



City of San Leandro

Meeting Date: May 20, 2013

Staff Report

File Number: 13-177

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Lianne Marshall
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving a New Legal Services Agreement with the Law Firm of Meyers Nave Riback Silver & Wilson

SUMMARY AND RECOMMENDATIONS

Approve a new legal services agreement with the law firm of Meyers Nave Riback Silver & Wilson to provide City Attorney and litigation services for the City

BACKGROUND and ANALYSIS

At the direction of the City Council, the City Manager's Office developed an agreement for legal services with the law firm of Meyers Nave Riback Silver & Wilson ("Meyers Nave") for consideration. Terms of the attached agreement are as follows:

- 1) Effective Date of Agreement: June 1, 2013
- 2) Rates:
 - a) City Attorney services (all services defined in previous legal services agreements and related amendments with Meyers Nave as Basic and Special, as well as all Successor Agency, Pitchess motions, weapons confiscations, code enforcement advice and counsel (except code enforcement litigation), and Labor & Employment work except as provided under Litigation in Section (b) below, will be charged at a blended rate of \$210 per hour. Paralegal services will be billed at \$135/hr.
 - b) Litigation, which includes all work (1) after a notice or summons has been served; (2) a decision to initiate litigation, or condemn property is approved by the City Council or Successor Agency; (3) preparing for and appearing at administrative hearings or proceedings before other public agencies, hearing officers or regulatory bodies related to:
 - (i) PERB hearings; (ii) fact finding hearings; (iii) mediations and arbitrations; (iv) employee disciplinary hearings; (v) grievance hearings; and (vi) notices of violation, will be charged at

a blended rate of \$264 per hour except for paralegal services, which will be billed at \$135/hr. Budgets will be submitted and approved by the City Manager or his designee for all litigation matters. These litigation rates do not apply to tort litigation assigned to attorneys from qualified panel firms selected by the City's third party administrator in consultation with the City Attorney and the City's Risk Manager.

c) Cost recovery (pass-through legal costs for which the City may recoup its expenses from a third party) will be charged at rates established in the City's fee schedule from \$250 to \$350 per hour depending on the seniority of the attorney assigned.

- 3) The term of the new agreement will be thirteen months (June 1, 2013 to June 30, 2014.) Fees for legal services will not exceed \$778,700.00 during the 13 month term of the agreement (June 1, 2013 to June 30, 2014). The legal services budget may be reduced by up to \$50,000 during the term of the agreement for retention of special counsel by the City Council or City Manager, upon consultation with the City Attorney. The legal services budget described herein would be exclusive of litigation and cost recovery services performed by Meyers Nave.
- 4) Meyers Nave will provide on-site legal consultation of at least 35 hours per week, which includes serving as legal counsel at all City Council meetings, and/or as legal counsel to meetings of other City legislative bodies when requested by the City Manager or his designee. The City Attorney will work with the City Manager to establish a schedule that provides an attorney is available at City Hall five days a week for on-site legal consultation.
- 5) The City Attorney and City Council will meet in April, 2014 to review the performance of the City Attorney. The parties may agree to changes or amendments including, but not limited to, extension of the term of the Agreement and changes in compensation provisions.
- 6) Legal consultants, outside investigators, court costs, expert witness fees, and all other legal expenses and costs are not included in the legal services budget amount and will be billed separately to and / or paid directly by the City through separate consulting services agreements with the respective vendors.

ATTACHMENT(S)

- New Legal Services Agreement with Meyers Nave Riback Silver & Wilson

PREPARED BY: Lianne Marshall, Assistant City Manager

AGREEMENT FOR LEGAL SERVICES

This Agreement, made and entered into as of June 1, 2013, by and between the City of San Leandro, California, a Municipal Corporation hereinafter referred to as "City" and Meyers, Nave, Riback, Silver & Wilson, a professional law corporation, hereinafter referred to as "Meyers Nave."

