

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, 2025. The current agreement continues to utilize the fee-for-service cost structure.

The Financial terms of the existing agreement are as follows:

- Fiscal Year 2020-2021: \$940,000 / General Services Hourly Rate: \$275
- Fiscal Year 2021-2022: \$960,000 / General Services Hourly Rate: \$280
- Fiscal Year 2022-2023: \$980,000 / General Services Hourly Rate: \$285
- Fiscal Year 2023-2024: CPI increase / General Services Hourly Rate: CPI increase
- Fiscal Year 2024-2025: 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 as a reimbursement back to the City and are therefore cost neutral, 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.

Nevertheless, the past fiscal year brought many complex challenges that were unexpected at the time that the above financial terms were adopted. With the onset of the COVID-19 pandemic, the City Attorney's office was called upon to assist in the development of a host of new programs and regulations designed to assist the City and the community in its efforts to respond to this once in a lifetime public health emergency. Related to that, the City Council directed the City Attorney's office to participate in an unusually large number of meetings, and assist with advice and generate work-product that could not have been foreseen when the budget was initially adopted. Such events included advising upon and drafting policies to address the COVID-19 pandemic including an eviction moratorium, proclamations of local emergencies, outdoor dining regulations, food delivery company fee cap, and a local grocery workers hazard pay ordinance. The City Attorney also advised upon the resignation of a city manager, recruitment and hiring of an interim City Manager, and new City Manager, initiatives to address and advise upon public health orders, measures to address local civil unrest in the wake of significant police killings nationally and locally, increased labor and employment advice and counsel work related to resignations, terminations, and significant changes to State and Federal law in response to COVID-19 safety protocols, and advice and litigation defense on various matters, including most recently on the

grocery workers hazard pay ordinance. As a result, the billable hours accrued by the City Attorney's office will exceed available budget by approximately \$200,000 in the current fiscal year. In addition, it is anticipated that service needs for the upcoming FY 2021-2022 fiscal year will similarly be greater than anticipated as the City works to recover from FY 2020-2021 and the pandemic, up to a maximum not to exceed \$1,125,000. It is important to note that the proposed increases for FY 2021-2022 have already been programmed into the proposed FY 2021-2022 budget.

As a result of the above factors, an amendment to the existing legal services contract is requested.

Fiscal Impacts

The proposed amendment would result in an increase of \$200,000 in costs in the FY 2020-2021 budget, which would be funded using General Fund reserves. The increased costs for FY 2021-2022 component of the request have already been programmed into the FY 2021-2022 budget.

Per the Agreement, the contract's not-to-exceed amount may not be exceeded without authorization from the City Council.

Attachment to Resolution

- Existing Legal Services Agreement



City of San Leandro

Meeting Date: June 28, 2021

Resolution - Council

File Number: 21-377

Agenda Section: ITEMS REMOVED FROM
CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Fran Robustelli
City Manager

BY: City Council

FINANCE REVIEW: Susan Hsieh
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council Approving an Amendment to the Existing 5-Year Agreement for Legal Services with Meyers Nave to Increase the Budget by \$200,000 for a Total Amount Not to Exceed of \$1,140,000 in Fiscal Year 2020-2021 and to Increase the Fiscal Year 2021-2022 Budget from \$960,000 to an Amount Not to Exceed \$1,125,000

WHEREAS, an amendment to the existing five-year agreement for legal services between the City of San Leandro and Meyers Nave is necessary to fund ongoing legal support being provided to the City Council; and

WHEREAS, that amendment would authorize an increase of \$200,000 using undesignated General Fund reserves for a total amount not to exceed \$1,140,000 in Fiscal Year 2020-2021; and

WHEREAS, that amendment would also increase from \$960,000 to \$1,125,000 the total not to exceed amount of the FY 2021-2022 portion of the agreement in FY 2021-2022 using funds that are already programmed into the proposed FY 2021-2022 budget (in account 010-11-040-5110); 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 by the City Council and execution by the City Manager of any related contract amendment documentation 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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