neither Firm nor any of its employees have an interest, present or contemplated, which would conflict in any manner with the interests of the City or which would in any way hinder Firm's performance of services under this Agreement. Firm covenants that no person having any such interest, whether an employee or subcontractor shall

perform the Services under this Agreement. During the performance of the Services, Firm shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission. City understands and acknowledges that Firm is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Firm is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section. City understands and acknowledges that Firm will perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement, and any such future service shall not be considered a conflict of interest for purposes of this section.

15. Non-liability of Officers and Employees. No officer or employee of City shall be personally liable to Firm, or any successors in interest, in the event of a default or breach by City for any amount which may become due Firm or its successor, or for any breach of any obligation under the terms of this Agreement.

16. City Right to Employ Other Firms. This Agreement is non-exclusive with Firm. City reserves the right to employ other legal service providers in connection with the Services at its discretion.

17. Insurance. Firm shall obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in **Exhibit C** attached hereto and incorporated herein by this reference. All insurance policies shall be subject to City approval as to form and content. Firm shall provide City with copies of required certificates of insurance upon approval of this agreement by City Council, and annually thereafter on or before the policy renewal date.

18. Indemnity and Defense. Firm shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Firm's performance of its obligations under this agreement or out of the operations conducted by Firm, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Firm's performance of this agreement, the Firm shall provide a defense to the City indemnitees, or at the City's option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

If the Firm is named in a lawsuit that arises out of an act or mission by the City Council, a City commission, City committee, or City employee, which was made against the express advice of the Firm, or where the Firm was not consulted, the City would defend and identify the Firm.

19. Compliance with All Laws. Firm shall be familiar with and shall comply with all City, State, and Federal laws and regulations applicable to the work to be performed under this Agreement. In providing the services required under this Agreement, Firm shall at all times comply with all applicable laws, regulations, and resolutions of the United States, the State of California, and the

City of Madera now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Firm without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Firm shall not assign the payment of any monies due Firm from City under the terms of this Agreement to any other individual, corporation, or entity. City retains the right to pay any and all monies due Firm directly to Firm.

21. Form and Service of Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: Arnaldo Rodriguez
 City of Madera
 205 W. 4th Street
 Madera, CA 93637
 Email: arodriguez@madera.gov

To Firm: Aleshire & Winder, LP
 Shannon Chaffin, Partner
 2440 Tulare Street #410
 Fresno, CA 93721
 schaffin@awattorneys.com

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

22. Entire Agreement. This Agreement, including the attachments and exhibits, represents the entire Agreement between City and Firm, and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Firm and only in the capacity as described within this Agreement.

23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

24. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

25. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as

though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

26. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Firm in the County of Madera, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

27. Attorneys' Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Non-Discrimination. Firm shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Firm employees or applicants for employment. Firm shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

IN WITNESS WHEREOF, the City and Firm have executed this Agreement on the date(s) set forth below.

ALESHIRE & WYNDER

CITY OF MADERA

By: _____
Shannon Chaffin, Partner

By: _____
Santos Garcia, Mayor

Date: _____

Date: _____

ATTEST:

By: _____
Alicia Gonzalez, City Clerk

EXHIBIT A

SCOPE OF SERVICES

1. Act as the City's designated City Attorney.
2. Provide advice and training to the City Council, Boards and Commissions, City officials, and staff on legal matters pertaining to municipal government, including the Ralph M. Brown Act, AB 1234 ethics, conflicts of interest, parliamentary procedures for running meetings, and other legal requirements applicable to municipalities and their elected officials imposed by statute.
3. Provide legal advice, written legal opinions, and consultation on matters affecting the City to the City Council, City Manager, boards, commissions, committees, officers, and employees of City in accordance with such policies and procedures as may be established by City.
4. Review agendas and staff reports for:
 - a. City Council
 - b. Successor Agency
 - c. Planning Commission
 - d. Various other City committees/commissions, as needed.
5. Prepare or review necessary legal documents such as: ordinances and resolutions; various types of agreements; real property instruments of varying nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bond size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memorandums of understanding; franchise agreements; bargaining agreements and bargaining agreement language, employment agreements, independent contractor agreements, investigative reports, as required, Public Records Act requests/responses, and similar documents, as requested by City.
6. Represent and advise City on pending and potential litigation as requested by City.
7. Attend meetings virtually or in person and advise on procedural and substantive issues that arise during meetings as needed. Regular meeting dates for the identified bodies are:
 - a. City Council: 1st & 3rd Wednesday of each month, 6:00 pm (generally required)
 - b. Redevelopment Agency Successor Agency: 2nd Wednesday of each month, 6:00 pm (as needed)
 - c. Planning Commission: 2nd Tuesday of each month, 6:00 pm (as needed)

