



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann

SUBJECT: SEE BELOW

DATE: September 18, 2020

**SUBJECT: AMENDMENT TO AGREEMENT WITH HALL ENERGY LAW PC FOR
LEGAL SERVICES RELATED TO POWER PROCUREMENT FOR SAN
JOSE CLEAN ENERGY**

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute a third amendment to the agreement with Hall Energy Law PC for legal services related to power procurement for San José Clean Energy for Fiscal Years 2020 through 2023 and increasing the amount of compensation by \$400,000, for a total amount not to exceed \$720,000.

OUTCOME

Execution of the third amendment to the agreement with Hall Energy Law PC will allow this law firm to continue to provide legal services related to power procurement for the San José Clean Energy program.

BACKGROUND

On February 12, 2019, the City entered into an agreement with the law firm of Hall Energy Law PC ("Hall Energy") for an initial term retroactive from January 10, 2019 through January 8, 2021, with one 24-month option to extend the term through January 8, 2023, in a total amount not to exceed \$44,000, to provide legal services related to power procurement for the San José Clean Energy program ("Agreement"). Under this Agreement, Hall Energy provides legal review and advice including: evaluating and preparing requests for bids and accompanying Master Agreement and Confirmation templates for electrical power, advising on necessary changes to the San José Municipal Code to enable the City to respond nimbly and execute Power Purchase Agreements, and advising the City on the financial obligations and commitments required by power suppliers including the drafting of collateralization agreements.

On July 17, 2019, the City and Hall Energy entered into a First Amendment to the Agreement to increase the total amount of compensation to \$144,000. On October 31, 2019, the City and Hall Energy entered into a Second Amendment to the Agreement to increase the total amount of compensation 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 January 9, 2018, the City entered into an agreement with Troutman Sanders LLP, one of the firms selected for the pool of qualified law firms, to provide legal services related to power procurement, with Mr. Stephen Hall as Lead Special Counsel under the agreement. In January 2019, Mr. Stephen Hall left the firm of Troutman Sanders LLP and formed Hall Energy. The City Attorney, in consultation with staff from the Community Energy Department, determined that continuing receiving services from Mr. Hall through Hall Energy was in the best interest of the City’s newly formed CCA, San José Clean Energy (“SJCE”). SJCE’s power procurement activities rely on specialized legal services that combine the knowledge of the law governing energy procurement, public utilities, and local government agencies, as well as a deep understanding of commercial and operational requirements applicable to wholesale and retail electricity service. Hall Energy offers this unique set of skills, which are not available in-house at the City Attorney’s Office, and has many years of experience providing legal services related to power procurement to CCAs. Hall Energy is also counsel to several CCAs, and SJCE benefits from Mr. Hall’s work with those entities because he maintains current knowledge of new developments in the industry and improvements to standard procurement contracts.

Hall Energy has provided legal 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 Hall Energy for the full term of the Agreement (January 10, 2019 through January 8, 2021) plus the 24-month extension option (through January 8, 2023), as applicable, the City must increase the funding by \$400,000, for a total amount not to exceed \$720,000. 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 \$400,000.

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 September 29, 2020 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the Community Energy Department.

COST SUMMARY/IMPLICATIONS

1. Amount of Recommendation:

Original Agreement – February 12, 2019	\$44,000
First Amendment – July 17, 2019	\$100,000
Second Amendment – October 31, 2019	\$176,000
Proposed Third Amendment	\$400,000
TOTAL	<u>\$720,000</u>

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.

September 18, 2020

Subject: Amendment to Agreement for Legal Services with Hall Energy Law PC

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 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
501	0782	NP/EQUIP -CLEAN ENERGY	\$9,437,801	\$400,000	IX - 83	6/23/2020; 30437

* The 2020-2021 Proposed Operating Budget was approved by the City Council on June 16, 2020 and formally adopted on June 23, 2020.

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 Nora Frimann, Acting City Attorney, at (408) 535-1900.