

Town of Portola Agreement for Services

AGREEMENT FOR

Fiscal Impact Analysis: Stanford Wedge Residential Housing Development

THIS AGREEMENT is made and entered into this 25th day of January 2023, by and between the Town of Portola Valley, a municipal corporation, ("Town") and Land Econ Group ("Consultant").

RECITALS

A. The Town desires to retain the professional consulting services of Consultant as an independent contractor to provide professional services to the Town, as described in more detail in Exhibit A. Consultant will work with the Town to develop a fiscal impact analysis for the Stanford Wedge Residential Housing Development.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:

1. **SCOPE AND LEVEL OF SERVICES**. The nature, scope and level of the specific services to be performed by Consultant are as set forth in detail in Exhibit A attached hereto.

2. **TIME OF PERFORMANCE**. The services shall be performed on a timely, regular basis in accordance with the Schedule of Performance attached hereto as Exhibit B.

3. **STANDARD OF PERFORMANCE**. As a material inducement to the Town to enter into this Agreement, Consultant hereby represents and warrants that it has the qualifications and experience necessary to undertake the services to be provided pursuant to this Agreement. Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the Town. Consultant hereby covenants that it shall follow the highest professional standards in performing all services required hereunder and will perform the services to a standard of reasonable professional care.

4. **COMPLIANCE WITH LAW**. All services rendered hereunder by Consultant shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the Town, and any federal, state or local governmental agency having jurisdiction in effect at the time the service is rendered.

5. **TERM**. This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect until the services required

hereunder have been satisfactorily completed by Consultant, unless earlier terminated pursuant to Section 17, below.

6. COMPENSATION. The Town agrees to compensate Consultant for its services according to the fee schedule set forth in Exhibit B, to a maximum of Thirty-three thousand seven hundred fifty dollars (\$33,750). The Town also agrees to compensate Consultant for its out-of-pocket expenses to the extent authorized in Exhibit B. In no event shall the total compensation and costs payable to consultant under this Agreement exceed the sum of Thirty Three Thousand Seven Hundred Fifty Dollars (\$33,750), unless specifically approved in writing by the Town Council.

7. METHOD OF PAYMENT. Consultant shall invoice the Town for work performed after as set forth in Exhibit B. Payments to Consultant by Town shall be made within thirty (30) days after receipt by Town of Consultant's itemized invoices.

8. REPRESENTATIVE. William W. Lee is hereby designated as the representative of Consultant authorized to act on its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of Land Econ Group were a substantial inducement for Town to enter into this Agreement. Therefore, William W. Lee shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The representative may not be changed by Consultant without the express written approval of the Town.

9. INDEPENDENT CONTRACTOR. Consultant is, and shall at all times remain as to the Town, a wholly independent contractor and not an agent or employee of Town. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Consultant receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Consultant shall not be eligible for benefits and shall receive no compensation from the Town except as expressly set forth in this Agreement. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the Town or otherwise act on behalf of the Town as an agent. Neither the Town, nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall at no time, or in any manner, represent that it or any of its agents or employees are in any manner employees of the Town. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold the Town harmless from any and all taxes, assessments, penalties, and interest asserted against the Town by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the worker's compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold the Town harmless from any failure of Consultant to comply with applicable worker's compensation laws. The Town shall not have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Town from

Consultant as a result of Consultant's failure to promptly pay the Town any reimbursement or indemnification arising under this Section.

10. CONFIDENTIALITY. Consultant, in the course of its duties, may have access to financial, accounting, statistical and personal data of private individuals and employees of the Town. Consultant covenants that all data, documents, discussion, or other information developed and received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by the Town. The Town shall grant such authorization if disclosure is required by law. Upon request, all Town data shall be returned to the Town upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

11. OWNERSHIP OF MATERIAL. All reports, documents, or other written materials developed or discovered by Consultant or any other person engaged directly or indirectly by Consultant in the performance of this Agreement shall be and remain the property of the Town without restriction or limitation upon its use or dissemination by the Town. The proprietary model used for fiscal impact analysis remains the sole property of the Consultant.

12. CONFLICT OF INTEREST. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the Town on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with the Town.

13. ASSIGNABILITY; SUBCONTRACTING. The parties agree that the expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of Consultant's obligations hereunder, without the prior written consent of the Town Council, and any attempt by Consultant to do so shall be void and of no effect and a breach of this Agreement.

