



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



AGENDA and NOTICE

Special Meeting

Thursday, April 14, 2022
6:15 P.M

HYBRID IN-PERSON/VIRTUAL MEETING
REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING
IN THE MEETING REMOTELY OR IN-PERSON.

IF YOU ATTEND THE MEETING IN PERSON, A FACE COVERING
IS RECOMMENDED BUT NOT REQUIRED.

A. ROLL CALL

B. CITY MANAGER REPORTS

1. Appointment of Kristopher J. Kokotaylo as City Attorney effective April 14, 2022 and authorization for Mayor Nagy to execute an amendment to the agreement for legal services with Meyers, Nave, Riback, Silver & Wilson
2. Oath of Office for City Attorney Kristopher J. Kokotaylo

C. ADJOURNMENT

HYBRID IN-PERSON/VIRTUAL MEETING NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Assembly Bill 361(2021). Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube. If you attend the meeting in person, a face covering is recommended but not required.

Mayor Nagy, Vice Mayor Hannon, and Council Members Bucci, Collazo, and Freitas may be attending this meeting via teleconference. Teleconference locations are not open to the public. In the event that any members of the City Council elect to attend this meeting via teleconference, all votes conducted during the teleconferencing session will be conducted by roll call vote.

How to view the meeting remotely:

Livestream online at YouTube <https://www.youtube.com/channel/UC383NGSxaPwZP1IkJbo2T8A>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

How to participate in the meeting remotely, via Zoom Webinar:

From a PC, Mac, iPad, iPhone or Android device: Zoom Meeting <https://us06web.zoom.us/j/82229702383>

From a telephone dial 1 669 900 9128, Webinar ID Number 822 2970 2383

Provide live, remote public comments, when the Mayor calls for comments. Use the raise your hand feature in Zoom to be called upon by the City Clerk.

For frequently asked Zoom questions, please go to [Agendas and Minutes](#) and select the Frequently Asked Questions link.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 24 hours before a special meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted, if time allows, at [Agendas and Minutes](#). Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at [City Clerk](#) or 510-578-4266.



STAFF REPORT

Item B. 1.

DATE 04/14/2022
TO Honorable Mayor and City Council Members
FROM Lenka Hovorka, Assistant City Manager
SUBJECT Appointment of Kristopher J. Kokotaylo as City Attorney effective April 14, 2022 and authorization for Mayor Nagy to execute an amendment to the agreement for legal services with Meyers, Nave, Riback, Silver & Wilson

RECOMMENDATION

Staff recommends that the City Council approve a Resolution appointing Kristopher J. Kokotaylo as City Attorney and authorizing an amendment to the agreement for legal services with Meyers, Nave, Riback, Silver & Wilson.

EXECUTIVE SUMMARY

More than three years ago, Kristopher Kokotaylo began serving as Interim City Attorney for the City of Newark through a letter agreement with the law firm Meyers Nave, dated December 6, 2018 ("Agreement"). The City Council now has expressed a desire to appoint Mr. Kokotaylo as City Attorney. An amendment to the Agreement has been prepared to reflect the appointment. There are no other proposed changes to the Agreement.

BACKGROUND

In fall 2018, City Council anticipated a vacancy in the City Attorney position. At its December 29, 2018 meeting, the City Council appointed Mr. Kokotaylo as Interim City Attorney, and authorized a new agreement for legal services with the law firm Meyers Nave, which had been providing outside special counsel services to the City. Mr. Kokotaylo has since served the City in the Interim City Attorney role.

DISCUSSION/ANALYSIS

The City Council met in closed session on February 24, 2022 to discuss the City's legal services. At the conclusion of the meeting, City Council expressed a desire to change Mr. Kokotaylo's appointment from Interim City Attorney to City Attorney. Mr. Kokotaylo is an experienced attorney who has provided legal services to the City as Interim City Attorney for more than three years. He also acted as special outside counsel for several years before that appointment. Over the past three years, Mr. Kokotaylo has consistently provided excellent and timely legal services to the City, managing the full range of legal issues the City faces.

