

**SECOND AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF MILPITAS AND JARVIS, FAY, DOPORTO & GIBSON, LLP**

THIS AMENDMENT is entered into this 19th day of June, 2012, by and between the City of Milpitas, hereinafter "City," and Jarvis, Fay, Doport & Gibson, LLP, hereinafter "Firm."

Recitals:

Whereas, the parties entered into a written agreement (the "Agreement") for legal services dated March 1, 2010 by Firm and dated March 2, 2010 by City, with a not-to-exceed amount of \$10,000, a copy of which is attached hereto; and

Whereas, the parties amended the Agreement on June 20, 2011 by way of written amendment (the "First Amendment"), a copy of which is attached hereto. The First Amendment increased the compensation amount of the Agreement by \$9,950.00, for a total not-to-exceed amount of \$19,950; and

Whereas, the parties wish to further amend the Agreement as set forth below.

NOW, THEREFORE, **IT IS HEREBY AGREED** as follows:

1. The compensation amount stated on the Agreement is increased by \$90,000, for a new total not-to-exceed amount of \$109,950.
2. All other terms and conditions remain unchanged.

APPROVED BY:

CITY OF MILPITAS

Jarvis, Fay, Doport & Gibson, LLP

Thomas C. Williams, City Manager

By: 

Dan Doport, Partner

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

**AMENDMENT TO AGREEMENT BETWEEN
THE CITY OF MILPITAS AND JARVIS, FAY, DOPORTO & GIBSON, LLP**

THIS AMENDMENT is entered into this 20th day of June, 2011, by and between the City of Milpitas, hereinafter "City," and Jarvis, Fay, Doport & Gibson, LLP, hereinafter "Firm."

Recitals:

Whereas, the parties entered into a written agreement (the "Agreement") for legal services dated March 1, 2010 by Firm and dated March 2, 2010 by City, with a not-to-exceed amount of \$10,000, a copy of which is attached hereto; and

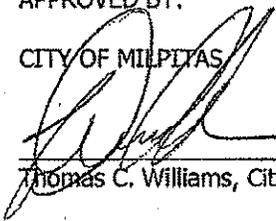
Whereas, the parties wish to amend the Agreement as set forth below.

NOW, THEREFORE, **IT IS HEREBY AGREED** as follows:

1. The compensation amount stated on the Agreement is increased by \$9,950, for a new total not-to-exceed amount of \$19,950.
2. All other terms and conditions remain unchanged:

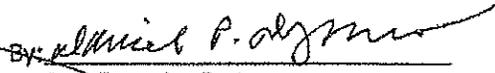
APPROVED BY:

CITY OF MILPITAS



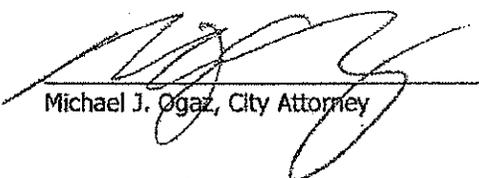
Thomas C. Williams, City Manager

Jarvis, Fay, Doport & Gibson, LLP

By 

Dan Doport, Partner

APPROVED AS TO FORM:



Michael J. Ogaz, City Attorney

JARVIS FAY DOPORTO & GIBSON, LLP

475 14th St., Suite 260
Oakland, CA 94612
Main: 510-238-1400
Fax: 510-238-1404
www.jarvisfay.com

City Attorney

MAR 02 2010

RECEIVED

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION

March 1, 2010

Michael J. Ogaz
City Attorney
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Re: Legal Services Agreement

Dear Mr. Ogaz:

Thank you for selecting Jarvis, Fay, Doport & Gibson, LLP to provide legal services to the City of Milpitas ("City"). This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for our services.

1. Scope of Engagement. We will represent and advise the City in connection with its participation in the City of San Jose's Newby Island Sanitary Landfill permitting and environmental review process (the "NISL Project"). Included within such representation shall be providing City advice on EIR pre-certification activities; post-certification administrative actions; and litigation risk analysis including estimated cost of litigation. 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 City \$250 per hour for time billed by our partners and of counsel attorneys, \$225 per hour for time billed by our associates, and \$115 per hour for time billed by our paralegals/legal assistants. 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. All of our hourly rates are subject to reasonable annual adjustments. Our charges to the City for our work on the NISL Project, including disbursements and expenses described in Section 3 below, shall not exceed ten thousand dollars (\$10,000.00) without the express written authorization of the City Attorney.

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 City. We do not bill for in-house copy or fax costs or other overhead.

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) 238-1405 or to email me at dan@jarvisfay.com.

5. Termination of Services. The City 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 City's new counsel.

We may terminate our services at any time with the City's consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) the City fails to meet any other obligation under this agreement and continues in that failure for 15 days after we send written notice to the City; (c) the City 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 City agrees to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination. Termination of our services, whether by the City or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. 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 City.

7. 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.

8. 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.

Michael J. Ogaz
March 1, 2010
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To accept this letter of engagement, please sign it below. Enclosed is an additional copy of this letter which the City should retain for its records. We appreciate the opportunity to serve as the City's lawyers.

Very truly yours,

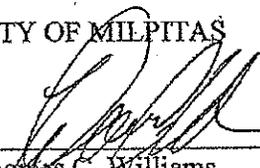
JARVIS, FAY, DOPORTO & GIBSON, LLP



Daniel P. Doport

These terms are accepted and agreed to
as of March 2, 2010.

CITY OF MILPITAS



Thomas C. Williams
City Manager, City of Milpitas

Michael J. Ogaz
City Attorney, City of Milpitas