



City of San Leandro

Meeting Date: March 16, 2020

Staff Report

File Number: 20-070

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.D.

TO: City Council

FROM: Jeff Kay
City Manager

BY: City Council

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution Approving a 5-Year Legal Services Agreement with Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") in an amount not to exceed \$940,000 in Fiscal Year 2020-21

SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council consider Meyers Nave's request for a new five-year Agreement to provide legal services to the City of San Leandro, commencing retroactively on January 1, 2020 and concluding on December 31, 2025

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 Resources Group, LLC ("MRG") to analyze the City's legal services. 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 several additional periods, with the current agreement set to expire on June 30, 2021. The current agreement continues to utilize the fee-for-service cost structure.

The current biennial budget provides \$956,121 for 2019-20 (\$944,800 appropriated for legal services), and \$993,913 for 2020-21 (\$982,592 appropriated for legal services) for the City Attorney's Office. The proposed agreement would include a "give back" of \$53,913 to the General Fund 2019-20 and 2020-21 adopted budget, and additional savings between \$40,000 to \$80,000 from the current agreement's trend line to provide budget savings for the next biennial budget. There would be no change in the level of service.

The Financial terms of the proposed agreement are below:

- Fiscal Year 2020-21: \$940,000 / General Services Hourly Rate: \$275
- Fiscal Year 2021-22: \$960,000 / General Services Hourly Rate: \$280
- Fiscal Year 2022-23: \$980,000 / General Services Hourly Rate: \$285
- Fiscal Year 2023-24: CPI increase / General Services Hourly Rate: CPI increase
- Fiscal Year 2024-25: CPI increase / General Services Hourly Rate: CPI increase
- Hourly rates for Cost Recovery would increase by the CPI each year. Hourly rates for Litigation work would increase by the CPI each year. Cost Recovery rates are charged to land use applicants, and litigation is as assigned by the City Council.

Analysis

The City has now been operating under the new contractual structure since 2013. Based upon staff's analysis, the current contract structure is effective in controlling costs and generating financial savings as predicted by the MRG analysis.

Meyers Nave now requests that the City Council authorize a new contract for legal services for a 5-year period. In recognition of increased regional cost of living expenses, the proposed agreement includes phased-in increases to the hourly billing rates from the current rate of \$275/hour for general legal services. For all litigation services, the rate would change from the current cap of \$395/hour to a range of between \$350/hour to \$450/hour. The cost of paralegal services would remain flat at its current rate of \$150/hour. Rates would then increase moderately each year thereafter, as outlined in the above proposed schedule. In Fiscal Years 2023-24 and 2024-25, rates would change based on the annual percentage change in the Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area.

Fiscal Impacts

The adopted 2020-21 biennial budget appropriations for legal services is \$982,592. If adopted, the proposed new agreement could generate up to \$53,913 in budgetary savings from January 1, 2020 through fiscal year 2020-21. Future budget year costs are as follows:

Fiscal Year 2021-22: \$960,000

Fiscal Year 2022-23: \$980,000

For Fiscal Years 2023-24 and 2024-25, the annual fiscal impacts would increase by the relevant annual percentage change in the Consumer Price Index.

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 1.5 years of the proposed five-year contract have already been appropriated in the adopted 2019-21 biennial budget, account 010-11-040-5110.

Attachment to Resolution

- Legal Services Agreement



City of San Leandro

Meeting Date: March 16, 2020

Resolution - Council

File Number: 20-072

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: City Council

FINANCE REVIEW: Liz Warmerdam
Interim Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council Approving a New 5-Year Agreement for Legal Services with Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") in an amount not to exceed \$940,000 in Fiscal Year 2020-21

WHEREAS, a new five-year agreement for legal services between the City of San Leandro and Meyers Nave for an amount not to exceed \$940,000 in Fiscal Year 2020-21 (account 010-11-040-5110), 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**

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 Senior 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, storm water, and matters related to City granted franchises.

2B. When 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 4H 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 \$275 per hour during fiscal year 2020-2021, \$280 per hour during fiscal year 2021-2022, and \$285 per hour during fiscal year 2022-2023 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 between \$350 and \$450 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, commonly referred to as "Cost Recovery Work," Meyers Nave shall be compensated at between \$375 and \$475 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) for legal services will be adjusted each July 1, beginning July 1, 2023, by the April percentage change in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose area. During the term of this Agreement, the hourly rates set forth in 4b) and 4c) will be adjusted each July 1, beginning July 1, 2020, 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, 2020 shall be as follows:

Year 1 (commencing July 1, 2020 and ending June 30, 2021): \$940,000

Year 2 (commencing July 1, 2021 and ending June 30, 2022): \$960,000

Year 3 (commencing July 1, 2022 and ending June 30, 2023): \$980,000

Year 4 (commencing July 1, 2023 and ending June 30, 2024):
Increased on the Year 3 annual compensation by the April percentage change in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose area rounded to the nearest \$5.00.

Year 5 (commencing July 1, 2024 until June 30, 2025 or the end of the term, whichever is longer):
Increased on the Year 4 annual compensation by the April percentage change in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose area rounded to the nearest \$5.00.

- h) 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 months of October and/or November, 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 of 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 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 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 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 the entire agreement about Meyers Nave’s 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 December 31, 2025, unless otherwise extended.

17. Effective Date

This Agreement shall be effective January 1, 2020.

18. Supersession of Prior Agreements


This Agreement supersedes all previous agreements between the parties.

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

CITY OF SAN LEANDRO

MEYERS, NAVE, RIBACK, SILVER & WILSON

Pauline Cutter, Mayor



Richard D. Pio Roda

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