

AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of July 2016 by and between the CITY OF SANTA CRUZ, a Municipal Corporation, hereinafter referred to as "City," and ATCHISON, BARISONE, CONDOTTI & KOVACEVICH, a Professional Corporation, hereinafter referred to as "Law Firm";

WHEREAS, ANTHONY P. CONDOTTI (hereinafter referred to as "Attorney"), is City Attorney of; and

WHEREAS, Attorney is a principal in the Law Firm whose members and associates (hereinafter referred to as "Law Firm Attorneys") specialize in the field of Governmental and Municipal law; and

WHEREAS, the CITY COUNCIL of City has determined it is in the best interest of City that it provide for its legal services by this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. Law Firm shall provide through the services of Law Firm Attorneys, all of those usual legal services required by City and customarily provided by the City Attorney, in particular, those legal services specified in Section 812 of the Santa Cruz City Charter. Attorney shall be the designated "City Attorney" for such purposes as may be required by law for the term of the Agreement. Law Firm shall devote such time and provide such services as may be reasonably necessary to carry out the purposes of this Agreement, and each member and associate of Law Firm shall be deputized therefor, and wherever required by the circumstances, or the context of applicable laws or regulations, each shall be referred to as Deputy City Attorney, Assistant City Attorney or Associate City Attorney.

2. The term of this Agreement shall commence on July 1, 2016 and shall continue through June 30, 2017 unless extended by mutual agreement, in writing.

3. City shall pay to Law Firm, for all legal services hereunder, excepting those special legal services and litigation services specifically hereinafter provided for, the sum of \$660,342.38 net after retirement contribution, payable in equal monthly installments on the first day of each month during the term hereof. The first such monthly installment shall be paid on or before August 1, 2016, for the period commencing July 1, 2016.

4. Law Firm shall be reimbursed, upon filing of a proper claim therefor, for all out-of-pocket expenses and costs advanced or paid on behalf of the City, including all court reporter fees and charges, on-line legal research fees, title company fees and charges, court costs, costs of outside investigators, or experts pertaining to general City litigation, printing of briefs, travel expenses, membership fees in organizations of municipal attorneys, and other similar costs and expenses. In this regard, City has determined that it is in the best interest of City that Law Firm Attorneys keep abreast of developments in Municipal Law, and one or more of them shall be expected to attend conferences of the League of California Cities, conferences of International

Municipal Lawyers Association, the American Bar Association State and Local Government Section, the National District Attorneys Association, conferences and meetings of Bay Area City Attorneys, and such other courses and seminars in Municipal Law as may be necessary to maintain current proficiency. Further, Law Firm Attorneys will be expected to serve on, and attend meetings of, official committees of the League of California Cities. Law Firm shall be reimbursed for reasonable out-of-pocket expenses for travel, lodging and incidental expenses in connection with service upon and attendance at such official committee meetings, conferences, courses and seminars, not to exceed \$15,000 per fiscal year.

5. This Agreement may be terminated on the following terms and conditions:
 - a. By City, upon providing Law Firm with thirty (30) days written notice thereof; provided, however, that in such event City shall pay to Law Firm, on the effective date of such termination, in addition to amounts earned under this contract, an amount equal to four (4) fixed monthly installment payments hereunder, plus accrued reimbursable expenses.
 - b. By Law Firm, upon providing City with four (4) months written notice thereof.

In the event of termination, Law Firm agrees to cooperate fully with City to achieve an orderly transition and assumption of duties by any succeeding City Attorney.

6. City shall authorize participation by Attorney and Successor City Attorney in the Public Employees Retirement System of the State of California (PERS) and will, by Resolution, establish the basis for calculation of contributions as required by City's contract with PERS.

7. Special legal services in connection with municipal bonds, certificates of participation, assessment proceedings or other types of capital improvement financing by or within the City, or legal proceedings undertaken in connection therewith, are hereby agreed and understood to be outside the usual services of City Attorney. In addition, Municipal Code enforcement services in excess of 15 hours per calendar month and paralegal services provided to the Partnership for Accountability, Connection and Treatment Program ("PACT") in excess of 32 hours per month week are hereby agreed and understood to be outside the usual services of City Attorney. For any legal services provided by Law Firm which, pursuant to this paragraph, are properly characterized as special legal services, Law Firm shall be paid a reasonable fee. Unless otherwise agreed to by the parties, a reasonable fee for purposes of this paragraph shall be \$250 per hour for work done by Law Firm Principals, and \$240 for all other Law Firm Attorneys and \$135 per hour for work done by Law Firm Paralegals and Law Clerks. With regard to paralegal services provided to PACT, the City shall have the right to re-open this contract to renegotiate this particular PACT paralegal services provision if, during any given fiscal year, paralegal costs charged by Law Firm for this paralegal service exceed \$40,000.

8. Law Firm shall be paid additional compensation for eminent domain proceedings, including all negotiations and acquisitions incident thereto, and for special litigation incidental to or arising out of any capital improvement project, which additional compensation shall be based

on the same hourly rates as specified in Paragraph 7, or such additional amounts as may be agreed upon from time to time.

9. It is further understood and agreed that if legal services are provided to any independent or separate agency or entity of government not operated as a department or division of City Government, such legal services shall not be deemed to be within the usual services of the City Attorney provided under this Agreement. Examples of separate agencies or entities are joint powers authorities and non-profit corporations governed by administrative or legislative bodies other than the City Council acting in its capacity as the City Council. Compensation for legal services provided to such agencies or entities by Law Firm at the request or the direction of City, shall be at the same rates specified in Paragraph 7, or such additional amounts as may be agreed upon from time to time.

