

May 18, 2023

Via Electronic Mail Only

Mayor Aalfs and Members of the
Portola Valley Town Council
765 Portola Road
Portola Valley, CA 94028
jaalfs@portolavalley.net

Re: Legal Retainer Agreement for Interim Town Attorney Services

Dear Mayor Aalfs and Members of the Portola Valley Town Council:

This letter sets forth the terms under which Shute, Mihaly & Weinberger LLP (“Firm”) will provide legal services to the Town of Portola Valley (“Client” or “Town”) as described below. If the Town agrees to the terms of this retainer agreement (“Agreement”), please sign a copy of this letter and return it to me following Council approval.

1. Legal Services to Be Provided

The Firm is retained to serve as Interim Town Attorney for the Town of Portola Valley in the interim period before the Town hires or retains a permanent Town Attorney. This Agreement covers Interim Town Attorney services only, and does not cover permanent Town Attorney services unless the Firm and Client enter into a new or amended Retainer Agreement, each in their discretion.

The primary Town Attorney responsible for representing the Town will be Firm Partner Catherine Engberg. Catherine will attend and provide advice at Town Council meetings. Firm Partner Rene Ortega will attend Town Council meetings if Catherine is unavailable. Catherine and/or Rene will attend Town Commission and Committee meetings upon request. Other members of the Firm may provide services to the Town as directed by Catherine.

A. The Firm will perform all functions of the Town Attorney, including, but not be limited to, the following services:

1. Representation of and advice to the Town Council, Committees and Commissions, and all Town officials in legal matters of municipal government;
2. Prepare or review ordinances, resolutions, leases, contracts, staff reports, or other documents, as requested by the Town;
3. Prepare or review all findings, decisions or other documents pertaining to legislative or quasi-judicial actions or decisions made by the Council, boards, commissions or officers, as requested by the Town;
4. Review Public Record Act requests and assist in responses, as necessary;
5. Available to assist with (a) personnel issues (excluding collective bargaining) in coordination with outside employment law counsel, and (b) general liability claims and litigation in coordination with outside insurance legal counsel;
6. Provide trainings as needed, such as on the Brown Act and Public Records Act;
7. Render legal advice to members of the Town Council and to the Town Manager, executive staff and employees with respect to Town matters. This advice will include, but not be limited to, issues related to the Brown Act, conflict of interest law, real estate transactions, due process requirements, the Permit Streamlining Act, California Environmental Quality Act, state Planning and Zoning law, the Mitigation Fee Act, election law, assessment districts, and constitutional restrictions on fees and taxes;
8. Provide advice regarding all claims and complaints by or against the City;
9. Represent the Town in litigation, arbitration, mediation, code enforcement, and administrative proceedings before other agencies. If litigation is being handled by outside legal counsel, manage and coordinate with outside legal counsel;
10. Negotiate and/or render advice with respect to negotiations pertaining to Town contracts, real estate transactions, and memoranda of understanding; and

11. Generally oversee and manage the Town's legal affairs and endeavor to insure that its policies, programs, and activities are carried out in compliance with all applicable law.

The Firm will provide these services in a timely manner. It will work closely with the Town Manager and be available for consultation with staff. The Firm will promptly respond to staff and Town Council members.

B. If the Firm determines that the best interests of the Town would be served by retaining outside counsel to represent the Town on a particular matter, the Firm shall inform the Town and request authorization to retain such outside counsel. Specifically, the Firm's duties under this Agreement do not include the following services, which the Firm expects will be primarily handled by outside legal counsel:

1. Administration and legal representation of workers' compensation claims and litigation, except for general legal advice in the area of workers' compensation and review of recommended settlements;

2. Negotiation and interpretation of M.O.U.'s with represented employees, disciplinary proceedings, and other matters related to labor and employment law, except to provide general legal advice on personnel matters related to the Town's rules and regulations, and to review the recommendations of outside counsel;

3. Legal services related to the issuance of municipal bonds;

4. Legal services related to liability claims and litigation tendered to the Town's insurer, except to provide general legal advice on matters related to the Town's processing of such claims and tenders, and to review the recommendations of outside counsel; and

5. Those matters as described in Section 7 below.

C. Insurance. The Firm agrees to maintain insurance in the following amounts:

1. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

2. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million Dollars (\$1,000,000) per incident.

