



Agenda Item B.10
CONSENT CALENDAR
Meeting Date: June 18, 2019

TO: Mayor and Councilmembers

FROM: Michelle Greene, City Manager

SUBJECT: Amendment No. 2 to Legal Services Agreement No. 2017-034
between the City of Goleta and Best, Best & Krieger, LLP

RECOMMENDATION:

Approve and authorize the City Manager to execute Amendment No. 2 to Agreement No. 2017-034 between the City of Goleta and Best, Best & Krieger, LLP for Legal Services, increasing the flat rate compensation from \$12,000 per month to \$13,000 per month commencing on July 1, 2019 and adding an inflationary increase of 1.5 percent per fiscal year commencing on July 1, 2020, subject to the approval of the Fiscal Year 2019-20 Budget.

BACKGROUND:

In April 2017, the City Council approved Agreement No. 2017-034 with Jenkins & Hogin, LLP to perform the functions of City Attorney and provide legal services such as prepare and review legal opinions, ordinances, resolutions, agreements, attend all City Council meeting, advice and consult the City Council and City staff on municipal law issues, general and routine public employee relations issues, interpretation of the Municipal Code and other legal matters.

In April 2018, Jenkins & Hogin, LLP merged its law practice with Best, Best & Krieger, LLP. That same month, City Council approved Amendment No. 1 to Agreement No. 2017-034 assigning and transferring interest in the Agreement to Best, Best & Krieger, LLP.

DISCUSSION:

Agreement No. 2017-034 states the general legal services and all other transactional services shall be provided at the flat rate of \$12,000 per month. The \$12,000 compensation is based on the presumption that the general services performed will fluctuate between 60 and 75 hours per month and if the estimate is significantly lower or higher after three months, the parties agree to reevaluate.

Since the approval of Agreement No. 2017-034 in April 2017, Michael Jenkins and other Best, Best & Krieger, LLP attorneys have consistently worked between 75-85 hours per month performing general legal services for the City. Therefore, staff recommends an increase in the monthly compensation to reflect the actual number of hours worked, which results in an increase to the flat rate of \$12,000 to \$13,000 or \$156,000/year.

The parties are also proposing an annual inflationary increase of 1.5 percent per fiscal year commencing July 1, 2020 and, on each July 1st, thereafter.

Approval of the attached amendment will allow the arrangement for City Attorney Services to continue without changes to the scope of service.

FISCAL IMPACTS:

The fiscal impacts associated with the amendment are \$1,000 per month (\$13,000/yr.) for FY19/20. Funding for the FY 19/20 and FY20/21 compensation increase has been proposed with the City Attorney's FY 19/20 and FY 20/21 budget, professional services – other account (101-5-1400-550).

The funds for the FY 21/22 annual inflationary increase will be budgeted with the FY 21/22 and FY 22/23 Budget Cycle.

Fund	GL Account	FY 17/18	FY 18/19	Proposed Budget FY 19/20	Proposed Budget FY 20/21 w/ 1.5% escalation	Proposed Budget FY 21/22 w/ 1.5% escalation
General Fund	101-5-1400-550	\$144,000.00	\$144,000.00	\$156,000.00	\$158,340.00	\$160,715.10
Total		\$144,000.00	\$144,000.00	\$156,000.00	\$160,680.00	\$165,500.40

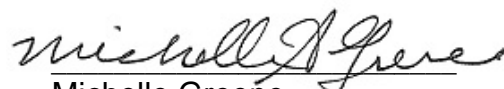
ALTERNATIVES:

The City Council may elect not to authorize this contract amendment at this time.

Reviewed By:


Winnie Cai
Assistant City Attorney

Approved By:


Michelle Greene
City Manager

ATTACHMENTS:

1. Proposed Amendment No. 2 to Agreement No. 2017-034
2. Agreement No. 2017-034 with Jenkins & Hogin, LLP to Provide Legal Services and Amendment No. 1 to Agreement No. 2017-034 (available online only)

ATTACHMENT 1

Proposed Amendment No. 2 to Agreement No. 2017-034

**AMENDMENT NO. 2
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
BEST, BEST, & KRIEGER, LLP.**

This **Amendment No. 2** to an AGREEMENT FOR LEGAL SERVICES by and between the **CITY OF GOLETA** a municipal corporation ("City") and **BEST, BEST & KRIEGER, LLP** ("Contractor") dated April 4, 2017 ("Agreement," Agreement No. 2017-034) is made this ____ day of June 2019.