WITNESSETH

Whereas, in 1986 City transitioned from in-house legal services to contract legal services, and retained Meyers Nave to provide contract City Attorney legal services to City; and

Whereas Meyers Nave has continued to provide contract legal services to City to the date of this Agreement by virtue of various contracts and contract amendments; and

Whereas in 2013 City retained Municipal Resources Group (MRG) to undertake a study of the relative costs of in-house and contract city attorney services; and

Whereas upon receipt and discussion of the MRG report at its meeting of February 19, 2013, the City Council elected to continue to rely upon Meyers Nave to provide contract legal services to the City contingent upon the Parties negotiating a new agreement consistent with MRG's recommendations and the City Council's directions; and

Whereas it is the desire of the parties hereto to enter this Agreement and establish the terms and conditions for continued rendition of legal services to City and the compensation therefore; and

Whereas Richard D. Pio Roda is a principal with Meyers Nave and has been selected by the City Council to serve as City's new City Attorney.

NOW THEREFORE, IT IS MUTUALLY AGREED as follows

1. Appointment of City Attorney

City retains Meyers Nave and appoints Richard D. Pio Roda (hereinafter referred to as "Attorney") as City Attorney; Meyers Nave and Attorney agree to faithfully represent the legal interests of City during the term of this Agreement.

2. Attorney's Services

2A. The City hires Meyers Nave to provide legal services as City Attorney. As requested by City such duties shall include those legal services as set forth in Section 425 of the San Leandro Charter and as generally understood within the field of municipal law to fall within the category of "city attorney/general counsel services" including but not necessarily limited to, the following:

- a) Regular attendance at City Council, study sessions, closed sessions and all meetings necessary to provide basic legal counsel;
- b) Attendance at Planning Commission meetings, Board of Zoning Adjustments or other City Commission or Board meetings upon the request of the City Council or City Manager to provide legal advice and/or serve as counsel;
- c) Serve as legal counsel to bodies as may be created and represented by or for the City Council, and which meet regularly or periodically or on an as needed basis;
- d) Review and/or preparation of staff reports, ordinances, resolutions, orders, agreements, forms, notices, declarations, certificates, deeds, leases, and other documents required by the City;
- e) Consultation with the City Council and City staff as needed - rendering of legal advice and opinions (both oral and written) concerning legal matters that affect the City including new legislation and court decisions;
- f) Provide legal guidance and advice to the City Council and City Manager regarding what position the City (and associated bodies) and any of its advocates (e.g., lobbyists) should take on matters pending before legislative bodies;
- g) Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and management staff on legal matters pertaining to City operations, including personnel, Skelly hearings, and labor relations matters except those set forth in Section 2B below;
- h) Perform legal work pertaining to management of public property and improvements, public rights of way and easements, and matters relating to public utilities;
- i) Coordinate with in-house staff on risk management issues, including self-insurance authorities;
- j) Provide legal guidance and advice on code enforcement issues;
- k) Coordinate the work of outside counsel and/or legal consultants as needed and as directed by the City Council and/or City Manager;
- l) Provide on-site legal consultation of at least 35 hours per week, which includes serving as legal counsel at all City Council meetings, and/or as legal counsel to meetings of other City legislative bodies when requested by the City Manager or his designee. The City Attorney will

work with the City Manager to establish a schedule that provides an attorney is available at City Hall five days a week for on-site legal consultation;

- m) Real estate and land use matters, such as property acquisition and disposition, drafting and review of leases, and complex environmental/CEQA matters;
- n) Matters related to comprehensive updates of the City's general plan or zoning ordinance, annexations, water rights, or Williamson Act issues;
- o) Municipal finance, tax, fee and assessment issues;
- p) Motions seeking discovery of police officer personnel records and hearings involving weapons confiscations;
- q) Cable TV rate regulations and FCC appeals;
- r) Successor agency services
- s) Sanitary sewer, stormwater, and matters related to City granted franchises.

This Section 2A does not include litigation or cost recovery for any of the subjects listed above in Section 2A. All litigation and cost recovery shall be billed separately pursuant to Sections 2B and 4 (b) and (c) below.

2B. The City also hires Meyers Nave to represent it in litigation. Litigation as used in this Agreement shall mean all work (1) after a notice or summons has been served; (2) a decision to initiate litigation, or condemn property is approved by the City Council or Successor Agency; (3) preparing for and appearing at administrative hearings or proceedings before other public agencies, hearing officers or regulatory bodies related to: (i) PERB hearings; (ii) fact finding hearings; (iii) mediations and arbitrations; (iv) employee disciplinary hearings; (v) grievance hearings; and (vi) notices of violation. The above definition of litigation does not preclude the City from assigning tort litigation to attorneys from qualified panel firms selected by the City's third party administrator in consultation with the City Attorney and the City's Risk Manager, nor affect the provisions of section 4.h regarding the potential to retain separate legal counsel for any legal assignment(s) that would otherwise be performed by Meyers, Nave.