14. INDEMNIFICATION.

14.1 To the fullest extent permitted by law, Consultant shall indemnify, defend (with independent counsel approved by the Town) and hold harmless the Town, and its elective or appointive boards, officers, employees, agents and volunteers against any claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed

under this Agreement due to the acts or omissions of Consultant or Consultant's officers, employees, agents or subcontractors. The provisions of this Section survive completion of the services or the termination of this Agreement. The acceptance of such services shall not operate as a waiver of such right of indemnification.

14.2 With regard to Consultant's professional services, Consultant agrees to use that degree of care and skill ordinarily exercised under similar circumstances by members of Consultant's profession, including without limitation adherence to all applicable safety standards. To the fullest extent permitted by law, Consultant shall indemnify, defend (with independent counsel approved by the Town) and hold harmless the Town, and its elective or appointive boards, officers, and employees from and against all liabilities, including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including, but not limited to, reasonable attorneys' fees, court costs and costs of alternative dispute resolution regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of Consultant or Consultant's officers, employees, agents or subcontractors. The provisions of this Section survive completion of the services or the termination of this Agreement. The acceptance of said services and duties by Town shall not operate as a waiver of such right of indemnification.

14.3 The Town does not and shall not waive any rights that they may possess against Consultant because of the acceptance by the Town or the deposit with the Town of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

15. INSURANCE REQUIREMENTS. Consultant agrees to have and maintain the policies set forth in Exhibit C entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Town Attorney as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the Town Attorney. Consultant agrees to provide Town with a copy of said policies, certificates, and/or endorsements before work commences under this Agreement. A lapse in any required amount or type of insurance coverage during this Agreement shall be a breach of this Agreement.

16. SUSPENSION. The Town may, in writing, order Consultant to suspend all or any part of Consultant's services under this Agreement for the convenience of the Town, or for work stoppages beyond the control of the Town or the Consultant. Subject to the provisions of this Agreement relating to termination, a suspension of work does not void this Agreement. In the event that work is suspended for a period exceeding 120 days, the schedule and cost for completion of the work will be adjusted by mutual consent of the parties.

17. TERMINATION.

17.1 This Agreement may be terminated by either the Town or Consultant following five (5) days written notice of intention to terminate. In the event the Agreement is terminated, Consultant shall be paid for any services properly performed to the last working day the Agreement is in effect. Consultant shall substantiate the final cost of services by an itemized, written statement submitted to the Town. The Town's right of termination shall be in addition to all other remedies available under law to the Town.

17.2 In the event of termination, Consultant shall deliver to the Town copies of all reports, documents, computer disks, and other work prepared by Consultant under this Agreement, if any. If Consultant's written work is contained on a hard computer disk, Consultant shall, in addition to providing a written copy of the information on the hard disk, immediately transfer all written work from the hard computer disk to a soft computer disk and deliver said soft computer disk to Town. Town shall not pay Consultant for services performed by Consultant through the last working day the Agreement is in effect unless and until Consultant has delivered the above described items to the Town.

18. CONSULTANT'S BOOKS AND RECORDS. Consultant 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, supplies, materials, or equipment provided to Town for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.

19. NON-WAIVER OF TERMS, RIGHTS AND REMEDIES. Waiver by either party of any breach or violation of any one or more terms or conditions of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the Town of the performance of any work or services by Consultant shall not be deemed to be a waiver of any term or condition of this Agreement. In no event shall the Town's making of any payment to Consultant constitute or be construed as a waiver by the Town of any breach of this Agreement, or any default which may then exist on the part of Consultant, and the making of any such payment by the Town shall in no way impair or prejudice any right or remedy available to the Town with regard to such breach or default.

20. NOTICES. Any notices, bills, invoices, reports or other communications required or permitted to be given under this Agreement shall be given in writing by personal delivery, by facsimile transmission with verification of receipt or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To Town:

Town Manager
Town of Portola Valley
765 Portola Road Portola
Valley, CA 94028 Fax:
(650) 851-4677

To Consultant:

Bill Lee

Senior Partner

Land Econ Group

Fax: ~~(510)~~ 301-6698

Notice shall be deemed communicated on the earlier of actual receipt or forty- eight (48) hours after deposit in the U.S. mail, the date of delivery shown on deliverer's receipt, or by acknowledgment of facsimile transmission.

21. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Consultant will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition.

22. ATTORNEYS' FEES; VENUE. In the event that any party to this Agreement commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

23. COOPERATION. In the event any claim or action is brought against the Town relating to Consultant's performance or services under this Agreement, Consultant shall render any reasonable assistance and cooperation which Town might require.

24. EXHIBITS, PRECEDENCE. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement.

25. PRIOR AGREEMENTS AND AMENDMENTS; ENTIRE AGREEMENT. This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between the Town and Consultant. This Agreement supersedes all prior oral and written negotiations, representations or agreements. No prior oral or written understanding shall be of any force or effect with

respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement. Any amendment relating to compensation for Consultant shall be for only a not-to-exceed sum.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement effective as of the date written above.

TOWN:

CONSULTANT:

By: _____
Mayor

By: Bill Lee

Name (printed): Bill Lee

Title: Senior Partner

EIN 46-4006648

ATTEST:

Town Clerk

EXHIBIT A

SCOPE OF WORK

LandEcon Group (LEG) has a municipal General Fund fiscal analysis model designed for the exact purpose of this assignment. It is a series of linked spreadsheet using Excel where each output variable can be traced back through its calculation to its input data and assumptions. This model design facilitates the evaluation of alternatives, and the transparency enhances credibility when challenged. Our work tasks are outlined below.

BASIC WORK SCOPE FOR PORTOLA VALLEY

- Attend kick-off meeting (electronic) with Portola Valley staff to ascertain project objectives, issues between the town and the applicant, and divergent views within the town and its leadership regarding the Stanford Wedge project.
- Request relevant documents in the City's possession and review all such documents. Request clarification on issues as needed.
- Host a meeting with Stanford University staff to acquire a detailed understanding its housing subsidy program for faculty and staff. Determine relationship between salary and purchase price and resale restriction for faculty and rents for junior faculty and staff. Examine the historic trends in home prices and rents for units in the Stanford subsidy programs to create guideline for forecasting.
- Review the latest Portola Valley Annual Financial Report and Budgets to develop the revenue and service cost factors per new resident essential to model application.
- Survey comparable projects in the market place to determine sales prices, price per square foot, rental rates and rent per square foot in support of assessed value estimates for the market-based scenario.
- Apply the information gained from the meeting with the applicant to the Stanford subsidized scenario for the single-family units.
- Apply the information within the Affordable Housing Agreement between the applicant and the Town to estimate rents and assessed values for the multi-family units for the BMR scenario.
- Calibrate all model inputs and run the fiscal impact model for two scenarios to determine impact on the Town's General Fund. The inputs would include: unit type and sizes, assessed

value, population by unit type, school children estimate, per resident costs and revenues by General Fund line item and payments to the Woodside Fire Protection District and the San Mateo County Sheriff.

- Forecast forward for 20 years for the two scenarios to estimate the impact on Portola Valley's General Fund over time.
- Prepare and submit the draft Stanford Wedge Fiscal Impact Report and make a presentation on the draft report (electronic).
- Receive comments on the draft from Town staff and the public and attend a review meeting (electronic) to understand the changes and refinements necessary to finalize the report.
- Submit the final Stanford Wedge Fiscal Impact Report and a separate memo responding to public comments as necessary and appropriate.
- Attend three calls with Town staff (kick-off, presentation of draft findings from analysis, and final summary and conclusions).
- Prepare up to five case studies of Stanford University housing developments or programs in other cities around the campus to understand their economics relative to market rate housing.
- Analyze cost of trail and open space maintenance.
- Review comments regarding the fiscal report and provide responses as appropriate.

Additional Services:

We will also be available for the optional tasks as follows: a) Two virtual community meetings, and b) Preparation of a "Frequently Asked Questions" online document that presents technical concepts in easy-to-understand language.

Note: 1. The proprietary model used for fiscal impact analysis remains the sole property of the Consultant.

EXHIBIT B

Schedule and Fees

SCHEDULE AND FEES

LEG proposes a schedule of approximately six weeks from receipt of contractual authorization (January 25, 2023) to proceed to submission of draft fiscal impact report. Additional time may be needed for review and response to community questions and comments and for optional services.