RECITALS

WHEREAS, the City entered into the Agreement with Contractor to provide legal services and to perform the functions of Interim City Attorney; and

WHEREAS, the Agreement was amended on April 1, 2018, to consent to an assignment of the Agreement to Best, Best & Krieger, LLP ("Amendment No.1"); and

WHEREAS, the Agreement between City and Contractor currently provides in Section 1 Subsection (b), marked as Exhibit "A" entitled Scope of Services and Applicable Billing Rates, the total flat fee compensation amount of \$12,000 per month; and

WHEREAS, effective July 1, 2019, the parties desire to amend the Agreement to provide for additional compensation in the amount of \$1,000/month from \$12,000 (\$144,000/year) to \$13,000/month (\$156,000/year) to reflect 75 to 85 hours of work per month instead of 60 to 75 hours of work per month;

WHEREAS, the Agreement between City and Consultant does not provide for an inflationary increase to the annual rate; and

WHEREAS, the parties desire to amend the Agreement so as to provide for an inflationary increase of 1.5 percent per fiscal year commencing July 1, 2020; and

WHEREAS, the parties desire to amend the Agreement so as to replace Exhibit "A" entitled Scope of Services and Applicable Billing Rates with Exhibit "A-1" Scope of Services and Applicable Billing Rates, which contains all the above-mentioned terms; and

WHEREAS, the Agreement did not provide for the Agreement or any amendments to be executed in counterparts by facsimile or electronic mail; and

WHEREAS, the parties desire to amend the Agreement to allow for execution of the Agreement and amendments by facsimile and electronic mail in order to expedite the finalization of the agreements; and

WHEREAS, the City Council approved this Amendment No. 2, on this 18th day of June 2019.

AMENDED TERMS

Now therefore City and Contractor agree as follows that the Agreement be, and hereby is, amended as follows:

1. This Agreement is amended to delete and replace in its entirety:

Exhibit A “Scope of Services and Applicable Billing Rates” with Exhibit A-1 “Scope of Services and Applicable Billing Rates” attached hereto and incorporated herein.

2. **Section 19. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES** of the Agreement is added to include counterparts and electronic/facsimile signatures as follows:

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 2 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONTRACTOR

Michelle Greene, City Manager

Michael Jenkins,
Best, Best & Krieger, LLP

ATTEST

Deborah Lopez, City Clerk

APPROVED AS TO FORM



Winnie Cai, Assistant City Attorney

EXHIBIT A-1

SCOPE OF SERVICES AND APPLICABLE BILLING RATES

I. GENERAL LEGAL SERVICES (Flat Fee)

- A. The general legal services to be provided by J&H to the City shall include the following:
1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to land use, CEQA, general municipal law issues, general and routine public employee relations issues, interpretation of the Municipal Code, potential tort liability, risk management, and other routine legal issues
 2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents
 3. Prepare for and attend all regular meetings of the City Council
 4. Telephone consultations with Councilmembers and staff
 5. Assumption of all pending assignments within J&H's competence unless otherwise determined in consultation with the City Manager; coordination with and supervision of outside counsel, including taking whatever steps needed to assure valid contracts are in effect
 6. Advice relating to implementation of the City's NPDES/stormwater permit
- B. The general legal services specified in paragraph A above and all other transactional services shall be provided at the flat fee of \$13,000 per month. The presumption is that General Services will fluctuate between 75 and 85 hours per month. If this estimate is significantly lower or higher after three months, the parties agree to reevaluate.
- C. Commencing July 1, 2020, the compensation will increase by 1.5% per fiscal year and will increase thereon every July 1 of each year.

II. LITIGATION SERVICES

The litigation services performed under this Agreement shall be provided at the hourly rate of \$325 per hour for lawyers with more than 15 years of experience, \$275 per hour for lawyers with 10 to 15 years of experience and \$225 for lawyers with less than 10 years of experience.

J&H shall not be responsible for any pending litigation matters handled by attorneys previously or otherwise employed by the City unless the file has been transferred to J&H and a valid substitution of attorney has been filed with the applicable court.

III. SPECIALIZED OR ADDITIONAL LEGAL SERVICES

- A. The specialized or additional legal services (excluding litigation services)

to be provided by the J&H to the City may include the following:

1. Environmental Legal Services, including review draft environmental impact reports and related environmental documents;
 2. Franchise, development agreement, lease, and settlement agreement negotiations and drafting of agreements;
 3. Prepare for and attend any special or adjourned meetings of the City Council and meetings of Planning Commission or other committees or commissions;
 4. Office conferences and criminal prosecution services to secure code compliance;
 5. matters which are deemed by the parties to constitute specialized or additional legal services;
- B. Specialized or additional legal services of the nature specified above in paragraphs 1 through 6 shall be billed at the hourly rate of \$195 per hour.