3. Independent Contractor

Meyers Nave declares that it is engaged in an independent business and agrees to perform the services provided for in this Agreement as an independent contractor and not as the agent, servant, or employee of the City. Meyers Nave shall be solely responsible for its own matters relating to payment of employees, including compliance with social security, withholding and all other regulations governing such matters.

4. Compensation.

- a) For all legal services other than those described in (b) and (c) below, City shall compensate Meyers Nave the amount of \$210 per hour for all attorney services whether by Attorney or by other attorneys associated with Meyers Nave and shall compensate Meyers Nave \$135 per hour for all paralegal services;
- b) Attorney, through Meyers Nave, shall be compensated in the amount of \$264 per hour for all litigation services rendered (as defined in section 2B above) whether by Attorney or by other attorneys associated with Meyers Nave;
- c) For all legal services for which the City is reimbursed by third parties (e.g. land use cost recovery), referred to herein as "Cost Recovery Work" Meyers Nave shall be compensated at between \$250 and \$350 per hour depending on the experience level of the Meyers Nave attorney assigned to the project;
- d) City shall separately reimburse Meyers Nave for customary costs and disbursements, including deposition and witness fees, court costs, telephone, photocopying, facsimile charges, computer research on-line fees and messenger services.
- e) Meyers Nave shall keep a record of time spent on all matters in increments of one-tenth (0.1) of an hour. Each task shall be distinctly and completely identified. The billing entry must contain the name or initials of the individual performing the task, the nature of the task, the date it was performed, and the length of time it took. Meyers Nave shall submit all invoices no later than the last day of the month following the month in which services were performed and actual costs incurred;
- f) The rates set forth in a) shall remain in effect for thirteen months from the date of this Agreement or until such time as the Agreement is terminated in accordance with the provisions of paragraph 16.
- g) The total amount charged to the City for services described in Section 2A for the thirteen month period beginning on June 1, 2013 and ending on June 30, 2014 shall not exceed \$778,700.00, exclusive of reimbursable costs. All fees and costs for each litigation case assigned to Meyers Nave under Section 2B shall have a separate budget. Cost Recovery Work charges shall also be separately charged, and not included within the not to exceed amount referred to herein.
- h) The total amount to be charged pursuant to 4.g) shall be reduced up to a maximum of \$50,000 (that is, from \$778,700 to \$728,700) in the event the City Manager, upon consultation with the City Attorney and approval of the City Council, retains separate legal counsel for any legal assignment(s) that would otherwise be performed by Meyers, Nave.

5. No Assignment

This Agreement is entered into by City and Meyers Nave and except as set forth herein the rights and obligations of Attorney may not be assigned or delegated to any other attorney of Meyers Nave without express written consent of the City Council. This Agreement is not assignable.

6. Contract and Performance Review

During the month of April, 2014, Attorney and City Council shall meet to review the performance of Attorney and members or associates of the firm in furnishing the services provided hereunder, and to review the compensation provisions hereof. The parties may agree to changes or amendments hereto including, but not limited to extension of the term of this Agreement and changes in compensation provisions, which changes or amendments shall be evidenced by written amendment hereto.

7. Joint Representation/Of Counsel

Meyers Nave maintains counsel agreements with certain legal specialists who are deemed independent contractors under the applicable provisions of the tax laws. They are not considered employees of the Meyers Nave. In the event that the matter of which you have engaged us to handle requires the use of that such certain specialist, it is necessary that you consent to dual representation by Meyers Nave and the specialist handling your services. The arrangement has no effect whatsoever on the cost of your legal services. It is merely an ethical requirement that we disclose this fact and that you consent. The City is consenting by signing this Agreement.

