

**THIRD AMENDMENT TO  
AGREEMENT FOR LEGAL SERVICES  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
HAWKINS DELAFIELD & WOOD LLP**

This THIRD AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by the CITY OF SAN JOSE, a municipal corporation (%CITY+), and HAWKINS DELAFIELD & WOOD LLP, a New York limited liability partnership (%ATTORNEY+).

**RECITALS**

**WHEREAS**, on November 24, 2014, CITY and ATTORNEY entered into an agreement entitled %AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY OF SAN JOSE AND HAWKINS DELAFIELD & WOOD LLP+(%AGREEMENT+); and

**WHEREAS**, on May 20, 2015, CITY and ATTORNEY entered into a First Amendment to the AGREEMENT to increase the maximum amount of compensation during the INITIAL TERM, FIRST OPTION YEAR and SECOND OPTION YEAR and to revise the members of ATTORNEY set forth in the Scope of Services; and

**WHEREAS**, on December 2, 2015, CITY and ATTORNEY entered into a Second Amendment to the AGREEMENT to modify the period of the INITIAL TERM and options in the AGREEMENT without increasing the total amount of compensation; and

**WHEREAS**, on June 3, 2016, CITY exercised its option to extend the AGREEMENT through June 30, 2017; and

**WHEREAS**, CITY and ATTORNEY desire to further amend the amended AGREEMENT to extend the term, revise the scope of services, and increase the amount of total compensation allowed;

**NOW, THEREFORE**, the parties agree to further amend the amended AGREEMENT as follows:

**SECTION 1.** SECTION 2, ~~%~~TERM OF AGREEMENT+is amended to read as follows:

- ~~%~~A. The initial term shall be from December 1, 2014 to June 30, 2016, inclusive (~~%~~INITIAL TERM+).
- B. Subject to the appropriation of funds by the City Council, the CITY has the option of extending the term of the AGREEMENT from July 1, 2016 through June 30, 2017, inclusive (~~%~~FIRST OPTION YEAR+). The CITY will exercise its option by giving ATTORNEY written notice at least fourteen (14) calendar days before the end of the INITIAL TERM.
- C. Subject to the appropriation of funds by the City Council, the term of the AGREEMENT may be extended for an additional three (3) year period following the FIRST OPTION YEAR, from July 1, 2017 through June 30, 2020, inclusive (~~%~~ADDITIONAL TERM+).

**SECTION 2.** Subsection A of SECTION 3, ~~%~~COMPENSATION+is amended to read as follows:

- ~~%~~A. The compensation to be paid to ATTORNEY, including both payment for professional services and reimbursable expenses, shall not exceed the following maximum amounts:
  - 1. During the INITIAL TERM, compensation shall not exceed Seven Hundred Thousand Dollars (\$700,000);
  - 2. During the FIRST OPTION YEAR, subject to appropriation, compensation shall not exceed Three Hundred Thousand Dollars (\$300,000), plus any amount remaining from the INITIAL TERM.

3. During the ADDITIONAL TERM, subject to appropriation, compensation shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000), plus any amount remaining from the INITIAL TERM and the FIRST OPTION YEAR.+

**SECTION 3.** REVISED EXHIBIT A, %SCOPE OF SERVICES+, is amended to read as shown in SECOND REVISED EXHIBIT A, attached and incorporated into this Third Amendment.

**SECTION 4.** REVISED EXHIBIT B, %COMPENSATION+, is amended to read as shown in SECOND REVISED EXHIBIT B, attached and incorporated into this Third Amendment.

**SECTION 5.** All of the terms and conditions of the AGREEMENT not specifically modified by the First Amendment, the Second Amendment or this Third Amendment shall remain in full force and effect.