3. Worker's Compensation insurance as required by the laws of the State of California.

4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide, or a California approved Surplus Lines carrier (e.g., Lloyd's of London).

2. Legal Fees, Costs and Billing Practices

The Firm's hourly billing rates for these services will be as follows:

Timekeeper	General (Non-Litigation) Services	Litigation Services and Reimbursement Matters
<i>Partner</i>	\$340	\$390
<i>Associate III</i>	\$315	\$365
<i>Associate II</i>	\$300	\$355
<i>Associate I</i>	\$285	\$335
<i>Planner</i>	\$285	\$335
<i>Paralegal</i>	\$215	\$255
<i>Law Clerk</i>	\$130	\$155

The Associate I category may include law school graduates who have not yet been admitted to a State Bar. Some Firm attorneys are only licensed to practice in states other than California; bar information for each attorney is available on the Firm's website (www.smwlaw.com).

Fees will be charged in increments of one-tenth of an hour.

In the event the Firm represents the Town either in litigation matters, or in matters in which the Town is reimbursed for the cost of attorneys' fees, for example in processing development applications ("Reimbursement Matters"), the Firm's fee would be at least the rate specified in the table above (\$390 per hour for Partners in 2023 as

annually increased consistent with this Agreement). For Reimbursement Matters, the Town will pay the greater of (1) the reimbursement rates listed in this Agreement, or (2) the rates actually reimbursed for the work.

The Firm will bear all expenses related to support staff, general overhead, continuing legal education, and attendance at public agency-law functions. The Firm will bill the Town for reimbursement for extraordinary costs incurred in the course of representation, including fees fixed by law or assessed by public agencies, messenger and overnight delivery services, postage, photocopying, and charges for electronic legal research. The Firm will not charge fees or costs for attorney travel time to and from the Town.

The Firm will provide detailed monthly billing statements for fees and costs incurred. Client agrees to pay the Firm's billed fees and costs within thirty days following billing.

3. Authorized Representative of Client

The Town Council as a whole shall direct the Firm's provision of services under this Agreement. The Town designates the Town Manager as the authorized representative to be the primary person to communicate with the Firm regarding the subject matter of this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Firm and other representatives of the Town. Unless directed otherwise by the Town, all correspondence and bills will be directed to the designated authorized representative.

4. Conclusion of Services, Discharge, and Withdrawal

Unless otherwise agreed in writing, our representation of Client under this Agreement will automatically terminate at the time we complete the legal services we have agreed to perform.

Client may discharge the Firm at any time by providing written notice to the Firm, which is effective upon receipt by the Firm. In the event of such discharge, if the Firm is Client's attorney of record in any proceeding, the Firm will promptly provide Client with a substitution of attorney form. Client will execute and return the substitution of attorney form immediately upon receipt from the Firm.

The Firm may withdraw upon 30 days' prior written notice, with or without cause. The Firm may withdraw at any time as permitted under the Rules of Professional

Conduct of the State Bar of California. A valid reason for withdrawal by the Firm would include, but not be limited to, Client's consent, Client's breach of this Agreement, Client's failure to pay fees and costs as provided in this Agreement, Client's conduct renders it unreasonably difficult for the Firm to carry out the representation effectively, or any fact or circumstances that would render the Firm's continuing representation unlawful or unethical.

At such time as the Firm's services conclude, all unpaid fees and costs will immediately become due and payable.

5. Client File

After the Firm's services conclude, the Firm will, upon Client's request, deliver to Client the file for this matter with the exception of attorney notes, correspondence, or memoranda not previously sent to Client if such material constitute attorney work product. Client agrees to pay copying and delivery costs as well as the reasonable hourly rates associated with locating, preparing, and transmitting the file (whether in paper or electronic form).

