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ADMINISTRATION DEPARTMENT

MEMORANDUM

TO: Mayor Brenda Esqueda and Councilmembers
FROM: Al Hernández, City Administrator
DATE: May 7, 2012
SUBJECT: Approval of Agreement for City Attorney Services with the Law Firm of Meyers Nave

RECOMMENDATION:

It is recommended that the City Council:

- a. Approve an Agreement for City Attorney Services (Attachment “A”) with the Law Firm of Meyers Nave; and
- b. Appoint Maribel S. Medina as the City Attorney.

BACKGROUND:

1. On October 17, 2011, City Council authorized the City Administrator to proceed with an RFP for City Attorney services for the City of San Fernando, the San Fernando Redevelopment Agency (Agency Counsel), the San Fernando Public Financing Authority (General Counsel), and the San Fernando Parking Authority (General Counsel).
2. On October 21, 2011, staff posted the RFP for City Attorney services on the City’s website and distributed it to 42 law firms.
3. On November 14, 2011, staff conducted the bid opening and received a total of 10 responses to the RFP for City Attorney services.
4. On January 26, 2012, all proposals were reviewed by an in-house committee (comprised of the City Administrator, Public Works Director, Personnel Manager, and Senior Accountant) to ensure that the information requested in the RFP was complete and the respondents satisfied the minimum qualifications. During this review, five firms were disqualified for various reasons.

5. In February 2012, staff invited in-house City Attorneys from the surrounding area to assist with the Screening Committee process; Amy Albano, Burbank City Attorney, responded and agreed to assist.
6. On March 22, 2012, the remaining five proposals were reviewed by the Screening Committee. During this review, one firm was eliminated.
7. On April 19, 2012 and April 26, 2012, City Council interviewed the each of the proposed City Attorneys from each firm.
8. On May 2, 2012, City Council motioned to terminate the contract with the current City Attorney firm and instructed the City Administrator to negotiate a contract with Meyers Nave, to be presented to City Council as soon as possible.

ANALYSIS:

Upon completing interviews with the final four law firms, City Council decided to move forward with Meyers Nave as the new City Attorney.

BUDGET IMPACT:

For Fiscal Year 2011-12, budget impact is expected to be minimal as we are close to the end of this fiscal year. For Fiscal Year 2012-13, Meyers Nave's rate will be incorporated into our new budget.

ATTACHMENT:

- A. Agreement for City Attorney Services

AGREEMENT FOR CITY ATTORNEY SERVICES

This Agreement is entered into this 7th day of May, 2012 by and among the CITY OF SAN FERNANDO, a municipal corporation ("CITY"), THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN FERNANDO, a public body, corporate and politic, the SAN FERNANDO PUBLIC FINANCING AUTHORITY, and the SAN FERNANDO PARKING AUTHORITY (collectively, "CITY"), and Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") ("CONTRACTOR").

RECITALS

A. CITY wishes to employ Meyers Nave as City Attorney of the CITY OF SAN FERNANDO, as Agency Counsel to THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN FERNANDO, as General Counsel to the SAN FERNANDO PUBLIC FINANCING AUTHORITY, and as General Counsel to the SAN FERNANDO PARKING AUTHORITY, on the terms set forth below.

NOW THEREFORE, THE PARTIES AGREE:

1. APPOINTMENT OF CITY ATTORNEY, AGENCY COUNSEL, AND GENERAL COUNSEL TO PUBLIC FINANCING AUTHORITY AND PARKING AUTHORITY.

Pursuant to Government Code Section 36505, the City Council of the City of San Fernando appoints the law firm of Meyers Nave to serve as City Attorney. Meyers Nave also shall serve as Agency Counsel of The Successor Agency of the San Fernando Redevelopment Agency, and General Counsel of the San Fernando Parking Authority and the San Fernando Public Financing Authority. All Assistant City Attorneys of CITY shall be employed by Meyers Nave and shall serve on behalf of CITY.

Meyers Nave shall serve as City Attorney, Agency Counsel, and General Counsel (collectively, "City Attorney"). Meyers Nave shall supply the City Administrator and staff with a list of the attorneys in the firm who will be assigned to provide representation in specialized areas so that staff may directly contact the attorneys most capable of providing advice on specific matters. Maribel S. Medina is hereby designated as the City Attorney, and no other attorney from Meyers Nave may be designated as the City Attorney without the prior consent of the City Council.

