



City of San Leandro

Meeting Date: June 20, 2016

Staff Report

File Number: 16-319

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.N.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving a 5-Year Legal Services Agreement with Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") in an amount not to exceed \$824,415 in FY 2016-17

SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council consider Meyers Nave's request for a new five-year Agreement to provide legal services for the City of San Leandro, commencing on July 1, 2016 and concluding on June 30, 2021.

BACKGROUND

The City of San Leandro entered into a Professional Services Agreement with Steven R. Meyers in 1986, to provide contract legal services to the City and its agencies, and to perform the functions, duties and responsibilities of the City Attorney, as set forth in the City's Charter. In 2000, Amendment No. 1 assigned the Professional Services Agreement to Meyers Nave, a professional corporation. Amendment No. 2 and Amendment No. 3 were approved in 2005 and 2008, respectively. The above contracts were structured such that a fixed monthly retainer was provided to Meyers Nave in exchange for the firm's legal services.

In February 2013, the City of San Leandro contracted with Municipal Resource Group, LLC ("MRG") to complete an analysis of the City's legal services framework. As part of this analysis, MRG completed an extensive review of the costs associated with the agreement, as well as a benchmark survey of nine other jurisdictions in Alameda and Contra Costa Counties; Alameda, Berkeley, Fremont, Hayward, Livermore, Pleasanton, Union City, Pittsburg, and Richmond.

Based upon this analysis, the City Council ultimately negotiated a new agreement with Meyers Nave that eliminated the flat retainer structure, which was replaced by a fee-for-service arrangement. Per the MRG analysis, this structure was designed to simplify the administration of the contract and ultimately reduce the City's costs. This analysis subsequently was

presented to the City Council for consideration on February 19, 2013.

On May 20, 2013, the City Council voted to adopt a new 13-month agreement with Meyers Nave, effective from June 1, 2013 through June 30, 2014, which was subsequently extended for two additional twelve-month periods, with the current agreement set to expire on June 30, 2016. The current agreement continues to utilize the fee-for-service cost structure outlined above, with a not-to-exceed cap of \$802,780 that includes a \$50,000 set-aside for use at the City Manager's discretion in consultation with the City Attorney to retain separate outside legal counsel.

Analysis

The City has now been operating under the new contractual structure for approximately three years, and based upon staff's analysis, the current contract structure is effective in controlling costs and generating financial savings as predicted by the MRG analysis. In the current fiscal year concluding on June 30, 2016, projections indicate that total fees for city attorney/general counsel services will remain approximately 20% below the not-to-exceed threshold that was adopted as part of the current contract.

Following several months of negotiations with the City Council, Meyers Nave now requests that the City Council authorize a new contract for legal services for a 5-year period, i.e. commencing July 1, 2016 and concluding June 30, 2021. As part of this proposed new contract, Meyers Nave will provide a \$550,000 volume discount, to be distributed incrementally over the first three years of the contract period.

In recognition of increased regional cost of living expenses, the proposed agreement boosts the hourly billing rates in FY 2016-17 from the current rate of \$230/hour for general legal services to \$245/hour. For all litigation services, the rate would change from the current cap of \$280/hour to a range of between \$280/hour to \$350/hour. The cost of paralegal services would remain flat at its current rate of \$150/hour. As a result, the total annual budget cap for legal services in FY 2016-17 will increase to \$824,415 from its current cap of \$802,780, exclusive of reimbursable costs. During the remaining four years of the five-year term, the hourly rates will be adjusted each July 1, beginning July 1, 2017, by the April percentage change in the Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area. Except for automatic annual CPI adjustments rounded to the nearest \$5.00, the hourly compensation will remain fixed and no renegotiation of hourly rates may occur during the term of the agreement.

Fiscal Impacts

For Fiscal Year 2016-17, the budget for "city attorney/general counsel services" is \$824,415. This amount includes a \$50,000 set-aside that may be used by the City Manager for outside legal services, consistent with the existing Agreement. Per the Agreement, Meyers Nave's contract is a not-to-exceed amount that constitutes a "hard cap" in the budget that the City Council has no obligation to increase..

