CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT

MEETING DATE: DECEMBER 16, 2019

TO: CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: CONSIDERATION AND APPROVAL OF A LEGAL SERVICES AGREEMENT WITH CHURCHWELL WHITE LLP FOR CITY ATTORNEY SERVICES.

RECOMMENDATION:

Staff recommends the Sonora City Council ("City Council") consider the proposed legal services agreement for City Attorney services with Churchwell White LLP ("Firm") and to authorize the Mayor to execute the Agreement on behalf of the City of Sonora ("City").

BACKGROUND:

At a regular City Council meeting held on October 17, 2016, the City Council appointed Douglas White to act as City Attorney for City and approved an agreement with Firm to provide City Attorney legal services for a term of three (3) years. The agreement between City and Firm expired on October 31, 2019. This new agreement is intended to continue Firm's City Attorney legal services arrangement with City.

DISCUSSION:

The existing City Attorney legal services agreement ended on October 31, 2019. City seeks to enter into a new City Attorney legal services agreement with Firm with an effective date of November 1, 2019. The City Attorney legal services agreement with Firm is the same as the prior agreement with two exceptions. The first exception eliminates a specific term for the agreement and instead states that the contract may be cancelled by the City or Firm at any time with appropriate notice. The second change eliminates the set monthly legal retainer. This change means that the City will only pay for those legal services that were provided to City and City is not required to use a minimum amount of legal services each month. All other provisions of the Agreement reflect the continuation of the October 17, 2016, City Attorney legal services agreement with Firm.

FISCAL IMPACT

Approval of the Agreement will have no new fiscal impact.

ENVIRONMENTAL

Authorizing execution of the subject contract is not considered a project for purposes of the California Environmental Quality Act (CEQA) pursuant to Section 15378(b) of CEQA Guidelines.

OPTIONS

1. The City Council may approve the Agreement for City Attorney services;

2. The City Council may continue consideration of the Agreement for City Attorney services, with instructions to staff for any changes; or

3. The City Council may reject the Agreement for City Attorney services.

ATTACHMENTS

Agreement for City Attorney services.

AGREEMENT FOR CITY ATTORNEY SERVICES

THIS AGREEMENT FOR CITY ATTORNEY SERVICES ("Agreement") is made and entered into this ____ day of _____ 2019, by and between the City of Sonora, a California municipal corporation ("City"), and the law firm of Churchwell White LLP, a California limited liability partnership ("Firm"). City and Firm may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. At a regular City Council meeting held on October 17, 2016, members of the Sonora City Council ("City Council") approved an agreement for City Attorney services with the Firm effective on November 1, 2016 for a term of (3) three years.

B. At a regular City Council meeting held on December 16, 2019, City Council considered and approved this Agreement for Firm to continue providing City Attorney legal services for City on an ongoing basis.

C. The Parties seek to enter into this Agreement to authorize Firm to provide City Attorney legal services to City on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties and in consideration of the benefits that accrue to each, it is agreed as follows:

AGREEMENT

Section 1. **Recitals**. The recitals set forth above are incorporated herein by this reference and made part of this Agreement. In the event of any inconsistencies between the recitals and Sections 1 through 23 of this Agreement, Sections 1 through 23 will prevail.

Section 2. **Appointment**. City hereby retains Firm to provide all legal services required by City (including such other public agencies or entities selected or appointed by City), and Firm hereby agrees to perform such legal services ("Legal Services"). The Mayor for City is authorized and charged with executing this Agreement. Douglas L. White is hereby appointed City Attorney for City, Nubia Goldstein and Thomas Hallinan are hereby appointed Deputy City Attorney for City. City Attorney shall be solely responsible for the appointment of any Deputy City Attorney following execution of this Agreement. City Attorney may from time to time assign alternate attorneys employed by Firm to act as Deputy City Attorney or to perform the Legal Services set forth in this Agreement.

Section 3. **Effective Date**. This Agreement shall become effective and Firm shall commence performance under the terms of this Agreement on December 16, 2019 ("Effective Date"), and Firm shall continue such performance, unless either City or Firm terminates this Agreement sooner, in accordance with Section 7 of this Agreement.