An amendment to the original engagement letter was prepared and has been reviewed

by special outside counsel Ms. Jennifer Faught. The amendment changes the original agreement only to reflect the appointment and title change; no other changes are proposed.

FISCAL IMPACT

The proposed amendment does not change the financial terms of the legal services agreement. There is no additional cost for services as a result of making the appointment or approving this amendment.

REVIEW AND APPROVAL

Prepared by – Lenka Hovorka, Assistant City Manager

Reviewed and Approved by – David J. Benoun, City Manager

Attachments

Engagement Letter Agreement

Agreement Resolution

Agreement Amendment

December 6, 2018

Mayor and City Council
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Re: Engagement of Legal Services

Dear Mayor and City Council:

Thank you for retaining Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") to perform legal services in connection with the City of Newark. We appreciate the opportunity to serve as your lawyers and look forward to working with you.

This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for those services. Please read this entire agreement before signing and returning it to us.

1. Scope of Engagement. We will provide the legal services reasonably required to represent and advise you as Interim City Attorney starting December 29, 2018 until terminated by either party pursuant to paragraph 5. Our work is limited to such services. We currently provide special counsel services to the City on certain matters. We also understand that the City has existing agreements with other law firms to provide legal services on certain matters. As Interim City Attorney, Kristopher J. Kokotaylo will regularly update the City Council and City Manager on all the major projects being handled by the City Attorney's Office and the attorney or attorneys working on them. He is authorized by this agreement to decide which attorney should perform particular legal services for the City, in consultation with the City Manager, including special counsel services. All work to be performed by Meyers Nave is within the scope of this agreement. A scheduled presence of the Interim City Attorney or other attorney from Meyers Nave at City Offices may be requested by the City Manager. Meyers Nave will update City Council and City Manager on all major projects handled by the City Attorney's Office or by outside firms contracted to do work for the City, respond to emails within several hours and aim to complete routine contracts and assignments within 24 hours.

2. Fees and Personnel. As compensation for our services, our fees will be based on our current standard billing rate for the personnel performing services under this agreement at the time such services are rendered. Our standard billing rates for attorneys and paralegals are attached as Attachment 1.

Kristopher J. Kokotaylo will be the attorney in charge of representing your interests. If other attorneys and/or paralegals are assigned to work on your matter, the then current hourly rates of those individuals will be utilized. This agreement retains the legal services of our law firm and not of a particular attorney. However, pursuant to this agreement, Kristopher J. Kokotaylo will serve as Interim City Attorney and Richard D. Pio Roda will serve as Interim Assistant City Attorney. Initial rates will be as follows for the following attorneys: Kristopher J. Kokotaylo: \$280/hour; Richard D. Pio Roda: \$325/hour; Alex Mog: \$265/hour. Hourly rates are subject to reasonable change at the beginning of each year.

3. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses related to your representation. Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as Attachment 2.

4. Billing and Payment Responsibilities. We will send monthly statements which are due within 30 days of receipt. Our Statement of Fee and Billing Information sets forth the details of our fee and billing policy.

5. Termination of Services. You may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to your new counsel.

We may terminate our services at any time with your consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) you fail to meet any other obligation under this agreement and continue in that failure for 15 days after we send written notice to you; (c) you have misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, you agree to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by you or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. Insurance. During the term of this engagement, this law firm shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000 per occurrence; and \$4,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to you.

7. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

8. Dispute Resolution. In the event you become dissatisfied with any aspect of our relationship, we encourage you to bring such concerns to our attention immediately. If we are unable to resolve any dispute, either arising out of or in connection with this agreement or relating to the services performed by our firm or any of its attorneys, to our mutual satisfaction, our firm will first comply with any mandatory dispute resolution procedures that may apply to any such dispute.