Budget Authority

Sufficient funds for the first year of the proposed five-year contract have been included in the

adopted FY 2015-17 biennial budget.

Attachment to Resolution

- Draft Legal Services Agreement

PREPARED BY: Eric Engelbart, Deputy City Manager, City Manager's Office



City of San Leandro

Meeting Date: June 20, 2016

Resolution - Council

File Number: 16-303

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving a New 5-Year Agreement for Legal Services with Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") in an amount not to exceed \$824,415 in FY 2016-17

WHEREAS, a new five-year agreement for legal services between the City of San Leandro and Meyers Nave for an amount not to exceed \$824,415 in Fiscal Year 2016-17, which includes a \$50,000 set aside for the retention of special counsel at the discretion of the City Manager in consultation with the City Attorney, is presented to the City Council; and

WHEREAS, the City Council is familiar with the contents thereof.

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

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

AGREEMENT FOR LEGAL SERVICES
BETWEEN CITY OF SAN LEANDRO AND MEYERS NAVE RIBACK SILVER & WILSON

This Agreement for Legal Services ("Agreement"), effective July 1, 2016, is 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."

RECITALS

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 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;

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; and Kristopher Kokotaylo as Assistant City Attorney. Meyers Nave and Attorney agree to faithfully represent the legal interests of the City during the term of this Agreement.

2. Attorney's Services

2A. The City hires Meyers Nave to provide legal services as City Attorney.

City Attorney 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.

2B. The City hires Meyers Nave to represent it in litigation.

Litigation as used in this Agreement means all work (1) after a notice or summons has been served; (2) after 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. All litigation and cost recovery shall be billed separately pursuant to Sections 2B and 4 (b) and (c) below.

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 Sections 4(b) and 4(c) of the Agreement, the City will compensate Meyers Nave in the amount of \$245 per hour for all attorney services whether by Attorney (Richard D. Pio Roda, the City Attorney) or by other attorneys associated with Meyers Nave, and will compensate Meyers Nave \$150 per hour for all paralegal services;

b) Attorney, through Meyers Nave, shall be compensated in the amount between \$280 and \$350 per hour for all litigation services (as defined in Section 2B of the Agreement) rendered whether by Attorney or by other attorneys associated with Meyers Nave. These rates are only applicable if the City selects Meyers Nave to provide litigation services; the City has the discretion to select any other qualified firm to provide litigation services.

c) For all legal services for which the City is reimbursed by third parties, referred to in the Agreement as “Cost Recovery Work,” Meyers Nave will be compensated at between \$280 and \$375 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 online 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) During the term of this Agreement, the hourly rates set forth in 4a), 4b), and 4c) for legal services will be adjusted each July 1, beginning July 1, 2017, by the April percentage change in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose area. Except for automatic annual CPI adjustments rounded to the nearest \$5.00, the hourly compensation is fixed. No renegotiation of rates shall occur during the term of this Agreement.

g) The total amount charged to the City for services described in Section 2A for each twelve month fiscal year period beginning on July 1, 2016 shall not exceed \$824,415.00, exclusive of reimbursable costs, subject to annual increases consistent with the April Consumer Price Index (CPI) for San Francisco-Oakland-San Jose area. This amount continues to include a \$50,000 set-aside that may be used at the discretion of the City Manager in consultation with the City Attorney for the retention of separate legal counsel. 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) Compensation amounts due from City to Meyers Nave based upon the provisions of this section are subject to fiscal year “volume discounts” consistent with Agreement years as follows:

Year 1 (commencing July 1, 2016 and ending June 30, 2017):
Volume Discount = \$200,000.
Volume Discount in 12 monthly installments in the sum of \$16,666.66.

Year 2 (commencing July 1, 2017 and ending June 30, 2018):
Volume Discount = \$200,000.
Volume Discount in 12 monthly installments in the sum of \$16,666.66.

