AGREEMENT FOR SERVICES
BETWEEN CITY OF SUNNYVALE AND JOHN A. NAGEL

This Agreement for Services, dated December 15, 2015, is between the City Council of the City of Sunnyvale ("City Council") and John A. Nagel ("Employee") for services to be performed by Employee in the position of City Attorney.

Section 1. Duties

The City Attorney shall perform the functions and duties specified in Section 908 of the Charter of the City of Sunnyvale, the Sunnyvale Municipal Code, and other legally permissible and proper duties and functions as the City shall from time to time assign. During the period of the City Attorney's employment as City Attorney, the City Attorney shall devote his best efforts to the performance of his duties, and shall not be employed in any other capacity while employed as City Attorney, without the express prior written consent of the City Council.

Section 2. Term

This Agreement shall commence January 19, 2016, and extend until terminated as provided hereinafter.

Section 3. Termination/Severance

A. Because an intimate and confidential relationship is necessary between City and Employee, the Employee serves at the pleasure of the City Council, and nothing herein shall be taken to prevent, limit, or otherwise interfere with the right of the City Council to terminate the service of Employee with or without cause. However, the City Council shall take no action to terminate the services of the Employee within ninety (90) days after the seating of a new member following any election at which one or more new members are elected to the City Council. There is no express or implied promise made to the Employee for any form of continued employment. The Employee shall have no right to a termination hearing. The City and the Employee acknowledge that an excellent City-City Attorney relationship is in the best interest of the City, and accordingly agree to use their best efforts to foster City-City Attorney communications. This Agreement is the sole and exclusive basis for an employment relationship between Employee and the City Council.

B. If the Employee is terminated by the City Council while the Employee is still willing and able to perform the duties of the City Attorney, the City Council agrees to pay the Employee a single lump sum payment, made on the effective day of the termination, of an amount calculated as follows: twelve (12) months aggregate salary and an amount equivalent to twelve (12) months aggregate medical insurance benefit allowance for termination on or before January 19, 2017, nine (9) months aggregate pay and benefits for termination between January 19, 2017 and January 19, 2019, and six (6) months aggregate pay and benefits for termination after January 19, 2019. Any such payments will release the City Council from any further obligations under this Agreement. Contemporaneously with the delivery of the separation pay herein above set out, the Employee agrees to execute and deliver to City a release releasing the

City from liability for all claims that the Employee may have against the City, except those claims prohibited from such a release under either California or federal law.

C. Notwithstanding paragraph 3(B), above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provision of paragraph 3(B) if the Employee is terminated because of:

1) the conviction of or a plea of nolo contendere to a crime,

2) an offense of moral turpitude,

3) a violation of statute or law constituting misconduct in office, or

4) willful misconduct.

Further, City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 3(B), in the event the Employee retires or voluntarily resigns in writing prior to termination without affirmative action by the City to terminate, initiate termination proceedings or request the Employee's resignation.

D. In the event that the Employee, voluntarily and without the official request of the City, retires or resigns his position before the termination of this Agreement, the Employee shall provide written notice to the City at least two (2) months in advance of the Employee's final date of employment, unless the parties agree otherwise. Such resignation shall not be deemed a "termination" which triggers the requirement of the lump sum payments in Paragraph 3(B), above.

Section 4. <u>Resignation</u>

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position as City Attorney, or to retire from public service. In the event the Employee voluntarily resigns his position, or retires, Employee shall give City two (2) months' notice in advance, unless the parties agree otherwise. Further should Employee begin to actively seek other employment, Employee will notify Employer forthwith of Employee's intention to seek other employment. In the case of a voluntary resignation or retirement, no severance will be paid to Employee.

B. Notwithstanding paragraph 4(A), above, in the event the City Council at any time during the course of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of the City of Sunnyvale, or in the event the City Council refuses following written notice to comply with any provision herein benefiting Employee, or Employee resigns following a suggestion, whether formal or informal, by the City Council that he resign, then, in that event, Employee may, at his option, be deemed "terminated" at the date of such reduction, such refusal to comply, or resignation with the meaning and context of the severance pay provision. A reduction in salary resulting from the annual performance evaluation pursuant to the City's "Pay for Performance Plan" detailed in Section 5(B) or an across-the-board reduction for all employees, shall not trigger the provisions of this paragraph.

Section 5. Salary

A. The Employee's starting salary shall be two hundred five thousand dollars ($205,000) per annum.

B. The Employee's compensation shall be evaluated on an annual basis. This evaluation will include consideration of both merit increases and "across-the board" increases provided to department directors and non-represented management employees. It will also include consideration of the competitive market compensation for City Attorneys in comparable Northern California cities at the time of the performance evaluation. The annual base salary may be increased by written agreement of the parties or by inclusion of the agreed salary amount in any duly adopted ordinance or resolution of the city setting the City Attorney's salary on employee salaries generally. Nothing in this provision shall require the City to use a set formula, or require the City to provide either a merit or other salary increase at the annual evaluation. However, where the annual performance evaluation is good or excellent, the City shall normally adjust the compensation to provide Employee with a reasonable and market-competitive compensation as provided to city attorneys in comparable Northern California cities.