ATTACHMENT 2

Agreement No. 2017-034 with Jenkins & Hogin, LLP to Provide Legal Services and
Amendment No. 1 to Agreement No. 2017-034

**AMENDMENT NO. 1 TO LEGAL SERVICES AGREEMENT
BETWEEN CITY OF GOLETA AND JENKINS & HOGIN LLP
ASSIGNMENT OF AGREEMENT FOR SERVICES**

This constitutes written consent to an assignment to Best, Best, & Krieger LLP of the Agreement for Services between City of Goleta ("City") and Jenkins & Hogin, LLP ("Contractor") dated April 4, 2017 (the "Agreement"). The consent is valid beginning April 1, 2018.

RECITALS


- A. The City entered into an Agreement with Contractor to provide legal services and perform the functions of Interim City Attorney.
- B. Contractor desires to assign or transfer interest in the Agreement to Best, Best, & Krieger LLP ("Assignee").
- C. Pursuant to Section 11 of the Agreement, Jenkins & Hogin, LLP requested permission to assign the Agreement to Assignee. The attorneys of Jenkins & Hogin LLP, including City Attorney Michael Jenkins, desire to merge law practices with Assignee and continue to practice under the auspices of Assignee. Assignee warrants that it possesses the skill and training to fully undertake the obligations of the Contractor under the Agreement and agree to all its terms. Moreover, the assignment will not change any of the personnel, fees, or other terms of the Agreement.

NOW THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties agree as follows:

- 1. Consent. The City hereby consents to the assignment as requested effective April 1, 2018. If Contractor submits a fully executed assignment of the Agreement, Contractor will be excused from further obligations under the Agreement and Assignee will thereby assume all Contractor's obligations under the Agreement.
- 2. Client Files. The City hereby authorizes Firm to release hardcopy and electronic versions of any and all client papers and property including, without limitation, correspondence, e-mail, pleadings and other court filings, memoranda, legal research, draft documents, deposition transcripts, exhibits, physical evidence, expert reports, billing records, and other items contained in Firm's files related to the City to Assignee or to any representative or attorney from that firm. This authorization specifically extends to materials covered by the attorney client privilege and attorney work product doctrine, as well confidential and privileged materials related to personnel matters.

3. Limited Amendment. All terms and conditions of the Agreement remain in full force and effect.

CITY OF GOLETA



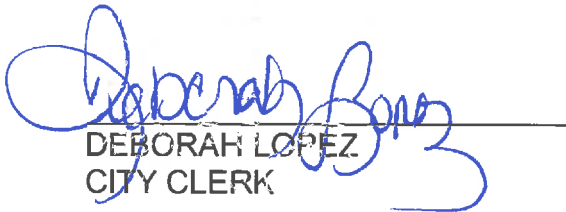
PAULA PEROTTE
MAYOR

CONTRACTOR



By: MICHAEL JENKINS, PARTNER:
JENKINS & HOGIN, LLP

ATTEST



DEBORAH LOPEZ
CITY CLERK

**AGREEMENT FOR LEGAL SERVICES
FOR THE CITY OF GOLETA
(Interim City Attorney)**

This Agreement is made and entered into this 4th day of April, 2017, by and between the law firm of Jenkins & Hugin, LLP (hereinafter "J&H"), and the City of Goleta, a California municipal corporation (hereinafter "the City").

RECITALS:

A. The City currently has a vacancy in the position of City Attorney. The City has immediate need to appoint someone to perform the functions of the City Attorney as defined by Chapter 2.06 of the Goleta Municipal Code until the Council selects and appoints a permanent City Attorney. The Interim City Attorney would assume all of the responsibilities of the City Attorney until further action of the City Council.

B. The City desires to retain J&H to discharge the duties of the office of City Attorney on an interim basis and to provide other legal services as required.

C. The attorneys of J&H are duly licensed under the laws of the State of California and are fully qualified to discharge the duties of Interim City Attorney and to provide the legal services contemplated by this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

J&H shall discharge the duties of the office of City Attorney of the City on an interim basis and shall use its best efforts to provide legal services in a competent and professional manner. J&H shall provide all services to the City of the kind and nature typically provided by an in-house City Attorney's office, including litigation services, unless specifically exempted by this Agreement or otherwise determined by the City Council. The legal services to be provided by J&H shall consist of those set forth in Exhibit "A" attached hereto and shall be billed at the rates set forth therein or as otherwise agreed by the parties. Except where conflict of interest rules require otherwise, J&H shall supervise the activities of all other counsel retained by or for the City and shall review their invoices prior to payment.

