

**LEGAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN PABLO AND
MURPHY & ASSOCIATES PC**

THIS AGREEMENT for consulting services is made by and between the City of San Pablo ("City") and the law firm of Murphy & Associates PC ("Counsel") as of July 1, 2020.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Counsel shall provide legal services to City in connection with the City's undertakings to promote and accomplish new economic development, including consultation and advice, preparation and review of agreements, financing materials and related documents, legal research and opinions regarding proposed actions. Services shall be provided as particular assignments are given from time to time by the City Manager or the City Attorney, which may be given orally and then confirmed in writing. Litigation services are not included under this Agreement, and in the event the City desires to retain Counsel for litigation, a separate agreement shall be entered into.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and continue unless terminated as provided for in Section 8. Timelines for particular work assignments shall be agreed upon with each assignment.
- 1.2 **Standard of Performance.** Counsel represents that it is experienced in providing these services to public clients and is familiar with the plans and needs of City. Counsel shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Counsel is engaged in the geographical area in which Counsel practices its profession.
- 1.3 **Assignment of Personnel.** Counsel shall assign only competent personnel to perform services pursuant to this Agreement with C. Nicole Murphy serving as the key contact between the City and Counsel. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Counsel shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Counsel shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Counsel's obligations hereunder.

Section 2. COMPENSATION.

City hereby agrees to pay Counsel on an hourly basis for the services under this Agreement. The hourly rate for services shall be the general client rates established by Counsel from time-to-time for its services. At the present time, these rates are \$300 for C. Nicole Murphy, \$275 for associate attorneys, and \$175-\$225 for legal assistants or law clerks. Counsel shall notify the Contract Administrator of any change in rates at least thirty (30) days prior to the effective date of the change. Moreover, not more than Fifty

Thousand dollars (\$50,000) shall be paid for services and reimbursable costs incurred under this Agreement, unless the Agreement is amended. Except as specifically authorized by City, Counsel shall not bill City for duplicate services performed by more than one person.

The parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Counsel and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Counsel shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- Identification of the project/application, the original work order amount, the amount of prior billings, the total due this period, and the balance available;
- Description of the services performed, time spent performing the services and identify of person performing the services

In addition, Counsel shall prepare a cover page or summary with only the number of hours and dollar amount that can be provided in the event of a Public Records Act request.

2.2 Payment Schedule.

2.2.1 City shall have 30 days from the receipt of an invoice that complies with all of the requirements of Section 2.1 to pay Counsel.

2.3 Total Payment. In no event shall Counsel submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Payment of Taxes. Counsel is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.5 Authorization to Perform Services. Counsel is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

2.5 Reimbursable Expenses. Reimbursable expenses do not include ordinary copying, regular mailing, phone or typical computer work. Travel time shall be a reimbursable expense. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Counsel shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Counsel only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Counsel's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Counsel, at its own cost and expense, shall procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by the Counsel and its agents, representatives, employees, and subcontractors. Counsel shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Counsel shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Counsel's proposal. Counsel shall not allow any subcontractor to commence work on any subcontract until Counsel has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Insurers shall have an A.M. Best's rating of no less than A:VII unless otherwise accepted by the City in writing:

4.1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Counsel's services include work within 50 feet of a railroad right of way, the Counsel shall have removed any exclusion on their liability policy limiting coverage for work near a railroad, or shall provide a Railroad Protective Liability policy in favor of the City. Limits for such coverage shall be no less than \$5,000,000.

4.2. Automobile Liability Insurance. ISO Form Number CA 00 01 covering any auto (Code 1), or if Counsel has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

4.3. Workers' Compensation Insurance. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4.4. Professional Liability (Errors and Omissions): Insurance appropriate to the Counsel's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

4.5. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

4.5.1 *Additional Insured Status.* The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Counsel including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Counsel's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

4.5.2 *Primary Coverage.* For any claims related to this contract, the Counsel's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Counsel's insurance and shall not contribute with it.

4.5.3 *Notice of Cancellation.* Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

4.5.4 *Waiver of Subrogation.* Counsel hereby grants to City a waiver of any right to subrogation which any insurer of said Counsel may acquire against the City by virtue of the payment of any loss under such insurance. Counsel agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

4.5.5 *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Counsel to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

4.5.6 *Claims made policies.* If any of the required policies provide claims-made coverage:

4.5.6.1 The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

4.5.6.2 Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

4.5.6.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Counsel must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

4.6. Certificate of Insurance and Endorsements. Counsel shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Counsel's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

4.7. Subcontractors. Counsel shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.

4.8. Higher limits. If the Counsel maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Counsel. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

4.9 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

4.10 Remedies. In addition to any other remedies City may have if Counsel fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Counsel's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Counsel to stop work under this Agreement or withhold any payment that becomes due to Counsel hereunder, or both stop work and withhold any payment, until Counsel demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND COUNSEL'S RESPONSIBILITIES

5.1. COUNSEL shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY) and hold harmless CITY, and its employees, officials, volunteers and agents ("Indemnified Parties") from and against any and all losses, claims, damages, costs and liability arising out of any personal injury, loss of life, damage to property, or any violation of any federal, state, or municipal law or ordinance, arising out of or resulting from the performance of this Agreement by COUNSEL, its

officers, employees, agents, volunteers, subcontractors or sub-Counselors, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of CITY.