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

%CITY+

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_  
JENNIFER POU SHO  
Sr. Deputy City Attorney

By \_\_\_\_\_  
RICHARD DOYLE  
City Attorney

%ATTORNEY+

HAWKINS DELAFIELD & WOOD LLP, a  
New York limited liability partnership

By \_\_\_\_\_  
ERIC S. PETERSEN, ESQ.  
Partner

**SECOND REVISED EXHIBIT A**  
**SCOPE OF SERVICES**

- A. At the request of the City Attorney or an authorized deputy of the City Attorney, ATTORNEY shall provide services related to the following CITY projects:
1. Cogeneration Facility Project
  2. Headworks Project
  3. Dewatering Project
  4. Yard Piping Project
  5. Miscellaneous
    - a. Advise the CITY on various alternative methods available to it for delivering major public works construction projects at the San José-Santa Clara Regional Wastewater Facility; and
    - b. Advise the CITY on implementing, administering and managing major public works construction projects undertaken at the San José-Santa Clara Regional Wastewater Facility using various project delivery methods, including design-build projects.
- B. At the request of the City Attorney or an authorized deputy of the City Attorney, ATTORNEY shall perform the following tasks related to the projects listed in paragraph A above:

TASK 1: PROCUREMENT

- a. Review procurement documents
- b. Conference calls
- c. As-needed legal advice

TASK 2: DESIGN-BUILD (%DB+) CONTRACT EXECUTION

- a. Conference calls with CITY and Design-Builder
- b. Negotiation meetings with Design-Builder
- c. Manage DB Contract editing through negotiations
- d. Finalize DB Contract

TASK 3: EARLY WORK PACKAGES (%EWP+)

- a. Conference calls with CITY and Design-Builder
- b. Negotiation meetings with Design-Builder
- c. Manage EWP editing through negotiations
- d. Finalize EWP

TASK 4: DEFINITIVE CONTRACT AMENDMENT (%DCA+)

- a. Conference calls with CITY and Design-Builder
- b. Negotiation meetings with Design-Builder
- c. Manage DCA editing through negotiations
- d. Finalize DCA

- C. The members of ATTORNEY responsible for providing services under this AGREEMENT are Eric Petersen and Rick Sapir. Additional members of ATTORNEY may provide services under this AGREEMENT upon written approval by the City Attorney or an authorized deputy of the City Attorney.

**SECOND REVISED EXHIBIT B**  
**COMPENSATION**

- A. CITY agrees to compensate ATTORNEY for professional services performed in accordance with the terms and conditions of this AGREEMENT at the ~~blended~~ hourly rate of \$395.00 for any attorney. The parties agree that the ~~blended~~ hourly rate set forth herein may be changed no more than once during the FIRST OPTION YEAR and no more than once during the ADDITIONAL TERM. No adjustment in the hourly rate may exceed the percentage change in the national Consumer Price Index (CPI-U) between the day that this AGREEMENT is made and entered into, and the effective date of the adjustment.

An adjustment in the hourly rate may be made without formal amendment to this AGREEMENT. ATTORNEY shall submit any proposed change to the City Attorney. The City Attorney must affirmatively accept said modification in writing before it becomes binding under the terms of this AGREEMENT.

- B. In addition to the above compensation, CITY shall reimburse ATTORNEY for actual out-of-pocket costs and expenses reasonably incurred in connection with providing CITY the services specified in this AGREEMENT, including but not limited to the following:

- Proofreading at a rate not to exceed \$60.00 an hour;
- Duplicating at a rate not to exceed \$.20 per page;
- Faxes at a rate not to exceed \$1.75 per page;
- Word processing at a rate not to exceed \$20.72 an hour;
- Postage and deliveries at actual cost;
- Overtime expenses, but only if preapproved by the CITY; and
- Travel expenses not to exceed amounts reimbursable to CITY employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3).

**EXHIBIT B-1**  
**COMPENSATION TABLE**

Column 1	Column 2	Column 3	Column 4
Project Nos.	Basis of Compensation	Invoice Period	Compensation
1, 5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$1,000,000
2, 5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$700,000
3, 5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$700,000
4, 5	<input checked="" type="checkbox"/> Time & Materials <input type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$100,000
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):			\$2,500,000