




TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Cara Silver, Town Attorney 

DATE: February 8, 2023

RE: Authorize the Town Manager to Amend the Budget for Fiscal Year 2022-23 to allocate additional funds for legal services associated with the Housing Element Update

RECOMMENDATION

Staff recommends that the Town Council authorize the following budget amendment for fiscal year 2022-23:

1. Add \$25,000 to the Jarvis Fay LLP Legal Services Agreement for legal advice on the California Environmental Quality Act (CEQA) issues related to the Housing Element Updated and related documents.

BACKGROUND

The Housing Element is part of Portola Valley's General Plan and identifies policies and programs to meet the housing needs of the Town's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city/town and county in California adopt a Housing Element approximately every eight years. Portola Valley's current Housing Element covers the planning period from 2014-2022 and was adopted in 2015. The new Housing Element will cover 2023-2031 and is called the 6th Cycle. In addition, the State Department of Housing and Community Development (HCD) reviews and certifies that each jurisdiction's Housing Element meets all the requirements of the law.

On March 23, 2022, Town Council received a staff report on the status of the Housing Element Update process, consequences of non-certification, the work plan, and timing. At that time, the Town Council directed staff to complete the Housing Element, zoning code amendments, environmental analysis, conforming General Plan amendments and associated work prior to January 31, 2023. There was acknowledgement that it would be very challenging to meet that timeline but that every effort should be made. In response to that direction, the staff/consultant team have been developing technical work and bringing it through a public review process with the Planning Commission.

One of the foundational documents for this review is the Initial Study / Mitigated Negative Declaration (IS/MND) which was prepared under CEQA. Public comments were received from October 28 to November 29, 2022. The Planning Commission held a public meeting on November 16 to receive public comments. The Town received approximately 47 comment letters (with some people submitting multiple letters) and additional verbal comments at an approximate 4-hour Planning Commission meeting. A Response to Comments document was prepared and a Planning Commission meeting was conducted on January 24, 2023 to discuss these comments. We expect that additional specialized CEQA services will be required in the next couple of months.

DISCUSSION

Given the large number of public comments, the short timeframe for responding to those comments and the possibility of litigation/builder's remedy claims in the event the Town did not comply with the State-mandated deadlines, the Town Attorney retained the services of an attorney Rick Jarvis of Jarvis Fay LLP specializing in CEQA law. The Town Manager previously approved a contract with Jarvis Fay in the amount of \$25,000 under his signature authority. The Town Attorney and Town Manager are now recommending additional funding for Jarvis Fay to continue their work on CEQA issues relating to the Housing Element and post-approval environmental process and other related initiatives.

FISCAL IMPACT

This funding will come from the legal contingency fund.

ATTACHMENT

1. Legal Services Agreement

Cc: Jeremy Dennis, Town Manager

JARVIS FAY LLP

LOCAL GOVERNMENT LAW

Via Email: (ces@jsmf.com)

December 6, 2022

Cara E. Silver
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025

Re: Legal Services Agreement

Dear Cara:

Thank you for selecting Jarvis Fay LLP to provide legal services to the Town of Portola Valley (the "Town"). This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for our services. The effective date of this agreement shall be December 1, 2022. This agreement expires on December 31, 2024, unless a later writing confirms an agreement of the parties to extend the term of this agreement.

1. Scope of Engagement. We will provide legal services to the Town regarding advice on CEQA issues relating to its anticipated adoption of its updated Housing Element, as well as to defend it in litigation expected to be filed challenging it. The scope of this engagement may be extended to other matters if confirmed in writing. A writing confirming an agreement to provide legal services to you on other specified matters shall bring such services within the scope of the terms set forth in this letter.

2. Fees and Personnel. We shall bill the Town \$380 per hour for time billed by our senior partners and senior of counsel, \$340 per hour for time billed by partners and of counsel attorneys, \$305 per hour for time billed by senior associates, \$265 per hour for time billed by associates, and \$135 per hour for time billed by our paralegals/law clerks. These rates represent the maximum we will charge for our work, but we may charge lesser rates or "no charge" some time, as a matter of billing judgment. We bill for our time in 6 minute increments, with no minimum billable time. Our stated rates will be in effect until the end of FY 2023 (June 30). All of our hourly rates are subject to reasonable annual adjustments. We will provide you with notice of any such adjustments.

3. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses from outside vendors related to your representation, which we will pass on to the Town. We will advance payment for routine expenses for individual items that cost less than \$1,000, but will refer items that cost more directly to the Town for payment. We do not bill for in-house copy or fax costs or other overhead.

555 12TH STREET, SUITE 1630, OAKLAND, CA 94607

MAIN: 510.238.1400 / WWW.JARVISFAY.COM / FAX: 510.238.1404

4. Billing and Payment Responsibilities. We will send monthly statements that are due within 30 days of receipt. If you have any questions about an invoice, please feel free to call me at (510) 238-1401 or to email me at rick@jarvisfay.com.

5. Termination of Services. The Town may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to the Town's new counsel.

We may terminate our services at any time with the Town's consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its due date; (b) the Town fails to meet any other obligation under this agreement and continues in that failure for 15 days after we send written notice to the Town; (c) the Town has misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance occurs or exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, the Town agrees to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination. Termination of our services, whether by the Town or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. Original Documents and Property. Upon the Town's request, after our representation has concluded or been terminated we will return to the Town any original documents and other property the Town provided to us in connection with our representation. Unless the Town requests any such items, or has made written arrangements with us to retain such items, we reserve the right to destroy or otherwise dispose of these items, without further notice to the Town at any time after ten years following the date of the final invoice sent to the Town with respect to this matter.

7. Insurance. During the term of this engagement, this law firm shall maintain general liability and property damage insurance in the amount of \$2,000,000; professional errors and omissions insurance, in an amount of \$1,000,000 per occurrence; and \$3,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to the Town.

8. Form 700. This agreement does not require or permit this law firm or any of its personnel to make a governmental decision for the Town, as specified in 2 Cal. Code of Regs. § 18700.3(a). Accordingly, no member of this law firm will be required to file a Form 700 in connection with the legal services provided under this agreement.

9. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

10. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

To accept this letter of engagement, please sign it below and return a PDF copy of this page to our office via email. If you would also like a paper copy of this letter for your files we will be happy to mail that to you. We appreciate the opportunity to serve as lawyers for the Town.

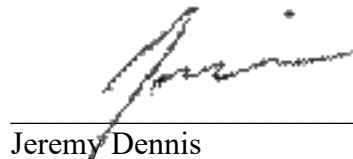
Very truly yours,

JARVIS FAY LLP



Rick W. Jarvis

These terms are accepted and agreed to:



Jeremy Dennis
Town Manager
Town of Portola Valley