



# Memorandum

**TO: Board of Administration for the  
Police and Fire Department  
Retirement Plan**

**FROM: Benjie Chua Foy**

**SUBJECT: 2<sup>nd</sup> Amendment to Reed Smith  
Agreement**

**DATE: December 16, 2024**

Approved

Date 12/19/2024

## RECOMMENDATION

Discussion and action to authorize the CEO to negotiate and execute the second amendment to the agreement ending on June 30, 2025, for legal services between the Board of Administration for the Police and Fire Department Retirement Plan (the Board) and Reed Smith to increase the not-to-exceed (NTE) by \$180,000 from \$1.6 million to \$1.78 million.

## BACKGROUND

Reed Smith has been the Board's general and fiduciary counsel since March 2012. In May 2020, following the completion of a Request for Proposal (RFP) for legal services, a contract was entered into between the Board and Reed Smith for an amount not-to-exceed \$1 million for an initial term of five years ending June 30, 2025,. The table below shows expenditures for the last five fiscal years, starting FY19-20.

Fiscal Year	General Counsel	Hourly/Fiduciary	Total Expenses
7/1/19-6/30/20	\$103,125	\$40,945	\$144,070
7/1/20-6/30/21	\$124,200	\$8,910	\$133,110
7/1/21-6/30/22	\$117,271	\$243,614	\$360,885
7/1/22-6/30/23	\$120,791	\$245,383	\$366,174
7/1/23-6/30/24	\$124,410	\$400,508	\$524,918
<b>Total</b>	<b>\$589,797</b>	<b>\$939,360</b>	<b>\$1,529,157</b>
Average	\$117,959	\$187,872	\$305,831

In September 2023, the Board approved a first amendment to the contract that increased the NTE contract amount by \$600,000 to \$1.6 million.

The type of services provided by Reed Smith are categorized as general counsel and fiduciary services. General counsel monthly invoices are set at a fixed price with 3% increases per year. They include 10 hours of legal services, including any hours over 5 hours in attendance at the regular monthly Board meeting. Fiduciary services are provided on an hourly basis. Invoices are billed at the prevailing attorney's rate which range from \$636 to \$759 for fiscal year 2024-2025. Per the contract, rates have increased 3% per annum.

**ANALYSIS**

The chart below shows the expenditures for hourly/fiduciary services for the past three fiscal years:

Description	FY21-22	FY22-23	FY23-24
City policies, Muni Code proposed changes, ballot initiative / MOU			\$96,739
Personnel policies and JPC compensation issues		\$26,977	\$49,607
Military leave – also related to specific member		\$18,401	\$46,172
Benefits-related, equitable tolling, Disability Committee charter, PRA request			\$44,672
Internal audit, contracts, strategic planning		\$29,524	\$42,782
IT-related, Cybersecurity, LRS			\$32,598
Board and committee related items		\$11,528	\$28,585
Whistleblower complaint			\$24,970
CEO recruitment			\$10,282
San Jose Municipal Code Domestic Relations Order provisions		\$74,788	\$4,062
Felony forfeiture	\$168,426	\$51,940	\$147
Miscellaneous	\$75,188	\$32,225	\$19,892
<b>Total Hourly/Fiduciary Expenses</b>	<b>\$243,614</b>	<b>\$245,383</b>	<b>\$400,508</b>

The table below shows what has been spent on general counsel and fiduciary services for the current fiscal year through November 30, 2024, with seven months left on the contract.

Month	General Counsel	Hourly/Fiduciary	Total Expenses
07/24	0	\$25,446	\$25,446
08/24	\$11,310	\$15,892	\$27,202
09/24	\$11,649	\$22,847	\$34,496
10/24	\$11,649	\$6,717	\$18,366
11/24	\$11,649	\$10,801	\$22,450
<b>Fiscal Year to Date Expenses</b>	<b>\$46,257</b>	<b>\$81,703</b>	<b>\$127,960</b>
Projected Expenses for 7 months	\$81,543	\$114,384	\$195,927
<b>Total Projected Expenses for FY 24-25</b>	<b>\$127,800</b>	<b>\$196,087</b>	<b>\$323,887</b>
<b>Budget for FY 24-25</b>			<b>\$387,000</b>

Based on what has been spent and the projected expenditures for the next seven months, the total additional compensation requested for the original contract is shown below. This includes a contingency amount of \$10,000 each month for unknowns to avoid the need to request additional funds.

Description	Contract
Projected Expenditures for FY24-25 based on analysis above	\$324,000
Contingency amount of \$10,000 per month for remaining term	\$71,000
Less: amount paid through November 2024	(\$128,000)
Total projected expenditures for the rest of the term	\$267,000
Less: amount remaining in contract	(\$87,000)
Amount to add to second amendment of the contract	<b>\$180,000</b>

**CONCLUSION**

Staff recommend the Board approve authorizing the CEO to negotiate and execute a second amendment to the agreement between the Board and Reed Smith for legal services to increase the NTE by \$180,000 from \$1.6 million to \$1.78 million.

*Benjie Chua Foy*

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Benjie Chua Foy  
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