

**FIRST AMENDMENT TO AGREEMENT  
LAW OFFICES OF GARY M. BAUM**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on \_\_\_\_\_ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and LAW OFFICES OF GARY M. BAUM, a California sole proprietorship ("CONSULTANT").

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon the action of the Morgan Hill City Council taken on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_.
2. The CITY and CONSULTANT entered into that "Legal Consultant Agreement" made as of July 11, 2016, for consultant services for a maximum compensation of THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. Amount. Maximum compensation to CONSULTANT for all work and services performed, fees charged and expenses incurred, if any, under this Agreement shall not exceed SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00). Effective February 1, 2017, CONSULTANT'S hourly billing rate will increase from \$265 per hour to \$275 per hour, which increased rate is set forth on Exhibit "B," dated February 1, 2017, attached hereto and incorporated herein by this reference. CONSULTANT shall effect no additional rate changes during the term of this Agreement without prior written approval from CITY. Services or work performed by CONSULTANT in excess of the total maximum compensation set forth above shall be at no cost to CITY.

If CITY'S City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 **Term of Agreement**, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has first appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**  
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date: \_\_\_\_\_

City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Firm Name LAW OFFICES OF GARY M. BAUM

City Attorney

Date: \_\_\_\_\_

By: 

Title: Gary M. Baum

Date: Partner

Date: 11/8/17

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LEGAL CONSULTANT AGREEMENT  
WITH  
LAW OFFICES OF GARY M. BAUM**

THIS LEGAL CONSULTANT AGREEMENT ("Agreement") is made and entered into as of this 11th day of July, 2016 ("Effective Date"), by and between the CITY OF MORGAN HILL, a California municipal corporation ("CITY"), and the LAW OFFICES OF GARY M. BAUM, a California sole proprietorship ("CONSULTANT"). CITY and CONSULTANT may sometimes be referred to collectively herein as the "Parties" and individually as a "Party."

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to the authority of the City Manager pursuant to Chapter 3.04 of the Morgan Hill Municipal Code.
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish the services to be performed by CONSULTANT under this Agreement.

**AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover those legal services of CONSULTANT provided to CITY as described herein as of July 11, 2016, through June 30, 2017, subject to the provisions of Section 3 [Services Previously Rendered] and the provisions of Section 4.4 [Termination] of this Agreement. The City Manager is authorized to extend the term of this Agreement for a maximum period of one (1) year. Any such extension shall be in writing and signed by both parties to this Agreement.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following: general municipal law advice, subject to the provisions of Section 11 below [Conflict of Interest and Reporting].
3. **Services Previously Rendered.** It is understood and acknowledged by the Parties hereto that CONSULTANT may have commenced the services of CONSULTANT described in this Agreement to CITY in anticipation of the full execution of this Agreement by the Parties. CITY agrees to compensate CONSULTANT pursuant to the terms set forth in this Agreement for those services previously performed by CONSULTANT that CITY determines are wholly consistent with the services that are to be performed and provided by CONSULTANT under this Agreement and that City has accepted and approved.

4. **Compensation:** CONSULTANT shall be compensated as follows:

- 4.1. **Amount.** Maximum compensation to CONSULTANT for all work and services performed, fees charged and expenses incurred, if any, under this Agreement shall not exceed THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00). Compensation to CONSULTANT shall be based upon an hourly billing rate of CONSULTANT, which rates are set forth on Exhibit "B," attached hereto and incorporated herein by this reference. CONSULTANT shall effect no rate changes during the term of this Agreement without prior written approval from CITY. Services or work performed by CONSULTANT in excess of the total maximum compensation set forth above shall be at no cost to CITY.

If CITY's City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 1 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has first appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement, and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.

