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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