If Client does not request the file for this matter at the conclusion of representation, the Firm will retain the file for a period of five years after the matter is closed. If Client does not request delivery of the file for this matter before the end of the five-year period, the Firm will have no further obligation to retain the file and may, at the Firm's discretion, destroy it without further notice to Client.

6. No Guarantee

Nothing in this Agreement and nothing in the Firm's statements to Client will be construed as a promise or guarantee about the outcome of this matter. The Firm makes no such promises or guarantees.

7. Conflicts Waiver and Consent

Please be advised that the Firm represents public agencies, private organizations, and individuals in a range of matters throughout California and on energy law matters throughout the United States. For example, as we have discussed, the Firm represents Peninsula Open Space Trust and Mid-Peninsula Open Space District on a wide variety of matters in San Mateo County. Accordingly, it is agreed, and Client hereby consents, that our attorney-client relationship with Client in this matter will not serve as a basis for the Firm's disqualification from representing other clients or parties in any legal proceedings, cases, controversies, or matters, other than those in which we represent

Client, except if and to the extent absolutely and non-waivably required by the Rules of Professional Conduct.

In particular, the Firm has disclosed to the Town an interest related to APN 077-070-240 that may create a legal conflict during the period when the Firm is serving as Interim Town Attorney. The Firm and the Town agree that the Firm's legal services described in Section 1 above exclude any services related to that parcel; the Town will be represented by other counsel on such matters, if and as needed. Notwithstanding the foregoing, the Firm's concurrent representation of other clients in matters related to the above-referenced parcel and the Firm's services as Interim Town Attorney on all other matters could put the Firm in a position of representing two clients whose interests are adverse. The potential for such a situation gives rise to the possibility of divided loyalty on the part of the Firm. Although we are not currently aware of any actual or reasonably foreseeable adverse effects of such potential divided loyalty, it is possible that such effects may arise. By signing and returning this Agreement, the Town consents to the Firm's continued representation of other clients in matters related to the above-referenced parcel, and waives and agrees not to assert any conflict of interest or seek to disqualify the Firm from representing other clients in matters related to the above-referenced parcel, notwithstanding any adversity that may develop between the Town and such other clients in the future. Catherine and Rene will be screened from the Firm's work for other clients in such matters, and will not work on such matters.

Except as described herein, the Firm does not believe it had, and shall not acquire, any interest not disclosed to Client that creates a legal conflict with its performance of services under this Agreement, unless the Town consents in writing to such conflict.

8. Electronic Communication Tools and Devices

In order to maximize efficiency and responsiveness in representing Client and preserve natural resources, we intend to use electronic communications tools and devices (such as email, electronic transfer and storage of documents, cellular telephones, and "smart phones") to a significant extent during our representation. The use of such devices under current technology may place Client's confidential information and privileges at risk. However, we believe the effectiveness and efficiency involved in use of these devices outweighs the risk of accidental disclosure, malicious access, or corruption or loss. By executing this Agreement, Client acknowledges Client's consent to the use of these tools and devices without any encryption or other special protections or backups.

9. Execution of Agreement

If this Agreement is satisfactory, please execute a copy and return it to me. This Agreement will be effective when it is signed by you. However, this Agreement will apply to any services we may provide in connection with the engagement before the execution date.

The undersigned represents and warrants that it is authorized to execute this Agreement and bind Client to its terms and conditions.

Unless otherwise prohibited by law, the Firm and Client agree that an electronic signature to this Agreement and an electronic copy of this Agreement have the same force and legal effect as an original ink signature transmitted in hard copy (e.g., transmission via email of a .pdf file containing a scanned or digitally applied signature).

We look forward to serving as Interim Town Attorney.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Catherine C. Engberg

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This Legal Retainer Agreement for Interim Town Attorney Services was approved by the Town Council at its regular meeting of May __, 2023.

ACCEPTED AND AGREED:

Town of Portola Valley

_____ Date: _____

Jeff Aalfs, Mayor