2. GENERAL SERVICES.

The City Attorney shall perform such legal services as may be required from time to time by CITY and its officers, and shall be responsible for the preparation and review of all CITY ordinances and resolutions, together with agreements, deeds and other legal documents requested by CITY. The City Attorney shall attend all regular meetings of the City Council, and shall render legal advice and opinions to the City Council as requested on all matters affecting

CITY. The City Attorney shall advise boards and commissions, and the personnel of CITY, as directed by the City Council or the City Administrator, and shall be available in City Hall, as scheduled by the City Administrator, for meetings and consultation. On an annual basis, the City Attorney shall participate in the audit of CITY and any legal matters for which CITY is responsible.

3. SPECIAL SERVICES.

The City Attorney shall provide the Special Services listed in Paragraph 6, as directed by the City Council or City Administrator.

4. THIRD PARTY ADMINISTRATORS.

CITY utilizes third party administrators for workers compensation and liability cases through whom litigation is assigned at the direction of the City Administrator.

5. OFFICE HOURS IN CITY HALL.

Meyers Nave agrees to maintain office hours at City Hall on the afternoon of the day on which a regular City Council meeting is to occur. CITY agrees to provide office space and support staff as deemed necessary and appropriate by the parties.

6. COMPENSATION.

(a) RETAINER. CITY shall pay a monthly general services retainer of Six Thousand Seven Hundred and Fifty (\$6,750) in advance of the commencement of each calendar month. The retainer shall compensate Meyers Nave for the first 30 hours of work each month, for general services, including attendance at meetings and general advice, consultation and review of ordinances, resolutions and contracts.

(b) ADDITIONAL GENERAL SERVICES. CITY shall pay for additional general services in any month in excess of those provided under the retainer, including attendance at meetings or other activities, a blended hourly rate of \$225 per hour.

(c) SPECIAL SERVICES. CITY shall pay for Special Services as follows:

(i) Preparation of Special Ordinances and Contracts shall be paid hourly rate between \$225 and \$325, depending on the experience of the attorney providing the legal services. The determination of whether a particular ordinance or contract is a Special Ordinance or Contract shall be made jointly by the City Administrator and the City Attorney. Examples include ordinances regulating first amendment issues or contracts such as franchises;

(ii) Redevelopment and Real Estate legal services shall be paid at the hourly rate between \$225 and \$325, depending on the experience of the attorney providing the legal services;

(iii) Environmental legal services and Significant Land Use Matters (hazardous waste, NPDES, solid waste, CEQA, NEPA, General Plan Amendments and Zone Changes except as part of cost recovery matters set forth in subsection (vii) below, etc., exclusive of litigation or appearances before administrative agencies) shall be paid at the hourly rate between \$225 and \$325, depending on the experience of the attorney providing the legal services;

(iv) Bond counsel, disclosure counsel, issuer's counsel and similar services shall be paid at the hourly rates between \$230-\$390, not to exceed a cap which the City Administrator believes would be a standard fee for a similar sized transaction of equal complexity;

(v) Litigation and Administrative Hearing legal services shall be paid at the hourly rate between \$225 and \$325, depending on the experience of the attorney providing the legal services, except code enforcement matters, which shall be paid a blended hourly rate of \$225;

(vi) Labor relations and employment matters, regulatory and development impact fee matters, enterprise funds matters (such as rate setting, public works construction for utility infrastructure), complex public records or election matters (as preauthorized by the City Administrator upon discussion with the City Attorney) and public financing matters (such as general and special taxes and assessment districts) shall be paid at an hourly rate of between \$225 and \$325, depending on the experience of the attorney providing the legal services;

(vii) Cost recovery matters for all discretionary land use entitlements and other matters where the City's legal costs are subject to reimbursement by the project applicants shall be paid at the hour rates between \$230 and \$390.

(d) NO ADDITIONAL CHARGES FOR SUPPORT STAFF. Meyers Nave shall not impose additional charges for secretaries, word processing, or other support staff.

(e) NO ADDITIONAL CHARGES FOR TRAVEL FROM OFFICE TO THE CITY. Meyers Nave shall not charge for travel from or to the offices of CITY.

(f) REIMBURSEMENT FOR COSTS ADVANCED. In addition, CITY shall reimburse Meyers Nave for costs advanced in connection with the activities of the City Attorney. Such costs shall include printing and copying expenses, filing fees, court fees, costs for investigators or other experts, computer research, facsimile transmission, costs for service of process, extraordinary travel expenses, parking charges, messenger and express delivery, and similar costs relating to legal services that are generally chargeable to a client. No individual cost in excess of \$200.00 shall be incurred without the approval of the City Administrator or his designee.

(g) PAYMENT. Monthly, Meyers Nave shall submit a statement describing all services performed during the preceding calendar month, including those covered by the retainer, and a bill for its retainer for the following calendar month. All time for additional

services which is billed on an hourly basis shall be in detail sufficient to describe the work performed and the charges therefore. CITY shall review the monthly statement and pay for services rendered, costs incurred, and the monthly retainer, within thirty (30) days of receipt of the statement.