Year 3 (commencing July 1, 2018 and ending June 30, 2019):
Volume Discount = \$150,000.
Volume Discount in 12 monthly installments in the sum of \$12,500.

Year 4 (commencing July 1, 2019 and ending June 30, 2020):
No Volume Discount.

Year 5 (commencing July 1, 2020 and ending June 30, 2021):
No Volume Discount.

If, pursuant to Section 16, this Agreement is terminated prior to June 30, 2019, all outstanding volume discounts remain due and payable. Meyers Nave's "out-of-pocket" expense to pay any outstanding amount(s) will be consistent with the dates set forth for years 1-3 above.

i) City reserves the right to retain outside counsel not associated with Meyers Nave to provide legal services. If the City decides to retain outside counsel, Meyers Nave may provide oversight of the outside counsel as requested by the City Manager.

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

Each year during the month of April, 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. The parties may agree to changes or amendments hereto including, but not limited to extension of the term of this Agreement, 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 City has engaged Meyers Nave to handle requires the use of that such certain specialist, it is necessary that City consent to dual representation by Meyers Nave and the specialist providing services. The arrangement has no effect whatsoever on the cost of legal services. It is merely an ethical requirement that Meyers Nave disclose this fact and that City 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 requests that City agree to expressly waive any actual or potential conflicts that might arise from such representation 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 maybe 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 Meyers Nave 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 represent another client in opposing the specific project for which City engages Meyers Nave without City's specific written consent. 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 San Leandro Municipal Code.

10. Insurance

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

- a) General liability and property damage insurance in the minimum amount of\$ 1,000,000;
- b) 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 thirty days advance written notice.

11. No Guarantee Outcome

Any comments made by Meyers Nave 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; otherwise, it shall terminate on June 30, 2021, unless otherwise extended.

17. Effective Date

This Agreement shall be effective July 1, 2016.

18. Supersession of Prior Agreements

This Agreement shall supersede the Agreement for City Attorney Legal Services dated June 1, 2013 and amended July 1, 2014 and July 1, 2015.

19. Release of Claims

- a) The City releases and forever discharges Meyers Nave and its past, present and future officers, directors, board members, employees, agents, representatives, attorneys, and successors from any and all claims, demands, obligations, and causes of action of any nature whatsoever, past, present or future, whether known or unknown, whether existing or arising hereafter, whether based in tort, contract, statute, Constitution or other legal theories of recovery and whether for compensatory or punitive damages, which arise out of or in any way relate to the Eden Road matter between the City and Meyers Nave.

b) The Meyers Nave releases and forever discharges the City, its past, present and future elected and appointed officers, directors, board members, employees, agents, representatives, attorneys, successors; and assigns from any and all claims, demands, obligation's, and causes of action of any nature whatsoever, past present and future, whether known or unknown, whether existing or arising hereafter, whether based in tort, contract, statute, Constitution, or other legal theories of recovery and whether for compensatory or punitive damages, which arise out of or in any way relate to the Eden Road dispute between the City and Meyers Nave.

c) The mutual releases in subparagraphs (a) through (b) of this Section specifically include any and all claims, whether or not now known or suspected to exist and whether or not specifically or particularly described herein. The Parties expressly waive and any right to assert hereafter that any claim has been omitted from the terms of these releases through ignorance, oversight, error or any other cause, and further expressly waive any right that they may have under the provisions of California Civil Code Section 7542, which reads as follows:

'A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially effected his settlement with the debtor.'

20. Expiration of Tolling Agreement

But for any claims related to enforcement of this Agreement, the Tolling Agreement between the City and Meyers Nave dated December 11, 2013 and amended June 1, 2014, June 2, 2015 and September 22, 2015 has expired and is of no force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement for Legal Services.

CITY OF SAN LEANDRO

MEYERS NAVE, RIBACK, SILVER & WILSON

Pauline Cutter, Mayor

David Skinner, Managing Principal

ATTEST:

Tamika Greenwood, City Clerk

APPROVED AS TO FORM:

Valerie J. Armento, Special Counsel