



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT:** SEE BELOW

**DATE:** March 7, 2024

**SUBJECT: AMENDMENT TO AGREEMENT WITH STRADLING Yocca CARLSON & RAUTH RELATED TO *CITY OF SAN JOSE V. HOWARD JARVIS TAXPAYERS ASSOCIATION, ET AL***

## **RECOMMENDATION**

Adopt a resolution authorizing the City Attorney to negotiate and execute a Fourth Amendment to the Agreement with Stradling Yocca Carlson & Rauth for bond counsel services related to *City of San José v. Howard Jarvis Taxpayers Association, et al*, to increase the amount of compensation by \$400,000, for a total amount of compensation not to exceed \$750,000, and extend the term of the Agreement beginning May 1, 2021 through June 30, 2026, subject to the appropriation of funds.

## **OUTCOME**

Execution of the Fourth Amendment to the Agreement with Stradling Yocca Carlson & Rauth will allow this law firm to continue to provide legal services related to the appeal of *City of San José v. Howard Jarvis Taxpayers Association, et al*.

## **BACKGROUND**

On October 5, 2021, the City Council adopted a resolution<sup>1</sup> authorizing the issuance of bonds to refund and repay certain pension obligations, approving the form and authorizing the execution of certain documents, authorizing judicial validation proceedings relating to the issuance of such bonds and approving additional actions related thereto. The pension obligations include the unfunded liability for both the Police and Fire Retirement Plan and Federated City Employee's Retirement System Plan, and the annually required retirement contributions due and payable within 12 months of the issuance of the bond. The respective pension bond issuance would be capped at an aggregate principal amount of \$3.5 billion, or the sum of the City's unfunded liability and current obligation as calculated by the actuary for both Retirement Plans, together with the costs of issuing the bonds.

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<sup>1</sup> Resolution No. 80248, <https://records.sanjoseca.gov/Resolutions/RES80248.pdf>

The City Attorney executed an agreement with the law firm Stradling Yocca Carlson & Rauth to provide legal services pertaining to a validation action, and the appeal of *City of San José v. Howard Jarvis Taxpayers Association, et al.*

The City began judicial validation proceedings and filed a complaint with the Court on November 18, 2021. Summons were published advising all interested persons that they could contest the legality or validity of the matter by appearing and filing a written answer to the complaint within a set time period. The Howard Jarvis Taxpayers Association Citizens for Fiscal Responsibility and Pat Waite filed a written answer before the January 27, 2022 deadline to the City's complaint challenging the City's authority to issue pension obligation bonds without voter approval. The Santa Clara Superior Court entered a validation judgment, on February 6, 2023, affirming the City's authority to issue pension obligation bonds. Howard Jarvis Taxpayers Association et al filed their Notice of Appeal on March 9, 2023. The City filed Respondent's Brief on October 30, 2023. The hearing on the appeal before the Sixth District Court of Appeal will be on April 4, 2024.

### **ANALYSIS**

Stradling Yocca Carlson & Rauth was chosen to provide specialized legal services based on the firm's expertise with validation actions. The City prevailed in the trial court and the case is now on appeal. The purpose of the Fourth Amendment is to increase the amount of compensation by \$400,000 to allow Stradling to continue to provide legal services pertaining to the appeal of *City of San José v. Howard Jarvis Taxpayers Association, et al*, and to extend the term of the Agreement through June 30, 2026.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website as part of the March 12, 2024 City Council Agenda.

### **COORDINATION**

This item has been coordinated with the City Manager's Budget Office and the Finance Department.

### **COST SUMMARY/IMPLICATION**

The actions recommended in this memorandum will increase the compensation amount of the contract with Stradling Yocca Carlson & Rauth by \$400,000. Of the total increase, it is anticipated that approximately \$50,000 will be needed in 2023-2024, and was previously included in the budget adjustments approved by the City Council with their approval of the Mid-Year Budget Review on February 13, 2024. However, as this amount was inadvertently allocated to the Finance Department, subsequent

March 7, 2024

**Subject: Amendment to Agreement with Stradling Yocca Carlson & Rauth**

Page 3

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adjustments will be made at year-end to reallocate the funding to the City Attorney's Office. Any additional funding needed in 2024-2025 would be recommended to be allocated from the City Attorney's Office Outside Litigation Reserve, which currently has a balance of \$1.0 million.

## **BUDGET REFERENCE**

The table below identifies the fund and appropriation proposed to fund the contract amendment recommended as part of this memorandum.

<b>Fund #</b>	<b>Appn. #</b>	<b>Appn. Name</b>	<b>Current Appn</b>	<b>Amount. for Contract</b>	<b>2023-2024 Adopted Operating Budget Page</b>	<b>Last Budget Action (Date, Ord. No.)</b>
001	0442	Non/Personal Equipment	\$1,835,107	\$50,000	450	10/17/2023

## **CEQA**

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

NORA FRIMANN  
City Attorney

By /s/ Rosa Tsongtaatarii  
ROSA TSONGTAATARII  
Chief Deputy City Attorney

For questions, please contact Rosa Tsongtaatarii, Chief Deputy City Attorney, at (408) 535-1900.

cc: Jennifer Maguire, City Manager  
Rick Bruneau, Director of Finance  
Luz Cofresí-Howe, Assistant Director of Finance  
Jim Shannon, Budget Manager