



ADMINISTRATIVE SERVICES DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: February 5, 2019

Subject

Approval of a Legal Services Contract for City Attorney Services with Shute Mihaly and Weinberger.

Recommended Action

1. Authorize the City Manager to execute an agreement with Shute Mihaly and Weinberger for City Attorney Services in the amount of \$600,000 annually.
2. Approve Budget Modification Number 1819-038 reducing the Administration-City Attorney budget by \$770,889.

Discussion

On June 5, 2018, as part of the 2018-19 Fiscal Year Final Budget Hearing and Adoption (FY19), City budget staff were given direction by the City Council through a straw vote to conduct analysis on the possible outsourcing of the City Attorney's Office (CAO).

In May of 2018 the former City Attorney was placed on paid Administrative Leave. City Council then placed the Senior Assistant City Attorney in an Acting capacity per the City's Municipal Code 2.18.070. In October 2018 the former City Attorney accepted a job with another agency, creating a vacancy.

In November 2018 the Administrative Services Director provided City Council with analysis regarding the outsourcing of the CAO that consisted of cost comparisons with neighboring cities that have both an in house or contract city attorney and service level survey of those cities contracting out these services. That analysis concluded that the City could save a substantial amount by contracting out city attorney services, largely due to the finding that cities with contracted legal services have variable costs. The characteristic of these variable costs is that on a unit basis, costs are fixed but the total varies depending on the workload. In the fixed scenario, for an in-house attorney, regardless of the workload the costs would still exist and with the variable model costs could increase or decrease based on demand. Potential savings would need to be weighed against possible impacts to service levels. Council then directed staff to gather additional feedback on customer service levels from city managers and elected officials for cities with outsourced city attorney services.

In December 2018, staff received direction from the City Council to proceed with a Request for Proposal (RFP) for contracted city attorney services.

On December 21, 2018, the RFP (attachment A) was sent out to the following ten firms;

1. Atkinson Farasyn
2. Berliner Cohen
3. Best Best & Krieger
4. Burke Willans Sorenson
5. Goldfarb & Lipman
6. Meyers Nave Riback Silver & Wilson
7. Renne Public Law Group
8. Shute, Mihaly & Weinberger
9. Siegel McClure Flegel
10. Sloan Sakai Yeung & Wong

Three firms responded, Burke, Williams & Sorenson, Meyers Nave Riback Silver & Wilson, and Shute, Mihaly & Weinberger and all were invited to interview. On January 8, 2019 a closed session was held for the City Council to interview the three firms. City Council unanimously selected Shute Mihaly & Weinberger (SMW) with Heather Minner to serve as City Attorney and Richard Taylor to serve as Assistant City Attorney. Staff was directed to negotiate the contract and bring it back to a future City Council meeting for approval, to retain the services of the Legal Services Manager and manage the transition of the existing Senior Assistant City Attorney, whose position was being eliminated and to allow for a four week transition period. Lastly, staff was directed to return to Council with options for the current leased space where the City Attorney's Office is located. Follow up on the last two items will come before Council at a later date.

SMW was selected based on its experience working exclusively with government agencies, nonprofits and community groups, their areas of legal expertise, and their approach to staffing the City Attorney with lawyers from their firm serving exclusively as City Attorney for only one City at a time. Heather Minner will however continue to serve as Assistant City Attorney to Half Moon Bay. The Assistant City Attorney Richard Taylor, will continue to serve as City Attorney for the City of Saratoga. SMW also proposed the lowest costs. The contract with SMW is based on a monthly retainer of 200 hours at \$50,000 per month. Hours over this amount in a given month will be billed at the listed rates in the agreement. In months when the City does not meet the 200 hours, the fee will be reduced by \$250 for each hour less than the 200 hours worked that month. The contract excludes the following special services as outlined in the agreement these exclusions are consistent with the other two proposals received by the City:

- Code enforcement administrative proceedings and litigation.
- Litigation services, including arbitration, mediation and administrative proceedings before agencies other than the City.

- Real estate transactions;
- The Firm's existing special matters for the City, specifically advice related to the Vallco project and Lehigh Quarry, and CEQA advice related to the Cupertino Village Hotel project, the Westport project, Apple Campus 2, and De Anza Hotel.
- CEQA and land use advice on major development applications, specific plans, and general plan amendments.
- Advice related to ballot measures.
- Special projects assigned by the City Council.
- Reimbursable Matters and
- Recovery Matters.

Heather Minner will be onsite two days a week for seven hours per day but will be accessible via phone and email on days when she is not onsite. Richard Taylor will attend City Council and executive meetings if Heather Minner is unavailable.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The approval of Budget Modification Number 1819-038 is anticipated to result in reduced costs in salary and benefits of approximately \$729,784 due to the elimination of all but one position in the CAO as described in the following chart:

Position	Salary	Benefits	Total Costs	Projected Costs	Projected Savings
City Attorney	\$ 255,601	\$ 99,650	\$ 355,251	\$ 110,416	\$ 244,835
Sr. Assistant City Attorney	\$ 214,212	\$ 87,924	\$ 302,136	\$ 251,712	\$ 50,424
Assistant City Attorney	\$ 176,606	\$ 72,439	\$ 249,045	\$ -	\$ 249,045
Deputy City Attorney (Limited Term, 2 Years Remain)	\$ 127,073	\$ 58,406	\$ 185,479	\$ -	\$ 185,479
Legal Services Manager	\$ 99,142	\$ 50,219	\$ 149,361	\$ 149,361	\$ -
Total	\$ 872,634	\$ 368,639	\$ 1,241,273	\$ 511,489	\$ 729,784

No other budget adjustments are requested at this time, it is projected that savings in contract services will be sufficient to cover the costs of the new contract estimates at \$250,000 thru the end of the current fiscal year.

Prepared by: Kristina Alfaro, Director of Administrative Services

Approved for Submission by: Timm Borden Interim City Manager

Attachments:

A – Request for Proposal

B - Agreement