- 4.2. **Payment.** For work and services provided under this Agreement, payment to CONSULTANT shall be made per a monthly invoice from CONSULTANT. For extra work not a part of this Agreement, written authorization by CITY will first be required, and payment shall be based upon the hourly rates set forth on Exhibit "B."
- 4.3. **Records of Expenses.** CONSULTANT shall keep accurate records of payroll, travel, and expenses incurred by CONSULTANT in the performance of this Agreement. CONSULTANT shall make these records available to CITY upon request by CITY.
- 4.4. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' prior written notice to the other, or less under urgent circumstances described in said notice. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not yet been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

5. **Insurance Requirements.**

5.1. **Commencement of Work.** CONSULTANT shall not commence work under this Agreement until it has first obtained CITY approved insurance. For general liability insurance policies, CONSULTANT shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- the CITY, its elected officials, officers, employees, agents and representatives are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; and,
- the insurance shall be primary non-contributing.

CONSULTANT shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail.

5.2. **Workers Compensation Insurance.** CONSULTANT and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.

5.3. **Insurance Types and Amounts.** CONSULTANT shall maintain general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage. CONSULTANT shall also maintain a claims-made professional liability insurance in an amount of \$1,000,000 per claim.

5.4. **Acceptability of Insurers.** All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

5.5. **Provision of Agreement to Insurers.** CONSULTANT represents and warrants that CONSULTANT has provided a copy of this Agreement to their respective insurers, and the insurers are aware of all obligations pertaining to CONSULTANT as stated in this Agreement.

6. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.



7. **Non-Discrimination.** CONSULTANT covenants that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

8. **Independent Contractor.** CONSULTANT understands and agrees that CONSULTANT shall act as and be an independent contractor and not an employee of CITY. CONSULTANT shall be solely responsible for the performance of its employees, agents or subcontractors under this Agreement.

9. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

11. **Conflict of Interest and Reporting.** CONSULTANT states that it does not represent clients with adverse interests to the CITY. However, CITY acknowledges that CONSULTANT has advised CITY that CONSULTANT is general counsel of the Silicon Valley Regional Interoperability Authority ("SVRIA"), a Joint Powers Authority of which CITY is a member. While the Parties presently are aware of no apparent conflict of interest, CITY waives any potential conflict of interest during the period of CONSULTANT's services to CITY under this Agreement. The Parties agree that CONSULTANT will not handle any matters for CITY related to SVRIA and that such matters are not a part of the scope of services of CONSULTANT under this Agreement.

12. **Notices.** All notices provided pursuant to this Agreement shall be personally delivered or mailed, via first class mail, to the below listed addresses. These addresses shall be used for delivery of service of process.

Address of CONSULTANT is as follows:

Law Offices of Gary M. Baum  
19925 Stevens Creek Blvd., #100  
Cupertino, CA 95014-2358

Address of CITY is as follows:

City Attorney	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

13. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT's proposal or bid which is incorporated herein. In the event of any

inconsistency between the terms of the proposal and this Agreement, the terms of this Agreement shall govern and control.

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain all permits and licenses as may be required to provide services under this Agreement.

15. **Familiarity with Work.** By executing this Agreement, CONSULTANT represents and warrants for the benefit of CITY that: (1) it has investigated the work to be performed, (2) it has the skills, knowledge and experience to perform this work competently and fulfill all professional and ethical obligations of attorneys at law in the State of California; and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

16. **Time of Essence.** Time is of the essence in the performance of this Agreement.

17. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement nor any portion hereof shall be assigned by CONSULTANT without prior written consent of CITY.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.

19. **Indemnification.** CONSULTANT agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified, or provisions waived, only by subsequent mutual written agreement executed by CITY and CONSULTANT.

21. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the Superior Court of the County of Santa Clara.

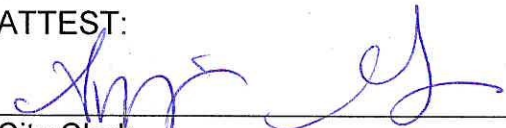
22. **Interpretation.** This Agreement shall be interpreted as though prepared by both Parties.

23. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable to the fullest possible extent.

**IN WITNESS THEREOF**, the Parties have executed this Agreement on the day and year shown below to be effective as of the Effective Date set forth above.

