

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: TERESA STRICKER, CITY ATTORNEY
SUBJECT: SECOND AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT NUMBER F002663 WITH BEST BEST & KRIEGER
LLP FOR CONTINUED LEGAL REPRESENTATION

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney that the Council, by resolution: 1) approve the Second Amendment to Professional Services Agreement Number F002663 with Best Best & Krieger increasing compensation by \$95,000, for a total contract amount not to exceed \$195,000, for continued legal representation through appeal in the matter of *Airport Business Center v. City of Santa Rosa, City Council of the City of Santa Rosa*, et al., Sonoma County Superior Court Case No. SCV-272714 and Court of Appeal of the State of California, First Appellate District Case No. A170967; 2) delegate authority to the City Attorney to execute the agreement; and 3) appropriate \$110,000 from unassigned General Funds to the City Attorney's professional services budget to fund the continued legal services in this matter through the appeal.

EXECUTIVE SUMMARY

The City entered into Professional Services Agreement Number F002663 with Best Best & Krieger LLP (BBK) effective July 19, 2023, for representation in the matter of *Airport Business Center v. City of Santa Rosa, City Council of the City of Santa Rosa*, et al., Sonoma County Superior Court Case No. SCV-272714 (*ABC matter*), in an amount not to exceed \$60,000. A First Amendment was entered into on September 30, 2024, to amend the Scope of Services to include handling the appeal of the matter in the Court of Appeal of the State of California, First Appellate District Case No. A170967 and to add \$40,000 in compensation for an amount not to exceed \$100,000.

BACKGROUND

A Writ of Mandate and Complaint for Declaratory and Injunctive Relief was originally filed and served on the City of Santa Rosa and City Council in March 2023, challenging Council's designation of a parking garage in downtown Santa Rosa, commonly known as Garage 5 or the 3d Street Garage, as surplus property under the Surplus Land Act.

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Effective July 19, 2023, the City entered into the Agreement with BBK for legal representation in the *ABC matter*. The Writ of Mandate and ABC's Motion for Stay was denied on May 31, 2024. ABC served a Notice of Appeal on July 16, 2024 and Petitioner's Writ of Supersedeas and request for stay was denied by the Court of Appeal on July 31, 2024. ABC's Opening Brief with the Court of Appeal is currently due on January 3, 2025.

A First Amendment to the Agreement was entered into on September 30, 2024, to amend the Scope of Services to include part of the costs of representing the City in connection with the appeal, adding \$40,000 in compensation for a total amount not to exceed \$100,000.

PRIOR CITY COUNCIL REVIEW

None.

ANALYSIS

The City Attorney recommends that the Council approve a Second Amendment to the Agreement with BBK to add an additional \$95,000 in compensation, for a total compensation amount not to exceed \$195,000. That funding level is anticipated to be sufficient for all representation of the City in the *ABC matter* through the pending appeal.

Additionally, the City Attorney recommends that the Council appropriate \$110,000 from unassigned General Fund reserves to fund the portion of the additional compensation added by the First Amendment for services rendered in Fiscal Year 2024-25 and the additional compensation to be added by the proposed Second Amendments to the Agreement.

FISCAL IMPACT

Funding for the \$95,000 in compensation added by the proposed Second Amendment to the Agreement and the additional approximately \$15,000 in compensation added for legal services rendered for Fiscal Year 2024-25 under the First Amendment to the Agreement is requested to be appropriated from unassigned General Fund reserves in a total amount of \$110,000. The current year budgeted deficit is \$13,590,000, this will increase the deficit to \$13,700,000.

ENVIRONMENTAL IMPACT

The action is not a project subject to the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15378(b)(4) because it is a fiscal

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activity, which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution / Exhibit A (Second Amendment to PSA F002663)

PRESENTER

Teresa Stricker, City Attorney