



June 2, 2009

**SUBJECT: Amendment of Outside Counsel Agreement for Insurance Recovery for Costs Related to Environmental Remediation of the Sunnyvale Town Center**

**REPORT IN BRIEF**

Approval is requested for a Second Amendment to a contract with the law firm of Folger Levin & Kahn<sup>1</sup>, LLP, to provide specialized legal assistance and representation related to recovery from City insurance policies for costs related to the environmental clean-up of the Sunnyvale Town Center Redevelopment Project. The research, identification and litigation of claims against insurance companies is complex and requires specialization in insurance law, and will require substantial involvement from both the City Attorney and outside counsel. The current contract provides for fees not to exceed \$100,000 and this second amendment is required to reflect the actual time spent on the Project to date in researching and identifying insurance policies with potential coverage, and to provide for anticipated legal costs over the next two years as insurance coverage is pursued.

**BACKGROUND**

Environmental law and insurance litigation specialists Joel D. Smith, Gregory D. Call, and Margaret R. Dollbaum of the law firm of Folger Levin & Kahn, LLP were retained to provide legal services to the City pursuant to Section 908 of the City Charter. Specifically, the firm is providing specialized assistance on environmental and insurance litigation to the City and the Redevelopment Agency related to the City's cost recovery efforts for the environmental clean-up and potential insurance coverage for the Sunnyvale Town Center Redevelopment Project.

Research by Folger Levin & Kahn, LLP has identified 35 insurance policies that may provide coverage for environmental costs. Claims have been made on all 35 policies, which were issued by 15 different insurance companies.

The City's current contract with Folger Levin & Kahn, LLP has a limit of \$100,000. Because the last invoice and anticipated future legal work over the next 2 years will exceed \$100,000, Council approval of the agreement is required.

<sup>1</sup> There is no relationship or connection whatsoever between City Attorney David Kahn and the Kahn in this firm.

**Amendment of Outside Counsel Agreement for Insurance Recovery for Costs  
Related to Environmental Remediation of the Sunnyvale Town Center**

June 2, 2009

Page 2 of 2

**DISCUSSION**

Due to continuing legal issues related to the insurance cost recovery efforts, the City will continue to require the specialized legal services of Joel D. Smith, Gregory D. Call, and Margaret R. Dollbaum and Folger Levin & Kahn, LLP. The City Attorney finds the billing rate for this firm to be competitive with other legal firms providing similar services.

**FISCAL IMPACT**

Funds are available in the budgeted 08-09 and 09-10 City Attorney operating budget.

**PUBLIC CONTACT**

Public contact was made through posting of the agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library and the City Clerk's office.

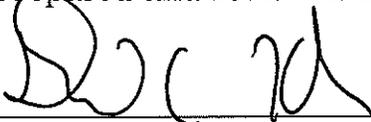
**ALTERNATIVES**

1. Approve a second amendment to increase the contract with the law firm of Folger Levin & Kahn, LLP in an amount not to exceed \$250,000.
2. Do not approve a second amendment to the contract with Folger Levin & Kahn, LLP.

**RECOMMENDATION**

Alternative 1, Council approve a Second Amendment to the Outside Counsel Services Agreement with Folger Levin & Kahn, LLP for legal services in an additional amount not to exceed \$250,000.

Prepared and reviewed by:



David E. Kahn, City Attorney  
City Attorney's Office

**Attachments:**

Attachment A – Draft Second Amendment to Outside Counsel Agreement

**SECOND AMENDMENT TO  
OUTSIDE COUNSEL SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE AND  
FOLGER LEVIN & KAHN, LLP**

THE OUTSIDE COUNSEL SERVICES AGREEMENT commencing January 1, 2008, by and between the CITY OF SUNNYVALE, a municipal corporation ("City") and FOLGER LEVIN & KAHN, LLP ("Outside Counsel) for the purpose of providing legal advice and representation related to recovery from City insurance policies for costs related to the environmental clean-up of the Sunnyvale Town Center Redevelopment Project and related tasks as requested, is hereby amended, effective April 30, 2009, as to Section 3.0, 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 \$250,000.00.

Except as amended above, all other terms and conditions of the Agreement commencing January 1, 2008, shall remain in effect.

IN WITNESS WHEREOF, City and Outside Counsel have executed this Second Amendment to Outside Counsel Agreement.

Dated: \_\_\_\_\_, 2009

Dated: \_\_\_\_\_, 2009

CITY OF SUNNYVALE  
A Municipal Corporation

FOLGER LEVIN & KAHN, LLP

By \_\_\_\_\_  
David E. Kahn, City Attorney

By \_\_\_\_\_  
Gregory D. Call, Partner

By \_\_\_\_\_  
Margaret R. Dollbaum, Partner

**EXHIBIT A**

**FOLGER LEVIN & KAHN, LLP**

**RATE SHEET**

Partner	\$450
Associates	\$375