LandEcon Group's basic service is \$15,000 for the comparison of the two scenarios. This fixed price amount assume that the applicant will provide LEG with the information needed to estimate the sales prices, rental rates and turnover patterns of the below market scenario. The firm's overall budget is detailed below:

Basic Fiscal Analysis Report	\$15,000.00
Case Studies	\$7,500.00
Review and Address Comments	\$5,000.00
Contingency of 10% on the Above	\$2,750.00
Total Contract Budget	\$30,250.00
Optional Services	\$3,500.00
Total Including Optional Services	\$33,750.00

Optional services, we will charge on a time and expenses basis subject to a cap of \$3,500. 2023 hourly rates are: William W. Lee - \$200 per hour and Tanya Chiranakhon - \$140 per hour.

Payment for Services

LEG will invoice an amount equal to 60 percent of the total contract amount upon submittal of a draft report. The balance will be invoiced upon submittal of the final report.

EXHIBIT C**(INSURANCE REQUIREMENTS)**

Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to or interference with property which may arise from, or in connection with, the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees or subcontractors.

1. **MINIMUM SCOPE OF INSURANCE.** Coverage shall be at least as broad as:

1.1 Insurance Services Office Form No. CG 0001 covering General Liability and Commercial General Liability on an "occurrence" basis.

1.2 Insurance Services Office Form No. CA 0001 covering Automobile Liability, Code 1 (any auto), Code 8 (hired autos) or Code 9 (non-owned autos), if Consultant has no owned autos.

1.3 Workers' Compensation Insurance as required by the Labor Code of the State of California and Employer's Liability Insurance.

1.4 Errors and Omissions Liability Insurance appropriate to the Consultant's profession. Architects' and Consultants' coverage is to be endorsed to include contractual liability.

2. **MINIMUM LIMITS OF INSURANCE.** Consultant shall maintain limits no less than:

2.1 **Comprehensive General Liability.** (Including products-completed operations, personal & advertising injury) One Million Dollars (\$1,000,000) combined single limit per claim and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2.2 **Automobile Liability.** One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

2.3 **Workers' Compensation and Employers Liability.** Workers' compensation limits as required by the Labor Code of the State of California. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

2.4 Errors and Omissions Liability. Two Million Dollars (\$2,000,000) per occurrence.

3. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to, and approved by, the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officials, employees, agents and contractors; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Town. The Town may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

4. OTHER INSURANCE PROVISIONS.

4.1 General Liability and Automobile Liability Coverages. The General Liability and Automobile Liability insurance policies required pursuant to Sections 1.1 and 1.2 shall contain or be endorsed contain the following provisions:

4.1.1 The Town, its officials, employees, agents, contractors and volunteers are covered as additional insureds with respect to liability arising out of work or operations performed by, or on behalf of, the Consultant including materials, parts or equipment furnished in connection with such work or operations, and products and completed operations of the Consultant on premises owned, leased or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officials, employees, agents and contractors.

4.1.2 The Consultant's insurance coverage is the primary insurance as respects the Town, its officials, employees, agents, contractors, and volunteers. Any insurance or self-insurance maintained by the Town, its officials, employees, agents, contractors, and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.1.3 The Insurance Company agrees to waive all rights of subrogation against the Town, its elected or appointed officers, officials, agents, and employees for losses paid under the terms of any policy which arise from work performed by the Town's insurer.

4.1.4 Coverage shall not be canceled by either party, except after thirty (30) days prior written notice (10 days for non-payment) by regular mail has been given to the Town.

4.1.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officials, employees, agents or contractors.

4.1.6 Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4.2 Worker's Compensation Insurance. The Worker's Compensation Policy required pursuant to Section 1.3 shall contain or be endorsed to contain the provision set forth in subsection 4.1.4 above.

4.3 Acceptability of Insurers. All required insurance shall be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

4.3 Claims Made Policies. If any of the required policies provide claims-made coverage, the Town requires that coverage be maintained by Consultant for a period of 5 years after completion of the contract.

5. VERIFICATION OF COVERAGE. Consultant shall furnish the Town with original certificates, amendatory endorsements, and actual policies of insurance effecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Town before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive consultant's obligation to provide them. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

Proof of insurance shall be emailed to the following representative of the City:

Laura Russell
Planning and Building Director
Town of Portola Valley
765 Portola Road
Portola Valley, CA 94028
(650) 851-1700 ext. 218
lrussell@portolavalley.net

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