If we are unable to resolve any dispute, and after mandatory dispute resolution procedures have been waived or exhausted, the parties shall submit such dispute to final and binding arbitration in Alameda County, California before the American Arbitration Association, pursuant to its then prevailing rules, unless the parties agree in writing to a different arbitration method or forum.

By signing this agreement, you acknowledge and agree that you have read and understand this arbitration provision. You understand that by agreeing to arbitration we each give up the right to present our claims or defenses for trial by a judge or jury, and we also give up the right to an appeal. The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel binding arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

9. Document Retention. In the course of our representation, you may provide us with and we may obtain documents that are relevant to the representation. Some of those documents may be important to you and so that there is no confusion we find that it is useful at the inception of the representation for us to communicate our Document Retention Policy. Meyers Nave is committed to using less paper and eliminating unnecessary copies of documents. This helps us manage information, helps the environment and helps us control costs. The materials pertaining to this matter belong to you and you may access them or have duplicates provided to you at any time during your representation with the exception of certain Meyers Nave firm and accounting information. At the conclusion of this matter, no further representation will be provided and we recommend that you make arrangements to retrieve all original documents.

It is the firm's general policy that we maintain records for a period of ten (10) years after conclusion of the matter, although due to certain practical considerations that is not always possible. Additionally, while we take steps to ensure that all records are held in strict confidence and maintained in a secure location, we cannot guarantee that something beyond our control will not occur resulting in damage to client records.

Thus, if in the course of our representation you provide us with original documents that you consider important or desire to keep, we recommend that, first, you inform us in writing that the documents are important. And second, we ask that you take immediate possession of such documents upon the conclusion of our representation. If we do not hear from you, we will generally retain only the documents and materials pertaining to this matter which we

designate as vital for a period of ten years. After which such documents will be destroyed unless, before that time, you notify us in writing that you wish to take possession of them.

10. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

11. Joint Representation. Our firm maintains of counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of our firm, it is necessary that you consent to dual representation by our firm and the specialist in the event the matter which you have engaged us to handle requires the use of that specialist. This arrangement has no effect whatsoever on the cost of your legal services, rather it is an ethical requirement that we disclose this fact and that you consent. You are consenting by signing this letter.

12. Conflicts. Our firm represents many public agencies in California, Nevada and Arizona. Since 1986, we have represented over seven hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities, and we are accepting new engagements all the time. It is virtually inevitable that we will work on projects from other clients having different governmental or political objectives, beliefs or views from City of Newark.

In view of the fact that City of Newark is a Public Entity, this letter confirms that the services which we are rendering to you are limited in scope and for the benefit of City of Newark only. Meyers Nave performs a variety of professional services for its clients and it is possible that we will represent public agency clients which are adverse to you on other matters. To avoid potential problems, you agree that you expressly waive any actual or potential conflicts that might arise from such representation, that you will not attempt to disqualify Meyers Nave on such matters, and that our firm is free to represent its clients on such matters.

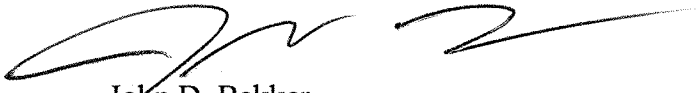
By signing this letter and returning it to us, you acknowledge that we have discussed these matters and you confirm that City of Newark does not object to our representation of clients on matters where their legal, governmental or political objectives and/or positions may be different from or adverse to those of City of Newark, and that City of Newark waives any conflict of interests with respect to our representation of such clients with differing legal, governmental or political interests. You further confirm that City of Newark will not assert any conflict of interest concerning such representation or attempt to disqualify this firm from representing such clients notwithstanding such adversity. While you would certainly be free to terminate our relationship, you agree that this firm nonetheless would be free to represent such clients even on those matters which you consider adverse, and that you waive any conflict of interest in connection therewith.

Needless to say, these acknowledgments do not permit our firm to represent another client in opposing the specific project for which you engage us without your specific written consent.

You may wish, and we encourage you, to consult legal counsel regarding the effect of this conflict waiver.