Section 6. Benefits

The Employee shall be entitled to retirement and other benefits in the Pay Plan applicable to employees in Classification Category "F" as set forth in the City's current Salary Resolution, except as listed below in Items A-F. The City has the express right to increase employee's contributions to CalPERS consistent with the increased contributions of City Department Heads and/or the City Manager.

A. The Employee shall not be entitled to a monthly vehicle allowance.

B. The Employee shall be credited with 25 days of Paid Time Off (PTO) effective on his first day of employment with the City. Beginning with the first pay period after January 18, 2016, Employee shall accrue PTO at the rate of employees at the 5-10 year longevity rate of 9.0 hours per pay period (29 days PTO/year). The maximum accrual cap is provided for in the Salary Resolution. At the time of leaving City employment, the Employee may, at his option, take compensation for accrued PTO in a single lump sum, or remain on the payroll for the period of time of the accrued PTO with continued receipt of all benefits until all applicable leave time is used. If the Employee elects to remain on the City's payroll for any length of time after his termination, it shall be for compensation purposes only and he shall have none of the duties and authority of the Employee, or represent himself as such.

C. The Employee shall receive sixty (60) hours of Administrative Leave each calendar year.

D. In addition to the standard life insurance provided to employees, City Council shall purchase additional term life insurance coverage sufficient to equal Employee's annual salary.

E. The City Council shall contribute to the City's deferred compensation plan on behalf of the Employee the maximum amount allowed by the United States Tax Code for

employees age 50 or older (currently $24,000), pro-rated over the number of pay periods in the fiscal year. At such time as the City of Sunnyvale increases the maximum deferral amount available to all employees, the contribution amount shall be adjusted for the cost of living in accordance with Internal Revenue Code Section 457(e)(15) or 33-1/3% of the includable compensation for the taxable year. Payments shall be made each month following employment.

F. City Council agrees to reimburse Employee for reasonable job-related expenses incurred in carrying out his duties as City Attorney, subject to reasonable budgetary restrictions.

Section 7. <u>Mortgage Assistance</u>

The City Council shall provide Mortgage Assistance to Employee as provided and subject to the terms in Council Resolution No. 712-15. Employee's eligibility for participation in the City's Mortgage Assistance Program is conditioned on Employee's application to participate in the Mortgage Assistance program within two years of commencing employment with the City on January 19, 2016, the purchase of a residence within the City of Sunnyvale within two years of commencing employment with the City on January 19, 2016 (as documented by a purchase and sale agreement and the opening of escrow for the purchase of the property) and the actual and continued residence of Employee in the property within the City of Sunnyvale purchased with City Mortgage Assistance.

Section 8. <u>Performance Evaluation</u>

The City Council shall formally review and evaluate the performance of the Employee by December 31 of each year. Such review and evaluation shall be in accordance with the specific criteria developed by the City Council in consultation with the Director of Human Resources and Employee. The City Council shall provide Employee with their written comments and may discuss the review with Employee, at the choice of either the City Council or the Employee. The Employee shall have the right to respond orally or in writing to the evaluation.

The City Council shall also provide an informal mid-year performance review of the Employee after his first six (6) months of employment and every year thereafter.

Section 9. <u>Indemnification</u>

The City Council shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, or demand, or civil rights or other legal action, arising out of any act, event or omission occurring in the performance of Employee's professional duties as City Attorney, except to the extent that Employee's actions are the result of gross negligence or willful misconduct. The City Council will defend compromise or settle any such claim or suit, as appropriate, and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond termination of employment or other expiration of this Agreement, to provide full and complete protection to Employee for acts undertaken or committed by Employee in his capacity as City Attorney, regardless of whether receipt of notice or filing of any claim or lawsuit occurs during or following Employee's employment with the

City. The extent of defense or indemnification may be limited by the provisions of California State law.

Section 10. Professional Development

City Council acknowledges that participation in local, state and national municipal law organizations by the Employee benefits the City. The City agrees to pay for the Employee's annual dues for membership in the State Bar of California, the Santa Clara County Bar Association, and the League of California City's City Attorneys Division.

Section 11. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 12. Binding Agreement

This Agreement reflects the complete Agreement between the parties. This Agreement shall be binding and inure to the benefit of the heirs of the estate of Employee.

Section 13. Severability

If any provision or portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of the Agreement or any portion thereof shall not be affected and shall remain in full force and effect.

The signatures of the parties below indicate that each has read and understood the Agreement and will abide by the terms stated herein.

This Agreement has been executed by the parties on the dates noted.

ATTEST:

CITY CLERK

CITY OF SUNNYVALE
CITY COUNCIL

MAYOR

Date: Dec 18, 2015

JOHN A. NAGEL, CITY ATTORNEY

Date: 12/21/15