

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: SUE GALLAGHER, CITY ATTORNEY
JENNIFER BURKE, DIRECTOR, SANTA ROSA WATER
SUBJECT: FOURTH AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT NUMBER F002270 WITH GEARY, SHEA,
O'DONNELL, GRATTAN & MITCHELL P.C. FOR LEGAL
REPRESENTATION

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney and the Director of Santa Rosa Water that the Council, by resolution, approve the Fourth Amendment to Professional Services Agreement Number F002270 with Geary, Shea, O'Donnell, Grattan & Mitchell, P.C. in the amount of \$75,000 for a total contract amount not to exceed \$350,000 for continued legal representation in the matter of *Pelayo, et al. v. Utility Partners of America, City of Santa Rosa, et al.*

EXECUTIVE SUMMARY

Effective October 19, 2019, the City entered into a Professional Services Agreement (PSA) with Geary, Shea, O'Donnell, Grattan & Mitchell, P.C. (Geary lawfirm) in the amount of \$75,000 for legal representation in the matter of *Pelayo, et al. v. Utility Partners of America, City of Santa Rosa, et al.* (Lawsuit).

Due to the complex and evolving nature of the Lawsuit, the PSA has previously been amended several times to add compensation for continued legal representation.

Although efforts for global mediation were unsuccessful, City and Plaintiffs separately reached a tentative settlement which the Superior Court affirmed on 4/11/2023. Defendant Utility Partners of America (UPA) filed a writ to challenge the Court's ruling. The Court of Appeal denied the writ and reaffirmed the settlement on June 14, 2023. The parties are considering next step. Trial has been continued to 1/19/2024.

The City Attorney and Director of Santa Rosa Water have determined that it is in the best interest of the City to continue services with the Geary lawfirm and to amend the PSA to add additional compensation for continued legal services to see this matter to final conclusion.

BACKGROUND

The Lawsuit concerns a contract executed in 2015, through which the City engaged Utilities Partners of America (UPA) for installation of approximately 35,000 smart water meters throughout the City. UPA hired plaintiff Pelayo and others to perform the individual installations. Pelayo and others filed suit in the spring of 2019, alleging that UPA had failed to pay appropriate prevailing wages. UPA, in turn, filed a cross-claim against the City seeking defense and indemnification.

Effective October 19, 2019, the City entered into a Professional Services Agreement (PSA) with the Geary lawfirm in the amount of \$75,000 for legal representation in the Lawsuit.

On June 29, 2021, Council, by Resolution RES-2021-120, approved a First Amendment to the PSA increasing compensation by \$100,000.

On June 30, 2022, the City Manager approved a Second Amendment to the PSA increasing compensation by \$75,000 for continued legal services.

On December 20, 2022, the City Manager approved a Third Amendment to the PSA increasing compensation by \$25,000 for continued legal services up to the City Manager's authority.

PRIOR CITY COUNCIL REVIEW

June 29, 2021 – First Amendment to Professional Services Agreement.

ANALYSIS

The Lawsuit has taken a number of unexpected turns, including UPA's disputed rejection of the City's tender of defense and subsequent cross-claim against the City. The complexity of the litigation has thus increased, both from a procedural and substantive perspective.

The original PSA, effective as of October 19, 2019, included a compensation limit of \$75,000. The PSA has been subsequently amended to increase compensation up to \$275,000 for continued legal services. After review of upcoming legal proceedings, it has been determined that it is in the best interest of the City to amend the PSA to add additional compensation of \$75,000 to allow for the continued legal representation by the Geary lawfirm.

FISCAL IMPACT

The continuation of the agreement with the Geary lawfirm will be funded with budgeted funds within Santa Rosa Water's Advanced Metering Infrastructure project.

ENVIRONMENTAL IMPACT

This action is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action may have significant effects on the environment, and no further environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution / Exhibit A (Fourth Amendment to PSA)

PRESENTER

Sue Gallagher, City Attorney