- d. Council workshops or other meetings as specified by the City (as needed)
8. Analyze proposed and enacted legislation, published legal opinions, and other matters that may have an impact on the operations of the City upon request.
9. Review Requests for Proposals to be published before publication upon request.
10. Appearances at Court for *Pitchess* Motions.
11. Review of Public Records Act requests as well as documents scheduled for production prior to response/production upon request.
12. Potentially litigate matters not covered by the City's insurance pool, to include land use and planning issues, breach of contract matters, and the like.
13. Upon request, provide litigation coordination and oversight for tort liability claims and litigation. Primary legal coverage is provided through the City's insurance pool; the City Attorney's office provides general legal oversight in partnership with the City's risk management staff.
14. Prepare annual audit letter regarding all pending litigation.
15. File restraining orders on behalf of City and staff, as necessary.
16. Upon request, prepare and/or review Deeds of Reconveyance, demands for payment, Release of Lien documents and other related documents.
17. Provide legal assistance pertaining to land use issues including, but not limited to, property acquisition, property disposals, public improvements, easements, dedications, CEQA, and public utilities as requested.
18. Provide legal advice and services on personnel matters as requested.
19. Be available for telephone consultation with City staff, as needed, on legal matters which are within their area of operation and maintain office hours at City Hall or virtually as requested by the City Manager at times mutually agreed to by the City Manager and designated City Attorney.
20. Promptly respond to calls, emails, and correspondence from City officials and staff.
21. Perform such other legal duties as may be required by the City Council and City Manager that are necessary to complete the performance of City Attorney functions.
22. In addition to the more technical scope of work outlined above, the City Attorney must understand his/her role in local government, avoiding political debates and active participation in the policy and managerial decision-making process entrusted to the City Council and City Manager. The City Attorney is expected to provide technically sound, impartial, and consistent legal advice to members of the City Council and City staff while

maintaining trust and an unwavering ethical standard no matter the situation or individuals involved.

EXHIBIT B

SCHEDULE OF COMPENSATION

1. Fee Schedule

Table 1. Hourly Fee Schedule			
<i>Personnel Category</i>	<i>General Services</i>	<i>Litigation & Special Services</i>	<i>Unique Services & Reimbursable Fees</i>
Rates effective August 3, 2023, through June 30, 2024			
Partner	\$250	\$290	\$350-\$400*
Associate	\$245	\$250	\$350
Law Clerk	\$155	\$165	\$165
Paralegal	\$155	\$165	\$165
Document Clerk	\$105	\$105	\$105
Travel	No Charge	Hourly Rate + Mileage	
Rates effective July 1, 2024			
Partner	\$265	\$290	\$350-\$400*
Associate	\$245	\$250	\$350
Law Clerk	\$155	\$165	\$165
Paralegal	\$155	\$165	\$165
Document Clerk	\$105	\$105	\$105
Travel	No Charge	Hourly Rate + Mileage	

*Unique Services for Partner Rate will be billed as \$350/hour for water-law/litigation, \$400/hour for finance matters, and \$375/hour for any work reimbursable to City under a third-party agreement

2. Fee Schedule Adjustments

The Fee Schedule as illustrated in Table 1 above shall remain in effect through December 31, 2024, unless otherwise adjusted by the City Council and Firm by mutual written agreement.

Commencing January 1, 2025, and each January 1 thereafter for the term of the agreement, all identified hourly rates are subject to increases based on the increase in the Consumer Price Index West Region for All Urban Consumers (CPI) October release, rounded to the nearest dollar, applicable to City’s area for the immediately preceding calendar year (12-month lookback). Firm shall have the right to unilaterally defer or waive any CPI adjustment at its discretion. Firm shall provide City written notice by November 30 of each applicable year of proposed adjustments. Said written notice shall be provided to the City Manager via email or delivery through the United States Postal Service.

3. Definition of Service Categories

a. General Legal Services are defined as:

- i) Providing routine legal advice, consultation, and opinions to City Council and staff;
- ii) Assisting in the preparation and review of ordinances, agreements, contracts and related documents, forms, notices, certificates, deeds, and other documents required by the City.
- iii) Attending all City Council, Planning Commission, and other meetings of Boards and Commissions of the City as deemed necessary, including when serving in an advisory capacity to the Council, Commission, or Board during an administrative hearing.
- iv) Attending weekly staff meeting as needed, at the discretion of the City Manager.
- v) Consulting with Councilmembers, City Manager, and City staff as needed.
- vi) Rendering legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions.
- vii) Performing research and interpreting laws, court decisions, and other legal authorities to prepare legal opinions and to advise the City Council and management staff on legal matters pertaining to City operations.
- viii) Monitoring pending and current state and federal legislation and case law as appropriate.
- ix) Coordinating the work of outside counsel as needed and as directed by the City Council and City Manager.
- x) Code enforcement matters to include preparing templates, ordinance updates or replacements, answering questions from staff and providing routine advice, assisting with notices, and negotiations with represented parties for compliance.
- xi) Legal analysis of Public Records Act requests and preparation of responses on behalf of the City.
- xii) Preparation and legal analysis of routine City contracts.
- xiii) Review and advice on purchasing matters, claim settlement authority, and government tort claim notices in compliance with City's municipal code provisions where City Attorney concurrence is required.