8. Conflict of Interest

Meyers Nave represents many public agencies in California. Since 1986, Meyers Nave has represented over five hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities. Meyers Nave is continually growing and is accepting new engagements all the time. As such it is virtually inevitable that Meyers Nave will work on projects from other clients having different governmental or political objectives, beliefs or views from those of the City. This paragraph confirms that the services rendered to City under this Agreement are limited in scope and for the benefit of the City only. In the course of providing a variety of professional services to the public sector, it is possible that Meyers Nave will represent public agency clients that are adverse to City on other matters. To avoid potential problems, Meyers Nave has requested that City agree to expressly waive any actual or potential conflicts that might arise from such representation-so much so that City will not attempt to disqualify Meyers Nave on such matters so that Meyers Nave is free to represent its clients on such matters.

By signing this Agreement, City acknowledges that Meyers Nave has discussed these matters and City confirms that the City does not object to Meyers Nave's representation of clients on matters where their legal, governmental or political objectives and/or positions may be different from or adverse to those of the City. The City also waives any conflicts of interest with respect to Meyers Nave's representation of such clients with differing legal, governmental or political interests. City furthermore confirms that the City will not assert any conflict of interest concerning such representation or attempt to disqualify this firm from representing such clients notwithstanding such adversity. While City may terminate its relationship with Meyers, Nave, City agrees that Meyers Nave nonetheless is free to represent such clients even on those matters that City considers adverse, and thereby City waives any conflict of interest in connection therewith. Such acknowledgments, however, do not permit Meyers Nave to still represent another client in opposing the specific project for which City engages Meyers Nave without City's specific written consent. Meanwhile, Meyers Nave requests that City review this paragraph carefully and Meyers Nave also encourages City to consult legal counsel regarding the effect of this conflict waiver if City wishes to do so.

9. Business License

Meyers Nave shall be responsible for securing and paying for a City business license as required by the City's Municipal Code

10. Insurance

During the term of this engagement, Meyers Nave shall take out and maintain the following insurance:

- General liability and property damage insurance in the minimum amount of \$1,000,000;
- Professional errors and omissions insurance, not below \$2,000,000 per occurrence;
- \$4,000,000 aggregate minimum, which may not be canceled or reduced in required limits of liability unless Meyers Nave provides the City with at least ten days advance written notice.

11. No Guarantee Outcome

Any comments made by us about the potential outcome of matters are expressions of opinion only and are not guarantees or promises about any outcomes or results.

12. Professional Standing

Meyers Nave's lawyers working with the City shall at all times be members in good standing of the State Bar of California, and shall conduct themselves in full

compliance with the standards of Professional Conduct of the State Bar.

13. Nondiscrimination

Meyers Nave shall not discriminate on the basis of race, religion, color, creed, and national origin, and gender, sexual orientation, marital status, age, physical or mental disability, legally protected medical condition, veteran status, or any other basis protected by state or federal laws.

14. Choice of Law

This Agreement together with any and all disputes arising therefrom shall be governed solely by the laws of the State of California.

15. Entire Agreement; Full Understanding; Modifications in Writing

This Agreement contains our entire agreement about our representation. Any modifications or additions to this agreement must be made in writing.

16. Term

This Agreement shall be terminable by City at will and by Attorney upon 30 days' written notice and otherwise it shall terminate on June 30, 2014, unless otherwise extended.

17. Effective Date

This Agreement shall be effective June 1, 2013.

18. Supersession of Prior Agreements

This Agreement shall supersede the Agreement for City Attorney Legal Services dated March 6, 1986 as amended on June 26, 2000, July 18, 2005 and July 1, 2008.

IN WITNESS WHEREOF the parties have executed this Agreement for Legal Services the day and year set forth below.

City of San Leandro

Date

Stephen Cassidy, Mayor

Attest:

City Clerk

Meyers Nave, Riback, Silver & Wilson

Date

David Skinner, Managing Principal

Special Counsel

2072321.5



City of San Leandro

Meeting Date: May 20, 2013

Resolution - Council

File Number: 13-178

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Lianne Marshall
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: ADOPT: Resolution Approving Agreement for Legal Services with Meyers Nave Riback Silver & Wilson ("Meyers Nave") for Contract City Attorney Legal Services (approves a 13-month agreement effective June 1, 2013)

WHEREAS, an agreement between the City of San Leandro and the law firm of Meyers Nave Riback Silver & Wilson, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution by the City Manager is hereby authorized.