2. Designation of Interim City Attorney.

Michael Jenkins is designated as Interim City Attorney for the City. The parties understand and agree that J&H may, from time to time, use other attorneys within J&H to assist Mr. Jenkins in the performance of this Agreement. The designation set forth in this

paragraph may be changed by mutual agreement without a formal amendment to this Agreement.

3. Billing Procedures and Monthly Statements.

3.1 Payment for all services set forth in Exhibit A shall be made on or before the last day of each month for services rendered during the preceding month. J&H shall submit to the City, within 10 days after the end of each calendar month, a general statement of professional services provided.

3.2 J&H will not bill the City for routine copying, telephone, mileage, facsimile or word processing or electronic research within J&H's current Westlaw Plan, which shall include California statutes and case and Ninth Circuit cases. J&H will bill the City, without any mark-up, actual expenses for out-of-contract electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying (over 50 pages) and similar out-of-pocket expenses. These items will be separately designated on J&H's monthly statements as "disbursements" and will be billed in addition to the fees for professional services.

3.3 Time will be charged by J&H in increments of 1/10th of an hour (*i.e.* six-minute units).

4. Term of the Agreement.

This Agreement shall commence as of April 4, 2017 and shall be and remain in full force and effect until terminated in accordance with the provisions of Section 6 hereof.

5. Resolution of Fee Disputes.

The City is entitled to require that any fee dispute be resolved by binding arbitration pursuant to the arbitration rules of the Santa Barbara County Bar Association for legal fee disputes. In the event that City chooses not to utilize the Santa Barbara County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by J&H shall be submitted to binding arbitration in Santa Barbara County to be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

6. Termination of the Agreement.

The City may terminate this Agreement, with or without cause, upon written notice to J&H. J&H may terminate, with or without cause, on sixty days written notice to the City. In either event, the City agrees to secure new counsel as quickly as

possible and to cooperate fully in the substitution of the new counsel as counsel of record. J&H agrees to cooperate fully in any such transition, including the transfer of files. Notwithstanding the termination of J&H's services, City will remain obligated to pay to J&H all fees and costs properly incurred prior to termination.

7. Conflict of Interest.

J&H represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement.

J&H represents that no City employee or official other than the members of J&H has a material financial interest in J&H. During the term of this Agreement and/or as a result of being awarded this contract, J&H shall not offer, encourage or accept any financial interest in J&H's business from any City employee or official.

8. Files.

All legal files of J&H pertaining to the City shall be and remain the property of City. J&H shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at J&H's expense, upon termination of this Agreement.

9. Modifications to the Agreement.

Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of J&H's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by J&H and paid by the City.

10. Nondiscrimination.

In the performance of this Agreement, J&H shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation or medical condition. J&H shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, sexual orientation or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

11. Assignment and Delegation.

This Agreement contemplates the personal professional services of J&H and it shall not be assigned or delegated without the prior written consent of the City. J&H shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

12. Insurance.

12.1 J&H shall obtain and maintain in full force and effect a professional liability insurance policy which provides coverage in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission or neglect by J&H which arises out of the professional services required by this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by J&H.

12.2 J&H shall, if and as prescribed by law, obtain and maintain Workers' Compensation insurance in accordance with Section 3700 of the California Labor Code.

12.3 J&H agrees to notify City in the event the limits of its insurance should fall below the coverage stated in this paragraph or if the insurance policies noted here are allowed to lapse and substitute insurance is not obtained.

13. Indemnification.

13.1 J&H agrees to indemnify, hold harmless and defend City and City Council, its officers, employees, agents and volunteers, from any and all liability or financial loss including legal expenses and costs of expert witnesses and consultants resulting from any suits, claims, losses or actions brought by any person or persons, by reasons of injury and arising directly or indirectly from the negligent or wrongful activities and operations of J&H, including its officers, agents, employees, or subcontractors in the performance of this Agreement.

13.2 Notwithstanding the provisions of paragraph 13.1, City acknowledges its statutory obligation under California Government Code section 825 *et seq.* to defend and indemnify the Interim City Attorney and his assistants and deputies from and against all and any claims, actions and liabilities arising from work performed within the scope of their duties under this Agreement.

13.3 The provisions of this Paragraph 13 shall survive the termination of this Agreement.

14. Legal construction.

14.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

14.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

14.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

14.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

14.5 J&H shall for all purposes be an independent contractor to the City.

15. Notices.

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

Michelle Greene
City Manager
City of Goleta
130 Cremona Drive
Goleta, CA 93117

TO FIRM:

Michael Jenkins
Jenkins & Hogin, LLP
1230 Rosecrans Avenue Suite 110
Manhattan Beach, CA 90266
TEL (310) 643-8448
FAX (310) 643-8441

16. Warranty of Authorized Signatures.

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

17. Use of the Term "City"

Reference to "City" in this Agreement includes the City Manager and any authorized representative acting on behalf of the City.