Firm shall not charge for travel time or mileage to and from City Hall or any services provided under the General Legal Services category. Firm shall not charge for brief, routine telephone calls with the City Council, City Manager, and City staff.

b. Special Legal Services are defined as:

- i) Code enforcement civil court proceedings and administrative hearings where Firm is acting as prosecutor on behalf of City.
- ii) Civil proceedings to appoint a receiver pursuant to the Health and Safety Code.
- iii) Administrative hearings and appeals involving labor and employment, administrative citations, permit and conditional use permit denials, revocation hearings of approved entitlements, and cannabis appeal hearings when Firm is acting as prosecutor on behalf of City.
- iv) Preparing and conducting investigations; representing City staff during investigations.
- v) Preparation and attendance at *Pitchess* motion hearings.

- vi) Preparation for and attendance at third party depositions of City staff.
- vii) Labor negotiations and preparation of personnel rules and procedures.
- viii) Labor Commissioner hearings.
- ix) Legal analysis of use of force incidents.
 - x) On-call response to use of force incidents.
- xi) Preparation for and attendance at *Skelly* hearings.
- xii) Preparing and advising on employment items including employment notices such as interview notices, notice of intended disciplinary action, and notice of disciplinary action.

In addition, the following constitute special legal services: Successor Agency matters, rent control, housing, enterprise funds, franchise negotiations, major contract negotiations, municipal finance matters (other than bonds and similar financial services), environmental and toxics, water, energy, franchises, utilities and telecommunications, solid waste, mobile home matters, and similar matters requiring special expertise.

- c. Litigation Legal Services are defined as:
 - i) Civil litigation commenced by or filed against the City in state or federal court.
 - ii) Writ of mandate, eminent domain, unlawful detainer, and small claims actions.
 - iii) Mediations, arbitrations, Public Employee Relations Board, and California Department of General Services Office of Administrative Hearings hearings.
 - iv) Injunctions, restraining orders, judgment liens, and protective orders.
 - v) State or federal court appellate proceedings.

The litigation services rates provided within this proposal do not include any fees or costs charged by an expert witness or specially retained counsel.

- d. Unique Services are defined as specialty public finance and certain water-law work.
 - i) Public finance services include the issuance or potential issuance of debt, loans, certificates of participation including formation of assessment or community facilities districts, etc. Expenses shall be charged at the cost thereof, which expenses shall include the cost of special tax counsel, if applicable, in an amount not to exceed \$5,000.00 and not to exceed other expenses fee (excluding special tax counsel) of \$2,500.00 per bond transaction.
 - ii) Water-law work, including issues regarding water rights and litigation regarding the same.

e. Fees Reimbursable by a Third Party

Legal services performed on matters where the City is reimbursed by a third party, such as development agreements.

4. Reimbursable Expenses

In addition to the hourly rates, Firm shall be reimbursed for out-of-pocket expenses such as photocopies (\$0.20 per page) and other reproduction costs, facsimile charges, messengers and couriers, court reporters, mileage costs to court and administrative proceedings, travel expenses outside of the City for special and litigation services, and other costs and expenses incurred on behalf of the City. Notwithstanding the foregoing, Firm shall not charge for word processing, routine computer-assisted legal research, local calls, or mileage to City Council meetings, City Hall or City offices. When on site, Firm shall have the ability to use City copiers and telephones without charge.

Firm shall charge for travel outside of the City in connection with administrative or judicial proceedings, or when traveling outside of Fresno or Madera County. Travel costs include mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals. Travel time may also be charged in connection with such proceedings. In addition, the City will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the City.

Registration fees for attorneys attending conferences and seminars shall be paid by Firm and are never charged to the City unless attendance is expressly requested by the City.

EXHIBIT C

INSURANCE

Without limiting Firm's indemnification of City, and prior to commencement of Work, Firm shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance

Firm shall maintain limits no less than:

- \$2,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- \$2,000,000 **Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Firm arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and \$1,000,000 **Employer's Liability** per accident for bodily injury or disease. Firm shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- \$1,000,000 **Professional Liability (Errors & Omissions)** per claim and in the aggregate. Firm shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Firm agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement. The cost of such insurance shall be included in Firm's bid.

Maintenance of Coverage

Firm shall procure and maintain, for the duration of the contract, 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 Firm, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

Firm shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Firm, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Firm hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

Firm acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Firm of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Firm maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Firm.

Notice of Cancellation

Firm agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible.

Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims

Firm shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Firm's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.