



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann

SUBJECT: SEE BELOW

DATE: April 26, 2021

**SUBJECT: AMENDMENT TO AGREEMENT WITH KEYES & FOX, LLP FOR
LEGAL SERVICES RELATED TO THE SAN JOSE CLEAN ENERGY
PROGRAM**

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute a fifth amendment to the agreement with Keyes & Fox, LLP for legal services related to the San José Clean Energy program, increasing the amount of compensation by \$250,000 for a total amount not to exceed \$570,000.

OUTCOME

Execution of the fifth amendment to the agreement with Keyes & Fox, LLP will allow this law firm to continue to provide legal services related to the San José Clean Energy program.

BACKGROUND

On March 14, 2019, the City entered into an agreement with the law firm of Keyes & Fox, LLP (“Keyes”) for an initial term retroactive from January 10, 2019 through December 31, 2021 and a total compensation amount not to exceed \$40,000, to provide legal services related to the San José Clean Energy program, including representing the City and San José Clean Energy in regulatory proceedings before the California Public Utilities Commission as well as and general regulatory and compliance advice (“Agreement”).

On May 23, 2019, the City and Keyes entered into a First Amendment to the Agreement to revise the scope of services, update the list of authorized compensation rates, and increase the amount of total compensation allowed to \$87,000. On July 19, 2019, the City and Keyes entered into a Second Amendment to the Agreement to revise the scope of services, update the list of authorized compensation rates, and increase the

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amount of total compensation allowed to \$109,000. On February 27, 2020, the City and Keyes entered into a Third Amendment to the Agreement to update the list of authorized compensation rates and increase the amount of total compensation allowed to \$145,000. On September 4, 2020, the City and Keyes entered into a Fourth Amendment to the Agreement to revise the scope of services and increase the amount of total compensation allowed to \$320,000.

ANALYSIS

In August 2016, the City issued a Request for Qualifications seeking to establish a pool of qualified law firms to provide legal advice and assistance related to establishing, operating and terminating California Community Choice Aggregation (“CCA”) programs, including: general advice relating to establishing, operating and terminating a CCA; advising the City on regulatory requirements for CCAs; representing the City as necessary in front of various regulatory bodies; power procurement, including drafting short and long term power purchase agreements; bond and financing counsel to advise the City and possibly prepare legal opinions on various funding options or security for power purchases; rate setting advice and the statutory constraints affecting utility rates.

On March 14, 2019, the City entered into an agreement with Keyes, one of the firms selected for the pool of qualified law firms, to provide legal services related to the San José Clean Energy (“SJCE”) program, including legal representation in regulatory proceedings before the California Public Utilities Commission (“CPUC”) as well as general regulatory and compliance advice.

In particular, for cost-control, efficiency, and effective advocacy, SJCE engages in several annual or bi-annual proceedings at the CPUC through a coalition of CCAs operating in Pacific Gas and Electric Company’s (“PG&E”) territory (together with SJCE, the “Joint CCAs”). These proceedings include PG&E’s General Rate Case (“GRC”) and Energy Resource Recovery Account (“ERRA”) applications. In the GRC, the CPUC approves PG&E’s generation rates. SJCE’s rates are set with reference to those rates. In the ERRA proceedings, the CPUC considers whether PG&E’s fuel and purchased power costs are reasonable and can be recovered in rates. The key concern for the Joint CCAs is that the annual Power Charge Indifference Account fee that CCA customers pay is determined in the ERRA proceedings. Keyes represents the Joint CCAs before the CPUC in the PG&E’s GRC and ERRA applications.

Keyes also provides the City with specialized regulatory and compliance support. This service includes but is not limited to maintaining and updating SJCE’s compliance calendar; conducting City filings in a manner consistent with the CPUC requirements; and assisting staff with the preparation of major bi-annual and annual compliance filings such as the Integrated Resource Plan, the Renewable Portfolio Standard (“RPS”) annual procurement plan, the RPS compliance report, and the Power Source Disclosure report, among others.

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Keyes has provided legal, regulatory, and compliance services to the City for two years. The funding for this agreement has exhausted the City Attorney's threshold procurement authority. To continue the contract with Keyes for the full term of the Agreement (January 10, 2019 through December 31, 2021, with an option to extend the agreement for up to two additional years) the City must increase the funding by \$250,000, for a total amount not to exceed \$570,000. Additional funds for the agreement will be provided by the Community Energy Department's Non-Personal/Equipment appropriation in the San José Clean Energy Operating Fund.

CONCLUSION

To ensure the continued delivery of legal services in support of the San José Clean Energy program, staff recommends increasing the maximum amount of compensation for ongoing services by \$250,000.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website as part of the May 4, 2021 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the Community Energy Department.

COST SUMMARY/IMPLICATIONS

1. Amount of Recommendation:

Original Agreement – March 14, 2019	\$40,000
First Amendment – May 23, 2019	\$47,000
Second Amendment – July 19, 2019	\$22,000
Third Amendment – February 27, 2020	\$36,000
Fourth Amendment – September 4, 2020	\$175,000
Proposed Fifth Amendment	\$250,000
TOTAL	<u>\$570,000</u>

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2. Source of Funding: The amendment to the contract will be funded by the Community Energy Department's Non-Personal/Equipment appropriation in the San José Clean Energy Operating Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contracts recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Current Appn.	Amount for Contract	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
501	0782	Community Energy Non-Personal/ Equipment	\$9,437,801	\$250,000	X-87	6/23/20 Ord. 30437

CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

NORA FRIMANN
Acting City Attorney

By */s/ Luisa Elkins*

LUISA ELKINS
Senior Deputy City Attorney

For questions please contact Luisa Elkins, Sr. Deputy City Attorney, at (408) 535-1900.