We would request that you review this letter carefully and, if it is consistent with your understanding of our respective responsibilities, please so indicate by returning a signed copy of this letter to me at your earliest convenience. Enclosed is an additional copy of this letter which you should retain for your records. Again, we thank you for allowing us the opportunity to serve as your lawyers.

Very truly yours,

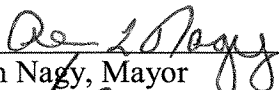


John D. Bakker
Attorney at Law

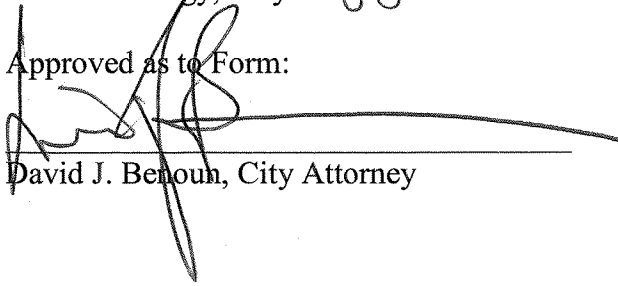
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Enclosures
c: Conflicts Department
Billing Department

These terms are accepted and agreed to as of the date of this letter.

City of Newark

By: 
Alan Nagy, Mayor

Approved as to Form:



David J. Benoun, City Attorney

ATTACHMENT 1

**MEYERS, NAVE, RIBACK, SILVER & WILSON
RATE SHEET**

	General Counsel	Special Services Enterprise and LEG	Cost Recovery and Litigation
Principals	\$325-\$395	\$350-\$425	\$400-\$500
Of Counsel	\$275-\$350	\$290-\$360	\$350-\$450
Associates	\$265-\$300	\$275-\$315	\$280-\$375
Paralegals	\$165	\$175	\$165-\$195

The particular rates charged within the above ranges will depend on the experience of the attorney and the subject matter.

There will be no charge for travel time.

With the exception of January 1, 2019, our rates adjust every January 1st by the greater of 3% or the relevant local CPI increase over the prior 12 month period.

ATTACHMENT 2

MEYERS, NAVE, RIBACK, SILVER & WILSON STATEMENT OF FEE AND BILLING INFORMATION

The following is a general description of our fee and billing policies. These general policies may be modified by the specific engagement letter or agreement to which this summary is attached.

Professional Fees. Our fees for professional services are based on the fair value of the services rendered. To help us determine the value of our services, our attorneys and paralegals maintain time records for each client and matter. Our attorneys and paralegals are assigned hourly rates which are based on years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually at the beginning of each year) to take into account inflation and the increased experience of our professional personnel.

To keep professional fees at a minimum, legal work that does not require more experienced attorneys will be performed, where feasible, by attorneys with lower billing rates. Of course, the quality of the work is paramount, and we do not sacrifice quality to economy.

Before undertaking a particular assignment, we will, if requested, provide you with a fee estimate to the extent possible. Estimates are not possible for some matters, however, and cannot be relied on in many others because the scope of our work will not be clear at the outset. When a fee estimate is given, it is only an estimate; it is not a maximum or minimum fee quotation. The actual fee may be more or less than the quoted estimate.

Billing And Payment Procedures. Unless other arrangements are made at the time of the engagement, invoices will be sent monthly. Invoices for outside services exceeding \$100 may be billed separately. Occasionally, however, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed; if requested, the initials of the attorney who performed the work will appear on the statement. The invoice will include a line item reflecting in-house administrative costs. The firm's in-house administrative costs include duplicating, facsimile charges, telephone charges, E-mail, postage, mileage and other administrative expenses.

The firm will be reimbursed for all outside services incurred in the course of providing legal services to our client(s). Outside services will include, but are not limited to, all third-party expenses, delivery charges, travel expenses, outside research services, filing fees, expert witness and expert consultant fees.

If you have any questions regarding an invoice, the Finance Director or Executive Director is available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.