7. TERMINATION OF AGREEMENT AND LEGAL SERVICES.

This Agreement and legal services to be rendered under it may be terminated at any time upon written notice from either party, with or without cause.

In the event of termination, Meyers Nave shall be paid for all work completed before termination, and upon payment, shall return to the City Administrator or other City Officer designated by the City Council, all files, documents and records belonging to CITY.

8. RENEWAL/PROPOSALS FOR CHANGES IN FEES/INITIAL COST REVIEW.

This Agreement shall be for a term of one year, and shall be automatically renewed on the same terms and conditions unless renewed on different terms by mutual agreement of both parties each year on the anniversary date of its commencement. Commencing May 7, 2013, and every year thereafter, the amount of the retainer set forth in subparagraph (a) of Paragraph 6, and the hourly rates set forth in subparagraphs (a), (b), and (c) (i) through (c) (vi), inclusive, of Paragraph 6 shall automatically increase by the annual percentage increase in the salaries the CITY pays to its management employees. Any other modification to this Agreement involving the services to be provided, or the fee structures or compensation shall be in writing. No change in compensation shall be effective prior to May 7, 2013. Meyers Nave and City agree that at the six month period from the commencement of this Agreement, Meyers Nave and City shall review the legal fees charged to date and conduct an analysis of the fees compared to the law firm previously providing City Attorney legal services.

9. LIBRARY.

CITY shall pay for the cost of books, literature, legal software, and other materials necessary to maintain an adequate reference library at City Hall as it deems appropriate in its own discretion. In addition, CITY shall pay for any hardware or software computer costs that it deems appropriate for computer communications between Meyers Nave's offices and City Hall.

10. PROFESSIONAL LIABILITY INSURANCE.

Meyers Nave warrants and represents that they are covered by a policy of professional liability insurance, insuring CITY as a client, in the amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate liability.

11. INDEPENDENT CONTRACTOR AND HOLD HARMLESS.

It is agreed that Meyers Nave shall serve as an independent contractor and not as an employee of CITY, and shall hold harmless and indemnify it for any claims, losses, liens,

demands and causes of action for negligent or tortuous conduct while serving as City Attorney. It is further agreed that CITY is not the exclusive client of Meyers Nave and such law firm shall have the right to serve as the attorneys for other clients not in conflict with the City of San Fernando. Meyers Nave warrants and represents that to the best of its knowledge there are presently no matters in which it is attorney of record which would require the execution of a conflict waiver from any of their clients.

12. FILES AND DOCUMENTS.

All files and records of CITY held by Meyers Nave in connection with representation of CITY shall be the responsibility of the firm to hold, maintain and return at the conclusion of the matter for which the records are used.

13. ANNUAL PERFORMANCE EVALUATION.

The City Administrator and the City Attorney shall establish a system to monitor and evaluate the performance, timeliness of services, compensation and other issues related to the terms of this agreement. Performance evaluations shall be conducted on a periodic basis at the discretion of the City Administrator.

14. AGREEMENT NOT ASSIGNABLE.

It is important to the CITY that its City Attorney be a law firm with experience in a variety of areas of municipal law and that the firm maintain continuity of representation with CITY. For these reasons, neither this Agreement nor any interest therein may be assigned or transferred by Meyers Nave.

15. CONFORMANCE WITH RISK MANAGEMENT AUTHORITY GUIDELINES.

Meyers Nave agrees to comply with "Model Litigation Management Guidelines" prepared by the Independent Cities Risk Management Authority, which is the CITY's pooled liability risk carrier.

16. TIME OF PERFORMANCE.

The services of the City Attorney shall be performed expeditiously in light of the purposes of this Agreement.

IN WITNESS WHEREOF, CITY and Meyers Nave have executed this agreement as of the date first written above.

CITY OF SAN FERNANDO,
A municipal corporation:

THE SUCCESSOR AGENCY TO THE SAN FERNANDO REDEVELOPMENT AGENCY,
A public body, corporate and politic:

By: _____
Brenda Esqueda, Mayor

By: _____
Brenda Esqueda, Chair

SAN FERNANDO PUBLIC FINANCING AUTHORITY

SAN FERNANDO PARKING AUTHORITY

By: _____
Brenda Esqueda, Chair

By: _____
Brenda Esqueda, Chair

ATTEST:

Elena G. Chávez, City Clerk/Agency Secretary

MEYERS, NAVE RIBACK, SILVER & WILSON

By: _____
Maribel S. Medina, Principal