10. It is further understood and agreed that legal services provided in connection with litigation, including the City's self-insured or uninsured risk for liability for damages (which shall include all risks insured against prior to August 1, 1975, and particularly including Worker's Compensation, Inverse Condemnation, Anti-Trust and Civil Rights Claims), or other litigation matters assigned to Law Firm for handling, shall not be deemed to be within the usual services of City Attorney provided for under this Agreement. Compensation for legal services provided in connection with such matters shall be at the same rates as set forth above. Should the City's costs for legal services provided by Law Firm pursuant to this paragraph 10 exceed \$350,000.00 at any point during the term of this Agreement, City shall have the right to reopen this provision of the agreement to renegotiate the hourly rate of compensation paid to Law Firm for its provision of services pursuant to this paragraph. Any such rate of compensation renegotiated pursuant to this reopener clause shall remain in effect for the outstanding term of the Agreement.

11. It is understood and agreed that if legal services are required to enforce the rules and regulations of any rent stabilization or rent control ordinance, adopted by the City Council or the electors of the City, such legal services shall not be deemed to be within the usual services of the City Attorney provided under this Agreement. Compensation for legal services provided in connection with enforcement of any such ordinance at the request or direction of the Council shall be at the rate specified for other special legal services, or such amount as may be agreed upon from time to time.

12. It is further understood and agreed that legal services provided at the City's request in connection with any development proposed by a private party or entity and for which for which the City, at its discretion, seek reimbursement shall be at the hourly rates set forth in Paragraph 7.

13. Law Firm shall provide all reasonable and necessary office facilities, equipment, books, supplies, secretarial services, employee benefits, insurance policies and other property or services necessary to carry out and provide the legal services required under this Agreement, and shall be responsible for all upkeep, care, maintenance, and risk of loss thereof.

14. This Agreement shall not be assigned by Law Firm without the consent of City, except to Attorney or Successor Attorney, or to a partnership or a professional legal corporation of which Attorney or Successor Attorney is a partner or shareholder.

15. Law Firm shall not accept private cases or clients which in the reasonable exercise of judgment by Law Firm Attorneys will, or may in the future, create conflicts of interest between City and such clients or cases. Should any such conflict develop, despite efforts to avoid conflicts, then Law Firm and its attorneys will immediately notify the City Council and appropriate measures will be agreed upon to remove the conflict or to resolve it consistent with Attorney and Law Firm's professional ethical obligations.

16. Indemnification. Attorney agrees to indemnify, defend, and hold harmless the City, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from Consultant's negligence, gross negligence, recklessness, or willful misconduct or patent or copyright violation in the performance of this agreement.

17. Insurance. Law Firm agrees to carry and maintain for the duration of this contract errors and omissions/professional liability insurance in the amounts specified in Exhibit A to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

"CITY"

CITY OF SANTA CRUZ, a
Municipal Corporation

By:


CITY MANAGER

ATCHISON, BARISONE, CONDOTTI &
KOVACEVICH, a Professional Corporation

By:


ANTHONY P. CONDOTTI

EXHIBIT A

Insurance Requirements

Certificate Requirements

The City will be issued a Certificate of Insurance (a Memorandum of Understanding will not be accepted) with the following minimum requirements:

- Certificate(s) will show current policy number(s) and effective dates;
- Coverage and policy limits will meet, or exceed, requirements below;
- The Certificate Holder will be City of Santa Cruz, Risk Manager, 877 Cedar St, Suite 100, Santa Cruz, CA 95060;
- Certificate will be signed by an authorized representative;
- An endorsement will be provided to show the City, its officers, officials, agents, employees, and volunteers as additional insureds.

Minimum Scope and Limits of Insurance

Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. The City will be entitled to coverage for the highest limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Coverage will be at least as broad as:

- Professional Liability (Errors and Omissions): \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

Consultant will maintain insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Insurance must be maintained and evidence of insurance must be provided for at least five years after date of completion of the agreement work. Also see "Claims Made Policies" section below.

- Commercial General Liability (CGL): \$1,000,000 (Including products and completed operations)

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.

- Automobile Liability: \$1,000,000

Proof of coverage for \$1 Million will be provided on ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), per accident for bodily injury and property damage.

- Workers' Compensation: 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.

Other Insurance Provisions

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

- Additional Insured Status

The City, its officers, officials, agents, 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 Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage will be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or through the addition of both CG 20 10 and CG 20 37 forms if later revisions used.

- Primary Coverage

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

- Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

- Waiver of Subrogation

Consultant hereby grants to the City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect 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.

The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Consultant, its employees, agents, and subcontractors.

- Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may at its option allow the Consultant to purchase coverage with a lower

deductible or retention, or require the Consultant to provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

- Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the agreement or the beginning of work performed under the agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work performed under the agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work performed under the agreement.

- Verification of Coverage

Consultant will 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 will not waive Consultant'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.

- Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

- 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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/02/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Monroe-Kelly Insurance Service
CONTACT NAME: Joanne M. Monroe
PHONE: 831-372-4511
FAX: 831-372-3812
E-MAIL: monroe1@redshift.com
INSURER(S) AFFORDING COVERAGE: Hartford Insurance Company

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Santa Cruz, its officers, officials, employees agents and volunteers as additional insured.

CERTIFICATE HOLDER: City of Santa Cruz Risk Management
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

