



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
LEE PRICE

SUBJECT: Sixth Amendment to Consultant
Agreement – Elections
Commission Evaluator

DATE: February 3, 2005

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute a Sixth Amendment to the Agreement with Hanson, Bridgett, Marcus, Vlahos, Rudy LLP, to increase the maximum amount of compensation to provide investigation services as the Evaluator to the San Jose Elections Commission by an additional \$30,000, to a total amount not to exceed \$230,000.

BACKGROUND

The San Jose Municipal Code and the Election Commission's Regulations and Procedures provide that the Commission selects an Evaluator to review and investigate complaints that are filed with the Commission. The law firm of Hanson, Bridgett, Marcus, Vlahos, Rudy LLP currently serves as Evaluator to the Elections Commission.

The original agreement with the Evaluator was executed in December, 2001. Over the years, this agreement has been amended to extend the term and to increase the funding to accommodate the investigation of complaints filed with the Elections Commission. It is expected that this will be the final amendment to the current agreement that expires on June 30, 2005, unless additional new investigations are required.

STATUS OF RECOMMENDATIONS - ELECTIONS COMMISSION INVESTIGATIONS

The Mayor's June Budget Message for 2004-2005, adopted by City Council on June 15, 2004, directed the City Attorney and City Clerk to explore alternatives for providing investigative services to the Elections Commission. Attorneys thus far have conducted all investigations of complaints filed with the Commission.

The Elections Commission in December 2004 made a recommendation to the Blue Ribbon Task Force to hire a City employee that would provide investigative services on matters that do not require an attorney. This investigator, reporting directly to the Elections Commission, would also proactively monitor compliance with ethics ordinances. At a joint meeting on December 8, 2004, the Blue Ribbon Task Force and the Elections Commission decided, however, that the investigator should be hired by contract rather than as a City employee. The Task Force and Commission will soon be bringing this recommendation forward to the City Council. If approved,

the Elections Commission will have both a non-attorney investigator and an Evaluator with the legal expertise necessary for some complaints.

With respect to the Evaluator, the Elections Commission approved the preparation of a Request for Qualifications (RFQ) for Evaluator services beginning July 2005.. It is anticipated that the RFQ will be issued in March of 2005. The RFQ will provide other qualified law offices, including local firms, the opportunity to competitively bid their services. The City Attorney and the City Clerk will assist the Commission in evaluating the RFQ responses to determine the most cost effective method of providing legal services to the Commission. A recommendation by the Elections Commission for Evaluator services will be forthcoming to the City Council within the next few months.

ANALYSIS

The Evaluator has recently completed the investigations of three complaints filed with the City Clerk in March, April and May of 2004, including the complaint filed with the Commission concerning former Councilmember Gregory. The recommended increase to this Agreement is necessary to cover the cost of the investigations related to these complaints.

A Special Election has been scheduled for June 2005 to fill the vacant seat in Council District 7. It is possible that the Commission may receive complaints related to this election. If this occurs, and the subsequent investigations are commenced during this fiscal year, it will be necessary to request additional funding to cover the services rendered by the Evaluator.

PUBLIC OUTREACH

Not applicable.

BUDGET REFERENCE

There is a separate item before City Council recommending the approval of a 2004-2005 Mid-Year Budget action to increase the city-wide expense appropriation for the Elections Commission Evaluator to fund this \$30,000 amendment.

CEQA

Not a Project.

RICHARD DOYLE, CITY ATTORNEY

LEE PRICE, CITY CLERK

cc: Del Borgsdorf