

**SECOND AMENDMENT TO
LEGAL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
DOWNEY BRAND, LLP
(San Francisco Baykeeper v. City of Sunnyvale)**

THIS SECOND AMENDMENT TO LEGAL SERVICES AGREEMENT is entered into this ____ day of _____, 20__, by the CITY OF SUNNYVALE (“City”), a California chartered municipal corporation and DOWNEY BRAND, LLP, a California limited liability partnership, engaged in the practice of law in California (“Outside Counsel”).

RECITALS

WHEREAS, on December 13, 2019, City and Outside Counsel entered into an agreement entitled, “Legal Services Agreement between the City of Sunnyvale and Downey Brand, LLP (San Francisco Baykeeper v. City of Sunnyvale)” (“Agreement”); and

WHEREAS, on July 20, 2020, City and Outside Counsel entered in to a First Amendment to the Agreement to increase the total amount of compensation for a total not-to-exceed amount of \$100,000; and

WHEREAS, City and Outside Counsel desire to amend the Agreement to increase the amount of total compensation allowed by \$400,000 for a total compensation of \$500,000;

WHEREAS, City has increased its insurance limits provisions for law firms entering into Legal Services Agreements with City pursuant to limits provisions set by the California Joint Powers Risk Management Authority, of which City is a member.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Section 3.0 is hereby amended to read as follows:

3.0 COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENTS.

- 3.1 Compensation.** Fees for all legal services provided hereunder shall be charged in accordance with Exhibit “A” which is attached and incorporated by reference. Exhibit “A” may be amended, from time to time, to alter fees and charges applicable hereto provided that a letter agreement is duly signed and approved by the City Attorney. The total amount of fees and expenses shall not exceed \$500,000.00. Outside Counsel shall notify the City prior to incurring billable costs in excess of 95% of the not-to-exceed amount.

2. Section 12.0 is hereby amended to read as follows:

12.0 INSURANCE.

12.1 General Liability. General Liability with minimum limits of at least \$2,000,000 per occurrence and \$4,000,000 aggregate combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability “occurrence” form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required.

12.2 Professional Liability. Professional errors and omissions coverage in a sum of at least \$2,000,000. If a claims-made policy is required, a “tail” of at least three years shall be purchased if non-renewed within three (3) years of completion of performance under this Agreement. Applicable aggregates must be identified and claims history provided to determine amounts remaining under the aggregate.

12.3 Workers’ Compensation. Outside Counsel shall comply with the applicable sections of the California Labor Code concerning workers’ compensation for injuries on the job.

12.4 Automobile Liability. \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

12.5 Cyber Coverage Liability. Cyber Coverage Liability insurance in the minimum amount of at least \$1,000,000 per occurrence.

3. First Revised Exhibit A, “Fee Schedule” is amended to read as shown in First Revised Exhibit A, attached and incorporated into this Second Amendment.

4. All of the terms and conditions of the First Amended Agreement not specifically modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

CITY OF SUNNYVALE, a California
chartered municipal corporation

DOWNEY BRAND, LLP, a California limited
liability partnership

By: _____
JOHN A. NAGEL
City Attorney

By: _____
MELISSA A. THORME
Partner

Dated: _____

Dated: _____

FIRST REVISED EXHIBIT A

FEE SCHEDULE

HOURLY RATES

| | |
|-------------------------|--|
| Melissa Thorme, Partner | \$405 per hour (discounted for municipal rate) |
| Partners | \$390-\$625 |
| Associates | \$250-\$390 depending on year |
| Paralegals | \$225 |
| Clerks | \$115 |