Section 4. **Integrated Agreement**. This Agreement contains all of the agreements of the Parties and all previous understandings and negotiations are integrated into this Agreement.

Section 5. **Amendment**. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by both Parties, except as otherwise stated herein. Any non-material change to the Agreement (e.g., change in Firm name or business structure) may become effective thirty (30) days following approval of such change, in writing, by the Mayor and Firm and shall not require the approval of the City Council.

Section 6. **Compensation and Services**.

6.1. Standard of Performance. Firm shall perform all Legal Services required by this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Firm is engaged in the geographical area in which Firm practices its profession. Firm shall prepare all work product required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Firm's profession.

6.2 Time. Firm shall devote such time to the performance of the Legal Services contracted for in this Agreement, as may be reasonably necessary to meet the standard of performance provided for in Section 6.1 above.

6.3. Hourly Rate for Legal Services. All Legal Services provided by Firm for City shall be billed at a blended hourly rate as follows:

6.3.1 General Counsel Legal Services. City shall pay Firm One Hundred Sixty-Seven Dollars ($167.00) per hour for all legal professionals (partners, of counsel, associates, paralegals, project assistants, and law clerks).

6.3.2. Special Counsel Legal Services. City shall pay Firm Two Hundred Seventy Seven Dollars ($277.00) for all legal professionals (partners, of counsel, associates, paralegals, project assistants, and law clerks) per hour for all Special Counsel Legal Services which include, but are not limited to, litigation, water, complex real estate transactions, enterprise funds, complex environmental, and labor and employment services. Special Counsel Legal Services will be provided in addition to and billed separately from General Counsel Legal Services.

6.3.3. Reimbursable Services. City shall pay Firm Three Hundred Eighty Eight Dollars ($388.00) per hour for all legal professionals (partners, of counsel, associates, paralegals, project assistants, and law clerks) that provide cost recovery legal services for City. Reimbursable Services include, but are not limited to, developer funded land use projects or bond financing. Reimbursable Legal Services will be provided in addition to, and billed separately from, General Counsel and Special Counsel Legal Services.

6.3.4. CPI Increase. The rates herein will be adjusted annually in accordance with an increase in the All Urban Consumer Price Index for the San Francisco-Oakland-San Jose Area ("CPI") but will not be decreased in the event there is any year-to-year or cumulative decrease in the CPI during the Term (as defined below) of this Agreement. Any increase in rates herein as a result of an increase to the CPI will be rounded up to the nearest dollar. Any changes in the Firm's rates shall be based on the August CPI, released every year in September, and shall become effective on November 1st of each year.

6.4. Outside Counsel. If Firm requires assistance from attorneys not associated or affiliated with Firm who specialize in a specific field, such as tax or bankruptcy, Firm will charge, and City agrees to pay, the billing rates for those attorneys. Firm shall obtain the consent of the Mayor prior to engaging any attorney not affiliated or associated with Firm to provide legal services to City.

6.5. Costs, Expenses & Advances. City shall pay for costs, expenses, and advances incurred by Firm on behalf of City and services provided by or obtained through Firm on behalf of City ("Costs & Advances"). Such Costs & Advances shall be the actual cost of the service obtained and there shall be no mark-up of the Costs & Advances by Firm. Costs & Advances include, but are not limited to: outside courier services, court runner services, court reporter services, and transportation costs. The Parties agree that City shall pay the Costs & Advances of copying and printing at a rate of twenty cents ($0.20 cents) per page, as adjusted annually by the CPI. Automobile mileage will be calculated at the rate per mile that is provided by the Internal Revenue Service at the time the expense is incurred. All Costs & Advances shall be itemized on Firm's monthly invoice to City and shall be due pursuant to Section 6.8 of this Agreement.

6.6. Legislative/Lobbying Services. City authorizes Firm to provide legislative and governmental relation services to City as its registered lobbyist in the State of California. Firm shall not charge or invoice City for legislative services under the compensation structure set forth in this Agreement.