5.2. In the event that Counsel or any employee, agent, sub-Counsel or subcontractor of Counsel providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Counsel shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Counsel or its employees, agents, sub-Counselors or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.3. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Counsel from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5.4. By execution of this Agreement, Counsel acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

Section 6. STATUS OF COUNSEL.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Counsel shall be an independent contractor and shall not be an employee of City. City shall have the right to control Counsel only insofar as the results of Counsel's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Counsel accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Counsel and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Counsel No Agent.** Except as City may specify in writing, Counsel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Counsel shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Counsel and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Counsel and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Counsel represents and warrants to City that Counsel and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Counsel represents and warrants to City that Counsel and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Counsel and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Counsel shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation or any other legally protected status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Counsel under this Agreement. Counsel shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Counsel thereby.

Counsel shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

- 7.6 **COVID-19 Pandemic.** All City of San Pablo programs and services must be in compliance with current health orders issued by Contra Costa County Health Services at: <https://www.coronavirus.cchealth.org/health-orders>; including but not limited to social distancing requirements: <https://cchealth.org/coronavirus/pdf/2020-0331-Appendix-A-Social-Distancing-Protocol.pdf>. Consultant shall comply with these requirements and contact City staff immediately if there is any issue with compliance.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Counsel.

Counsel may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Counsel shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Counsel delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Counsel or prepared by or for Counsel or the City in connection with this Agreement.

8.2 Extension. City may, in their sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Counsel understands and agrees that, if City grants such an extension, City shall have no obligation to provide Counsel with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Counsel for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Counsel recognize and agree that this Agreement contemplates personal performance by Counsel and is based upon a determination of Counsel's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Counsel. Counsel may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Counsel shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Counsel shall survive the termination of this Agreement.

8.6 Options upon Breach by Counsel. If Counsel materially breaches any of the terms of this Agreement, City' remedies shall include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement; and/or

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Counsel pursuant to this Agreement

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Counsel's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Counsel prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Counsel hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.
- 9.2 Confidentiality.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Counsel prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be kept confidential by Counsel. Such materials shall not, without the prior written permission of City, be used by Counsel for any purpose other than the performance of this Agreement nor shall such materials be disclosed publicly. Nothing furnished to Counsel which is otherwise known to Counsel or is generally known, shall be deemed confidential. Counsel shall not use the City's name or logo or photographs pertaining to the services under this Agreement in any publication without the prior written consent of the City.
- 9.3 Counsel's Books and Records.** Counsel shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Counsel to this Agreement.
- 9.4 Inspection and Audit of Records.** Any records or documents that Section 9.3 of this Agreement requires Counsel to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.
- 9.5 Intellectual Property.** The City shall have and retain all right, title and interest, including copyright, patent, trade secret or other proprietary rights in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents and any other works of authorship fixed in any tangible medium or expression, including but not limited to physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Counsel under this Agreement. Counsel further grants to City a non-exclusive and perpetual license to copy, use, modify or sub-license any and all

Intellectual Property otherwise owned by Counsel which is the basis or foundation for any derivative, collective, insurrectional or supplemental work created under this Agreement.

Section 10 **MISCELLANEOUS PROVISIONS.**

- 10.1 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.2 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.3 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.4 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.5 **Conflict of Interest.** Counsel may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Counsel in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Counsel shall not employ any official of City in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Counsel hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Counsel was an employee, agent, appointee, or official of City in the previous twelve months, Counsel warrants that it did not participate in any manner in the forming of this Agreement. Counsel understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Counsel will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Counsel will be required to reimburse the City for any sums paid to the Counsel. Counsel understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.6 Inconsistent Terms. If the terms or provisions of this Agreement conflict with or are inconsistent with any term or provision of any attachment or Exhibit attached hereto, then the terms and provisions of this Agreement shall prevail.

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

10.8 Contract Administration. This Agreement shall be administered by Lynn Tracy Nerland, City Attorney ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.9 Notices. Any written notice to Counsel shall be sent to:

C. Nicole Murphy
Murphy & Associates PC
455 Capitol Mall, Suite 403
Sacramento, CA 95814

Any written notice to City shall be sent to:

City Manager
City of San Pablo
13831 San Pablo Avenue, Building 1
San Pablo, CA 94806

10.11 Integration. This Agreement and all attachments represent the entire and integrated agreement between City and Counsel and supersedes all prior negotiations, representations, or agreements, either written or oral.

APPROVED AS TO FORM:

**CITY OF SAN PABLO
A Municipal Corporation**

By _____
**Lynn Tracy Nerland
City Attorney**

By _____
**Matt Rodriguez
City Manager**

MURPHY & ASSOCIATES PC

By _____
**Name: C. Nicole Murphy
Title: President**

APPROVED AS TO CONTENT:

By _____
Patricia Ponce, City Clerk

Dated _____

07/20