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND** (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]


ATTEST:

*Deputy*  
  
\_\_\_\_\_  
City Clerk  
Date: 7/18/16

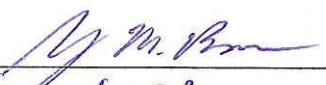
THE CITY OF MORGAN HILL

*for*  
  
\_\_\_\_\_  
City Manager  
Date: 7/16/16

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
Date: 7/11/2016

LAW OFFICES OF GARY M. BAUM

  
\_\_\_\_\_  
By: Gary M. Baum  
Title: Partner  
Date: 6/28/16

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**CITY OF MORGAN HILL  
OUTSIDE COUNSEL BILLING AND RETENTION POLICY**

**A.     Retention**

The role of retained counsel will be that of co-counsel with the retaining attorney. (City Attorney). All legal services provided will be pursuant to a written analysis (including strategy and budget) developed by retained counsel in cooperation with the retaining attorney, and approved by the retaining attorney before work on the specified project begins. Retained counsel will also:

1. Obtain authorization from the retaining attorney before beginning work on any pleading, discovery, motion, or other legal paper, and before securing the services of any expert;
2. Review the above with the retaining attorney prior to use;
3. Provide written status reports on the progress of the litigation to the retaining attorney on the progress of the project as necessary, logical, or requested, but no less frequently than every 60 days;
4. Provide summaries of each deposition taken to the retaining attorney;
5. Coordinate with the retaining attorney to use the legal and paralegal services of the City Attorney's office to keep costs down;
6. Maintain a complete file and provide a copy of all documents generated to the retaining attorney;
7. Make a continuous and diligent attempt to resolve any litigation at the lowest possible cost, with the least expensive professional effort consistent with quality legal representation. To this end, the City will be billed for the time of only one attorney at depositions, hearings, trial, and interoffice conferences. Services performed without prior approval of the retaining attorney are not authorized and may not be approved for payment.

From time to time the retaining attorney may direct a departure from the requirements listed above, or may disapprove certain efforts proposed by retained counsel, or may direct efforts with which retained counsel disagrees. The retaining attorney is responsible for these decisions and will consult with the client as appropriate about such matters.

B. Billing Requirements

Retained counsel's services must be itemized individually and billed monthly. Each monthly statement must include 1) the name and billing rate of each attorney and paralegal who worked on the matter; 2) the date each service was performed; 3) a brief description of each service performed; 4) the time spent by each attorney and paralegal on each service performed, to the nearest tenth of one hour; 5) itemized costs; and 6) subtotal of fees and costs billed for the month and total for the matter to date.

Retained counsel will be reimbursed customary costs. When authorized, telephone, photocopy, electronic research and expedited delivery charges may be billed at the actual net cost to retained counsel or a rate approved in advance by the retaining attorney. Charges for approved travel will be at coach rates and automobile mileage will be reimbursed at the City's current rate (reflects IRS).

Costs for the following items will not be reimbursed unless approved in advance by the retaining attorney:

- Electronic research (Lexis, Westlaw, etc.)
- Word processing and photocopying
- Secretarial time
- Secretarial and paralegal overtime
- Express mail and messenger delivery
- Travel time in excess of 3 hours per trip

Bills must be submitted to the attention of the retaining attorney, 17575 Peak Avenue, Morgan Hill, California, 95037, in the form discussed above.

C. Contract

Each retained counsel will be required to execute a consultant agreement in a form acceptable to the City.

Retained counsel may not bill in excess of the contracted amount without prior written approval from the City Attorney.

## **Exhibit B**

### **Morgan Hill Rates**

Partner Level Attorney:	\$265
Associate Level Attorney:	\$225
Law Clerk:	\$155
Paralegal:	\$125

Travel time to/from Morgan Hill will be billed at one hour each way or actual time, whichever is less.

## **Exhibit B - Effective February 1, 2017**

### **Morgan Hill Rates**

Partner Level Attorney:	\$275
Associate Level Attorney:	\$225
Law Clerk:	\$155
Paralegal:	\$125

Travel time to/from Morgan Hill will be billed at one hour each way or actual time, whichever is less.