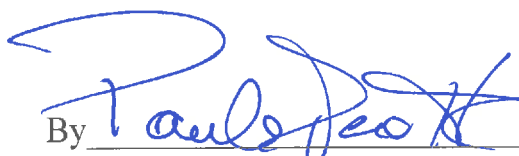
18. Entire Agreement.

This Agreement, together with any written modification pursuant to Paragraph 9 above, shall constitute the full and complete agreement and understanding of the parties and shall be deemed to supersede all other written or oral statements of either party relating to the subject matter hereof.

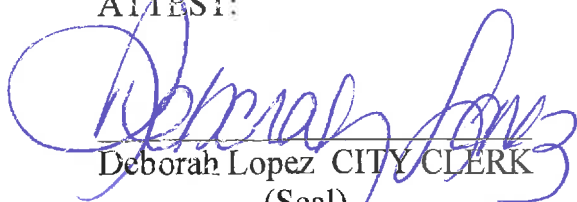
IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused this Agreement to be executed as of the dates indicated below.

Dated: April 4, 2017

CITY OF GOLETA

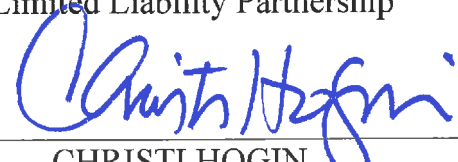
By 
Paula Perotte, Mayor

ATTEST:


Deborah Lopez CITY CLERK
(Seal)

Dated: April 4, 2017

JENKINS & HOGIN, LLP
A Limited Liability Partnership

By 
CHRISTI HOGIN

Attachments: Exhibit A Scope of services and applicable bill rates
Exhibit B Oath of Office

EXHIBIT "A"

SCOPE OF SERVICES AND APPLICABLE BILLING RATES

I. GENERAL LEGAL SERVICES (Flat Fee)

A. The general legal services to be provided by J&H to the City shall include the following:

1. Provide routine legal assistance, advice and consultation to the City Council and to City staff relating to land use, CEQA, general municipal law issues, general and routine public employee relations issues, interpretation of the Municipal Code, potential tort liability, risk management, and other routine legal issues
2. Prepare and review legal opinions, ordinances, resolutions, agreements and related documents
3. Prepare for and attend all regular meetings of the City Council
4. Telephone consultations with Councilmembers and staff
5. Assumption of all pending assignments within J&H's competence unless otherwise determined in consultation with the City Manager; coordination with and supervision of outside counsel, including taking whatever steps needed to assure valid contracts are in effect
6. Advice relating to implementation of the City's NPDES/stormwater permit

B. The general legal services specified in paragraph A above and all other transactional services shall be provided at the flat fee of \$12,000 per month. The presumption is that General Services will fluctuate between 60 and 75 hours per month. If this estimate is significantly lower or higher after three months, the parties agree to reevaluate.

II. LITIGATION SERVICES

The litigation services performed under this Agreement shall be provided at the hourly rate of \$325 per hour for lawyers with more than 15 years of experience, \$275 per hour for lawyers with 10 to 15 years of experience and \$225 for lawyers with less than 10 years of experience.

J&H shall not be responsible for any pending litigation matters handled by attorneys previously or otherwise employed by the City unless the file has been transferred to J&H and a valid substitution of attorney has been filed with the applicable court.

III. SPECIALIZED OR ADDITIONAL LEGAL SERVICES

A. The specialized or additional legal services (excluding litigation services) to be provided by the J&H to the City may include the following:

1. Environmental Legal Services, including review draft environmental impact reports and related environmental documents;
2. Franchise, development agreement, lease, and settlement agreement negotiations and drafting of agreements;
3. Prepare for and attend any special or adjourned meetings of the City Council and meetings of Planning Commission or other committees or commissions;
4. Office conferences and criminal prosecution services to secure code compliance;
5. Other matters which are deemed by the parties to constitute specialized or additional legal services;

B. Specialized or additional legal services of the nature specified above in paragraphs 1 through 6 shall be billed at the hourly rate of \$195 per hour

Exhibit "B"

OATH OF OFFICE
California Constitution Article 20, Section 3

I, Michael Jenkins, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Michael Jenkins
Interim City Attorney
City of Goleta
Effective date: April 4, 2017