



Legislation Details (With Text)

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**Title:** Staff Report for a City of San Leandro City Council Resolution Amending the existing 5-Year Legal Services Agreement with Meyers Nave ("Meyers Nave") to Add an Additional \$200,000 to the Fiscal Year 2020-2021 Agreement for a Combined Total Amount Not to Exceed \$1,140,000, and to Increase the Fiscal Year 2021-2022 Agreement from \$960,000 to a New Total Not to Exceed Amount of \$1,125,000

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Staff Report for a City of San Leandro City Council Resolution Amending the existing 5-Year Legal Services Agreement with Meyers Nave ("Meyers Nave") to Add an Additional \$200,000 to the Fiscal Year 2020-2021 Agreement for a Combined Total Amount Not to Exceed \$1,140,000, and to Increase the Fiscal Year 2021-2022 Agreement from \$960,000 to a New Total Not to Exceed Amount of \$1,125,000

**SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council modify its existing five-year legal services agreement, which commenced on January 1, 2020. The purpose of the proposed amendment is to increase by \$200,000 the cost of the fiscal year 2020-2021 portion of the agreement, for a combined total not to exceed amount of \$1,140,000 and to increase from \$960,000 to \$1,125,000 the total cost of the fiscal year 2021-2022 portion of the agreement.

**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, 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