



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 15, 2012

COUNCIL DISTRICT: CITY-WIDE

SUBJECT: SECOND AMENDMENT TO MEYERS, NAVE, RIBACK, SILVER & WILSON LEGAL SERVICES AGREEMENT AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE GENERAL FUND FOR FISCAL REFORM PLAN LEGAL SERVICES

RECOMMENDATION

1. Adopt a resolution authorizing the City Attorney to negotiate and execute a second amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson (Meyers, Nave) for legal services in connection with employment, labor, and pension reform, increasing the contract amount by \$950,000 for a total amount not to exceed \$1,200,000, subject to appropriation of funds as recommended below.
2. Adopt the following Appropriation Ordinance amendments in the General Fund:
 - A. Increase the city-wide appropriation to the City Attorney's Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$1,000,000; and,
 - B. Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$1,000,000.

OUTCOME

On October 28, 2011, the City Attorney executed an agreement with the law firm of Meyers, Nave for a term ending June 30, 2012, in a total amount not to exceed \$100,000, to provide legal services for a wide array of labor relations and employment matters. A first amendment to the agreement was executed on April 26, 2012, which extended the term through June 30, 2013, modified the scope of services, and increased the amount of total compensation by \$150,000, for a total not-to exceed amount of \$250,000. The amended scope of services includes, but is not limited to, legal services relating to compensation and retirement benefits for future employees and modifications to current and/or retired employees' compensation and retirement benefits,

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and Public Records Act matters. The scope of services includes representation of the City in the various Measure B litigation cases.

Execution of the second amendment to the agreement with Meyers, Nave will allow this law firm to continue to provide legal services related to employment, labor and pension reform. The increase to the Fiscal Reform Plan Outside Legal Counsel appropriation, if approved, will allow the City Attorney's Office to amend existing agreements with outside counsel to provide legal services on matters related to labor relations and pension reform as part of the City's Fiscal Reform Plan, specifically litigation in response to Measure B. Specifically, the appropriation increase of \$1.0 million will provide funding for increases to two contracts. In addition to the \$950,000 increase for Meyers, Nave, \$50,000 will be applied to a third amendment for the agreement with Ice Miller LLP.

BACKGROUND

The City Council in May 2011 approved a Fiscal Reform Plan to achieve savings and/or new revenues to eliminate the General Fund structural deficit, restore services to the January 2011 level, and to open facilities built or under construction within five years.

Significant legal services for labor relations and pension reform are required to support the implementation of the City's Fiscal Reform Plan. Outside counsel is providing legal advice on several labor and employment aspects of the Plan including, but not limited to, matters related to the pension ballot measure, compensation and retirement benefits for future employees, modifications to current employees' compensation and benefits, interpretation or application of written labor agreements, and litigation involving any of these issues.

ANALYSIS

The Association of Legal Professionals (ALP) represents the attorneys and other legal professionals in the Office of the City Attorney, except for the managing attorneys that are in Unit 99. Many of the labor and pension issues in the Fiscal Reform Plan are issues which have been and may continue to be part of the labor negotiations with ALP. Additionally, because ALP and Unit 99 attorneys are part of the City's retirement plan, we are required to use outside counsel.

The legal issues referenced above require attorneys with specialized expertise and extensive public sector experience. The City Attorney's Office will be retaining and/or continuing the services of several outside counsel firms for various legal services to support Fiscal Reform Plan implementation.

Management attorneys in the City Attorney's Office will coordinate and provide legal advice, as appropriate, on many of the labor and pension issues and will also provide oversight services for

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outside counsel. When appropriate, certain other attorneys may provide legal services on matters where no conflicts of interest exist.

The City Attorney's Office recently released three Request for Qualifications to develop a pool of law firms that could provide advisory counsel and legal services on labor relations matters for all employee units in the City of San José. Law firms selected as a result of this Request for Qualifications process include Meyers, Nave for labor and related issues; Hanson Bridgett LLP for pension and related issues; and Ice Miller LLP for tax and related issues due to their extensive experience in each of the below areas.

Meyers, Nave was selected due to the firm's extensive experience with labor and employment matters. Their continued participation is essential for legal representation in matters concerning compensation and retirement benefits for future employees and modifications to current and/or retired employees' compensation and retirement benefits. Additional funding in the amount of \$950,000 is necessary in order to execute this amendment to the contract; increase the total compensation of the contract from \$250,000 to \$1.2 million; and to pay for approximately \$380,000 in bills for litigation services received between during the summer and early fall 2012.

Ice Miller LLP provides the City with advice on compliance with federal tax laws and regulations and changes and proposed changes in federal tax laws and regulations that may affect the San Jose Police and Fire and Federated Employee Retirement Plans and Retiree Health Care Trusts. Additional funding in the amount of \$50,000 is necessary to increase the total compensation from \$50,000 to \$100,000. Per the Municipal Code, the City Attorney is authorized to amend contracts with a total compensation of up to \$250,000.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

Since this memorandum meets Criterion 1, it will be posted on the City's website as part of the December 4, 2012 City Council Agenda.

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COST SUMMARY/IMPLICATIONS

As part of the approval of the 2011-2012 Mid-Year Budget Review, the City Council approved the Fiscal Reform Plan Implementation Reserve in the General Fund to fund future ballot measures, polling, studies, potential litigation, and/or other items related to the implementation of the Fiscal Reform Plan. This memorandum recommends allocating \$1.0 million of the \$1.5 million earmarked reserve as included in the 2012-2013 Adopted Budget to the Fiscal Reform Plan Outside Legal Counsel, city-wide expense appropriation to provide for legal services in the current fiscal year. (It should be noted that the Administration is bringing forward a separate memorandum for Office of Employee Fiscal Reform related services, which recommends reducing the Fiscal Reform Implementation Reserve by \$350,000. If both recommendations are approved, \$150,000 will remain in the reserve for future use.)

1. Amount of Recommendation for increased Meyers, Nave contract:	\$950,000
Original Agreement – October 28, 2011	\$100,000
First Amendment – April 26, 2012	\$150,000
Proposed Second Amendment – November 27, 2012	\$950,000
TOTAL	\$1,200,000

In addition to the \$950,000 increase for Meyers, Nave, \$50,000 will be allocated to an agreement with Ice Miller LLP (increasing the total compensation amount from \$50,000 to \$100,000), if the recommended appropriation actions are approved. Per the Municipal Code, the City Attorney is authorized to amend contracts with a total compensation of up to \$250,000.

2. SOURCE OF FUNDING: General Fund – Fiscal Reform Plan Implementation Reserve

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. of Recommendation	2012-2013 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
001	3898	Fiscal Reform Plan Outside Legal Counsel	\$0*	\$950,000	IX-26	N/A*

* The recommendation in this memorandum would increase this appropriation by \$1.0 million.

HONORABLE MAYOR AND CITY COUNCIL

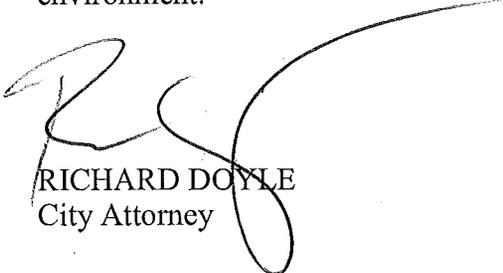
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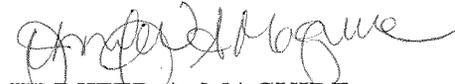
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CEQA

Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment.



RICHARD DOYLE
City Attorney



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Richard Doyle, City Attorney, at (408) 535-1900.