



**DATE** January 21, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Authorizing Amendment of the Legal Services Agreement with Downey Brand LLP to Increase the Contract Amount for Specialized Legal Support on Water Resources-Related Matters to a Not-To-Exceed Amount of \$225,000

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Attorney to amend the legal services agreement with Downey Brand LLP to increase the contract amount by \$75,000 to a not-to-exceed amount of \$225,000 to provide additional specialized legal support services on water resources-related matters.

### **SUMMARY**

The City entered into an agreement with Downey Brand for specialized legal support services on water resources-related matters in October 2016. Downey Brand has advised staff on legal matters related to the Sustainable Groundwater Management Act (SGMA) and the City's Sustainable Groundwater Management Plan, the Bay Area Water Supply and Conservation Agency pilot water transfer, and negotiation of the new East Bay Dischargers Authority Joint Powers Agreement. The total amount of \$150,000 authorized for the past two fiscal years has been nearly exhausted. Downey Brand has performed well, and staff continues to anticipate the need for additional support from the firm related to SGMA and other increasingly complex water resources matters. Staff is requesting authorization to amend the agreement with Downey Brand to increase the contract by \$75,000 to a total not-to-exceed amount of \$225,000 for fiscal year 2020.

### **BACKGROUND**

The Department of Public Works & Utilities requires specialized legal support service to advise staff on matters related to water resources, such as compliance with the Sustainable Groundwater Management Act (SGMA) and other water supply development efforts. On October 27, 2016, the City entered into an agreement with Downey Brand after Utilities staff, in consultation with the City Attorney's Office, reviewed the qualifications of three law firms with strong water resources, water rights, and groundwater experience. On February

20, 2018, the City Council approved an amendment to the Professional Services Agreement to increase the not-to-exceed amount to \$150,000. The February 20, 2018 staff report provides background on SGMA and the need for specialized legal support services to ensure that the City complies with this new law while ensuring that Hayward's groundwater rights are fully protected.<sup>1</sup>

Other recent water-related efforts further illustrate the need for specialized legal support services. The pilot water transfer, coordinated by the Bay Area Water Supply and Conservation Agency (BAWSCA), would deliver water from East Bay Municipal Utility District's (EBMUD) system to Hayward through the Regional Emergency Intertie. It was critical to negotiate agreements that protect the City's interests and ensure that the City is fairly compensated for its role in implementing this project. Downey Brand also assisted the City in negotiating a new Joint Powers Agreements with other member agencies of the East Bay Dischargers Authority (EBDA) for discharge of treated wastewater effluent to the San Francisco Bay for the next twenty years.

## **DISCUSSION**

Downey Brand has been advising the City on legal requirements related to SGMA since 2016 including the City becoming a Groundwater Sustainability Agency in June 2017 and efforts to work cooperatively with EBMUD to develop a single Groundwater Sustainability Plan for the East Bay Plain Subbasin by January 31, 2022. More recently, Downey Brand has assisted the City in negotiations related to the BAWSCA pilot water transfer and the new EBDA Joint Powers Agreement. As a result of this work, the not-to-exceed amount of \$150,000 in the agreement between the City and Downey Brand has been nearly exhausted.

Staff has been highly satisfied with Downey Brand's knowledge, responsiveness, and work products, and requests Council authorization to continue utilizing the firm's services to advise the City in matters related to SGMA and other water-related matters. Development of the Groundwater Sustainability Plan and public review of the document is expected to occur over the next twelve months. Therefore, staff is requesting an additional \$75,000 for additional specialized legal support services.

Staff anticipates that the requested increase will be sufficient for Downey Brand to provide needed services through at least the end of fiscal year 2020. Given the long-term nature of SGMA and the increasing complexity of water supply matters and regulations that are affecting the City, staff may return to the Council in the future to request additional funding.

## **ECONOMIC IMPACT**

Protecting the City's long-term water supply interests will benefit all of the City's customers. The recommended action would be paid from the existing approved utilities budget and would not have a material effect on water rates.

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<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=3346789&GUID=D9169738-56BA-49F2-9211-B941EC453165&Options=&Search=>

## **FISCAL IMPACT**

The Water Improvement Fund in the FY 2020 Capital Improvement Program includes sufficient funding for the recommended action. There will be no impact on the City's General Fund.

## **STRATEGIC INITIATIVES**

This agenda item does not directly relate to one of Council's Strategic Initiatives.

## **SUSTAINABILITY FEATURES**

Compliance with SGMA and participation in regional water supply planning efforts will help the City increase water supply reliability and ensure that the groundwater beneath Hayward is protected and sustainably managed.

## **PUBLIC CONTACT**

No public contact was initiated related to this specific action. However, individual water supply efforts, including SGMA, include requirements for stakeholder involvement and public outreach.

## **NEXT STEPS**

If Council approves the recommended action, the City Manager will execute the amended agreement and staff will increase the budget with Downey Brand to a not-to-exceed amount of \$225,000 for additional specialized legal support services on water resources-related matters.

*Prepared by:* Jan Lee, Assistant Director of Public Works – Utilities  
Seema Vashi, Assistant City Attorney

*Recommended by:* Alex Ameri, Director of Public Works  
Michael Lawson, City Attorney

Approved by:



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Kelly McAadoo, City Manager