

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR SCHWEDHELM AND MEMBERS OF THE CITY COUNCIL  
FROM: SUE GALLAGHER, CITY ATTORNEY  
SUBJECT: APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH BARON & BUDD, P.C. AND DIXON DIAB & CHAMBERS, LLP, TO PROVIDE LEGAL REPRESENTATION ON BEHALF OF THE CITY OF SANTA ROSA IN LITIGATION AGAINST PG&E ARISING FROM THE KINCADE FIRE OF OCTOBER 2019

AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended that the Council, by resolution, approve a Professional Services Agreement with Baron & Budd, P.C. and Dixon Diab & Chambers, LLP, for legal representation on behalf of the City of Santa Rosa in litigation against PG&E arising from the Kincade Fire of October 2019.

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EXECUTIVE SUMMARY

The City suffered significant property and economic as a result of the Kincade fire of October 2019. Evidence indicates that equipment and infrastructure owned and/or operated by Pacific Gas & Electric Co. and the PG&E Corporation (jointly, "PG&E") was the cause and origin of the fire.

Several local agencies affected by the Kincade fire are preparing to file suit against PG&E to recover damages incurred. In light of the significant property and economic damages suffered by the City and the strong evidence of PG&E's potential responsibility, the City Attorney recommends that the City join in that litigation.

The City Attorney further recommends that the City engage outside legal counsel to assist in the lawsuit. In light of the City's positive experience with the law firm of Baron & Budd, P.C. in litigation related to the 2017 wildfires, the City Attorney recommends that Council, by resolution, approve a second Professional Services Agreement with Baron & Budd, P.C. and its associated firm, Dixon Diab & Chambers, LLP, for assistance in this action as well. Under the proposed agreement, the two law firms, working closely with the City Attorney's Office, will provide all necessary legal services to represent the

City of Santa Rosa in a lawsuit for damages against PG&E relative to the Kincade fire. The Office of the City Attorney will retain control over all key decision-making.

### BACKGROUND

The Kincade wildfire was ignited on October 23, 2019, during a high wind event in the area of the Geysers, northeast of Geyserville in Sonoma County. The fire spread broadly over the course of many days, ultimately encompassing 77,758 acres (approximately 120 square miles). It threatened the communities of Geyserville, Healdsburg, Windsor and northeast Santa Rosa, triggered the evacuation of 180,000 residents across central Sonoma County; and engaged comprehensive local and statewide fire-fighting resources. The fire continued to rage for two weeks, until it was finally fully contained on November 6, 2019.

The Kincade Fire impacted many tens of thousands of residents within Santa Rosa and the surrounding areas. It significantly impacted the health and safety of City residents, the security of critical public services and infrastructure, and the welfare of community businesses. It required significant City resources, including, but not limited to fire, police, and emergency operations encompassing virtually all City departments. Many City facilities were forced to close, while others quickly shifted into emergency status. City facilities suffered direct damage, including damage and disruption to the City's wastewater treatment program and infrastructure, and on-going threats to the City's stormwater system from hillsides now stripped of vegetation. The ultimate scope of the fire's impact on City facilities and resources is still not fully known.

Existing evidence strongly indicates that the Kincade fire was caused by failures in facilities and infrastructure owned and/or operated by PG&E.

### PRIOR CITY COUNCIL REVIEW

Council has previously met in closed session to discuss potential litigation against PG&E and selection of outside counsel.

### ANALYSIS

The law firms of Baron & Budd, P.C. and Dixon Diab & Chambers, LLP have offered to provide legal representation for public entities and individuals in connection with the 2019 Kincade fire. Baron & Budd, P.C., along with a consortium of law firms including Dixon Diab & Chambers, have and continue to represent the City in litigation arising out of the October 2017 wildfires and both firms have extensive experience in representing public entities in large scale tort litigation.

The Professional Services Agreement provides for compensation on a contingency fee basis at the negotiated rate of eighteen percent (18%) of the net recovery obtained for the City in the action. The law firms will front all litigation costs, including expert witness

fees. Those costs will be recouped by the law firms only if a successful recovery is obtained. If no recovery is obtained, no costs or fees will be owed.

The City Attorney's Office will oversee the litigation and, pursuant to terms of the Agreement, will retain complete control of all decisions in the action. City Attorney, legal assistant and other in-house litigation fees and costs will be reimbursed prior to calculation of any contingency fee.

#### FISCAL IMPACT

Unknown at this time.

#### ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

#### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

#### NOTIFICATION

Not applicable.

#### ATTACHMENTS

- Resolution/Exhibit A - Professional Services Agreement

#### CONTACT

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