6.7. Included Services. Notwithstanding any other provision in this Agreement to the contrary, City will not be required to pay any separate or additional charge for the following:

a. Secretarial, word processing, or clerical services which are included in the hourly rates of Firm's legal professionals; and

b. Charges associated with telephone or facsimile services.

6.8. Invoices and Statements.

a. Firm shall provide City with an itemized statement or invoice for fees, costs, expenses, and advances incurred on a monthly basis. All statements and invoices shall indicate the basis for all charges, including the hours worked or cost incurred, the hourly rate, and a brief description of the work performed. Firm will establish separate billing projects for specific matters and funding categories as City may direct.

b. Payments shall be made by City to Firm within thirty (30) days of receipt of any statement or invoice, except for those specific items on an invoice that are contested or questioned and are returned by City with a written explanation of the question or contest, within thirty (30) days of receipt of the statement or invoice. Payments made to Firm more than thirty (30) days after the due date shall draw interest at ten percent (10%) per annum, except as otherwise set forth herein.

6.9. Payment of Taxes. Firm is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6.10. Office Hours. Firm shall make itself available to City at times mutually agreeable to Mayor and Firm.

Section 7. Term and Termination.

7.1. Term. This Agreement shall begin on the Effective Date and shall continue until terminated by City or Firm upon thirty (30) days advance written notice to the non-terminating party. Upon termination, Firm shall be entitled to and City shall immediately pay all amounts owed to Firm. City, however, may condition payment of such compensation upon Firm delivering to City copies of any or all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, specifications, records, files, or any other documents or materials, in electronic or any other form, that Firm prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder. Originals of attorney work product shall remain the property of Firm.

7.2. Options Upon Breach of Agreement by Firm. If Firm materially breaches any of the Terms of this Agreement, City's remedies shall include, but not be limited to, the following:

a. Immediate termination of this Agreement;

b. Retention of the plans, reports, documents, and any other work product prepared by Firm pursuant to this Agreement; or

c. Retention of a different law firm to complete the Legal Services.

Section 8. Independent Contractor and Assignment.

8.1. Independent Contractor. Firm shall perform all Legal Services required under this Agreement as an independent contractor of City and shall remain, at all times as to City, a wholly independent contractor with only such obligations as are required under this Agreement. Neither City, nor any of its employees, shall have any control over the manner, mode, or means by which Firm, its agents or employees, render the Legal Services required under this Agreement, except as otherwise set forth. City shall have no voice in the selection, discharge, supervision, or control of Firm employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

8.2. Assignment and Subcontracting. City and Firm recognize and agree that this Agreement contemplates personal performance by Firm and is based upon a determination of Firm's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Firm. Firm may not assign this Agreement or any interest therein without the prior written approval of the Mayor. Firm shall not subcontract any portion of the performance contemplated and provided for herein, other than to outside counsel as described in Section 6.4 of this Agreement, without prior written approval of City.

Section 9. Conflicts.

9.1. No Present Conflicts. Firm has no present or contemplated employment that is adverse to City. Firm agrees that it shall not represent clients in matters, either litigation or non-litigation, against City. However, Firm may have past and present clients, or may have future clients, who, from time to time, may have interests adverse to City, and Firm reserves the right to represent such clients in matters not connected with its representation of City.

9.2. Duty to Disclose Future Conflicts. If a potential conflict of interest arises in Firm's representation of two clients, if such conflict is only speculative or minor, Firm shall inform City and seek waivers from each client with regards to such representation. However, if real conflicts exist, Firm would withdraw from representing either client in the matter and assist them in obtaining special counsel.

9.3. No Conflict in Violation of Government Code section 1090. Firm may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Firm in a "conflict of interest," as that term is defined in the rules of professional responsibility governing Firm's profession, unless such conflict may be waived by City and City chooses to waive such conflict in writing.

Section 10. Errors and Omissions Insurance Coverage.