Late Payments. Statements for services are payable upon presentation and, in all events, within thirty (30) days after receipt. Occasionally a client has difficulty in making timely payments. To avoid burdening those clients who pay their statements promptly with the added costs we incur as a result of late payments, a late charge will be assessed on statements not paid within thirty (30) days. The maximum monthly late payment charge will be 1.5% per month. In the unlikely event we are required to institute legal proceedings to collect fees and costs, the prevailing party will be entitled to reasonable attorneys' fees and other costs of collection.

3084391.5

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPOINTING KRISTOPHER J. KOKOTAYLO AS
CITY ATTORNEY EFFECTIVE APRIL 14, 2022, AND
AUTHORIZING MAYOR NAGY TO EXECUTE AN
AMENDMENT TO THE AGREEMENT FOR LEGAL
SERVICES WITH MEYERS, NAVE, RIBACK, SILVER &
WILSON

WHEREAS, Mr. Kristopher J. Kokotaylo of Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") was appointed as Interim City Attorney for the City of Newark ("City") on December 29, 2018; and

WHEREAS, the City Council also executed a letter agreement for engagement of legal services with Meyers Nave dated December 6, 2018 (the "Agreement"); and

WHEREAS, since his appointment as Interim City Attorney, the City Council has found Mr. Kokotaylo to be a knowledgeable and trusted advisor, and qualified to act as City Attorney; and

WHEREAS, the City Council desires to appoint Mr. Kokotaylo as City Attorney of the City of Newark; and

WHEREAS, an amendment to the Agreement has been prepared to reflect this appointment, with no other changes proposed.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby:

1. Appoints Kristopher J. Kokotaylo as City Attorney of the City of Newark, effective April 14, 2022; and
2. Authorizes Mayor Nagy to execute an amendment to the letter agreement for engagement of legal services with Meyers Nave dated December 6, 2018, a copy of which is attached hereto as Exhibit "1," to reflect the appointment.



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fax (510) 444-1108
www.meyersnave.com

Kristopher J. Kokotaylo
kkokotaylo@meyersnave.com

March 15, 2022

Mayor and City Council
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Re: Amendment to Engagement of Legal Services for City Attorney Services

Dear Mayor and City Council:

Thank you for retaining Meyers Nave to perform legal services in connection with the City of Newark. We appreciate the opportunity to serve as your lawyers and look forward to continue working with you.

This letter serves as an amendment to the Letter Agreement for Engagement of Legal Services dated December 6, 2018 (the "Agreement").

1. Amendment. The Agreement is amended as follows:

a. Section 1 (Scope of Engagement) is amended to add the following at the end of that section: "Effective March 24, 2022, Kristopher J. Kokotaylo was appointed City Attorney by the Newark City Council and shall serve in that capacity pursuant to the terms of this letter."

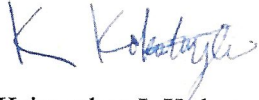
b. All references in Section 2 (Fees and Personnel) to "Interim" are removed.

2. Remainder of Agreement Unchanged. In all other respects, the terms of the Agreement shall remain unchanged.

Mayor and City Council
March 15, 2022
Page 2

We thank you for allowing us the continued opportunity and privilege to serve as your lawyers.

Very truly yours,



Kristopher J. Kokotaylo
Attorney at Law

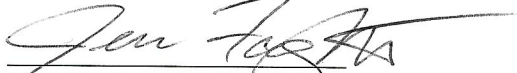
c: Conflicts Department
Billing Department

These terms are accepted and agreed to as of the date of this letter.

City of Newark

By: _____
Alan Nagy, Mayor

Approved as to Form:



Jennifer Faught, Special Counsel

5077994.1



STAFF REPORT

Item B. 2.

DATE 04/14/2022
TO Honorable Mayor and City Council Members
FROM Lenka Hovorka, Assistant City Manager
SUBJECT Oath of Office for City Attorney Kristopher J. Kokotaylo

City Attorney Kristopher J. Kokotaylo will be introduced, followed by administration of the Oath of Office.