10.1. Insurance Coverage. During the Term of this Agreement, Firm shall at all times maintain insurance coverage for Errors and Omissions with a limit not less than One Million Dollars ($1,000,000.00) per occurrence and Three Million Dollars ($3,000,000.00) in the aggregate. During the Term of this Agreement, Firm shall at all times maintain automobile liability insurance in an amount not less than Two Million Dollars ($2,000,000.00) per accident. A certificate of insurance shall be provided to City within thirty (30) days of execution of this Agreement. In the event that any coverage required by this Section is reduced, limited, or materially affected in any manner, Firm shall provide written notice to City at Firm's earliest possible opportunity and in no case later than thirty (30) days after Firm is notified of the change in coverage.

10.2. Remedies. In addition to any other remedies City may have, if Firm fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Firm's breach:

a. Order Firm to stop work under this Agreement or withhold any payment that becomes due to Firm hereunder, or both stop work and withhold any payment, until Firm demonstrates compliance with the requirements hereof; or

b. Terminate this Agreement.

Section 11. Legal Requirements.

11.1. Governing Law. The laws of the State of California shall govern this Agreement.

11.2. Compliance with Applicable Laws. Firm and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

11.3. Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Firm, and any subcontractors, shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

11.4. Licenses and Permits. Firm represents and warrants to City that Firm and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature legally required to practice their respective professions. Firm represents and warrants to City that Firm and its employees, agents, and any outside counsel shall, at their sole cost and expense, keep in effect at all times during the Term of this Agreement any licenses, permits, and approvals legally required to practice their respective professions. In addition to the foregoing, Firm and any outside counsel shall obtain and maintain during the Term of this Agreement any required business licenses from City.

Section 12. **Severability**. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement are declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties herein.

Section 13. **Counterparts**. This Agreement may be executed simultaneously, and in several counterparts, each of which shall be deemed an original, but which together shall be deemed one and the same instrument.

Section 14. **Work Product**.

14.1. Records Created as Part of Firm's Performance. Firm hereby agrees to deliver copies of all reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Firm prepares or obtains pursuant to this Agreement to City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including, but not limited to, those described above, prepared pursuant to this Agreement are prepared specifically for City and are not necessarily suitable for any future or other use.

14.2. Firm's Books and Records. Firm 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 or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Firm pursuant to this Agreement.

14.3 Inspection and Audit of Records. Any records or documents that Section 14.2 of this Agreement requires Firm to maintain shall be made available for inspection, audit, or copying at any time during regular business hours, upon oral or written request of City.

Section 15. **Notices**. Any notice or communication required hereunder between City and Firm must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS, or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or

communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:

City of Sonora
94 N. Washington Street
Sonora, California 95370
Attention: City Administrator
Tel: (209) 532-6331

If to Firm:

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.
Tel: (916) 468-0950
Fax: (916) 468-0951

Section 16. **Venue**. Venue for all legal proceedings shall be in the Superior Court of the State of California, in and for the County of Sacramento.

Section 17. **Entire Agreement**. This Agreement, together with its specific references, attachments, and exhibits, constitute all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto with respect to the subject matter of this Agreement. Unless set forth herein, neither Party shall be liable for any representations made, express or implied, not specifically set forth herein.

Section 18. **Authority**. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states, or firms represented, or purported to be represented, by such entities, persons, states, or firms, and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with.

Section 19. **Document Preparation**. This Agreement will not be construed against the Party preparing it but will be construed as if prepared by all Parties.

Section 20. **Advice of Legal Counsel**. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

Section 21. **No Implied Waiver of Breach**. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

Section 22. **Successors and Assigns**. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

Section 23. **Attorney's Fees and Costs**. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

SIGNATURE PAGE TO IMMEDIATELY FOLLOW

IN WITNESS WHEREOF, this Agreement has been entered into by and between City and Firm as of the date of execution by City.

CITY OF SONORA,
a California municipal corporation

By:_____
Jim Garaventa
Mayor

Date Signed:_____

Attest:

By:_____
City Clerk

Date Signed:_____

CHURCHWELL WHITE LLP,
a California limited liability partnership

By:_____
Douglas L. White, Managing Partner

Date Signed:_____