

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: TERESA STRICKER, CITY ATTORNEY
JENNIFER BURKE, DIRECTOR, SANTA ROSA WATER
SUBJECT: SIXTH 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 Sixth Amendment to Professional Services Agreement Number F002270 with Geary, Shea, O'Donnell, Grattan & Mitchell, P.C. in the amount of \$100,000 for a total contract amount not to exceed \$550,000 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 City has no further liability in the matter, but may retain additional rights. Trial for City's claim against UPA was scheduled to move forward on November 15, 2024, however it will be continued due to the Court's unavailability. Trial will likely be continued to February 2025.

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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.

On July 25, 2023, the Council, by Resolution RES-2023-127, approved a Fourth Amendment to the PA increasing compensation by \$100,000.

On July 31, 2023, the City Attorney approved a Fifth Amendment to the PSA increasing compensation by \$100,000 for continued legal services up to the City Attorney's delegated authority.

PRIOR CITY COUNCIL REVIEW

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

July 25, 2023 – Fourth 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.

Subsequently, the Court granted UPA's motion for summary judgment on equitable indemnity but the Court overruled UPA's demurrer to City's cross-complaint for contractual indemnity, thereby leaving both UPA's and the City's claims for indemnity in place. Although global mediation was unsuccessful, City and Plaintiffs separately reached a tentative settlement, subject to Court approval. That settlement provided for payment of \$250,000 in exchange for full release of liability in the case. The Superior Court approved the settlement on April 11, 2023. UPA appealed the settlement, but the was affirmed by the Court of Appeal on June 14, 2023. The City has no further liability in the matter, but may retain additional rights, including legal fees. Legal counsel was prepared to try the case on November 15, 2024; however the assigned judge is currently in trial on another matter. Accordingly, trial will likely be continued to a new date in February 2025.

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 \$100,000 to allow for the continued legal representation by the Geary lawfirm to take this matter through trial and to conclusion.

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

Pursuant to CEQA Guidelines Section 15378, the proposed action is not a "project" subject to the California Environmental Quality Act (CEQA) because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

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ATTACHMENTS

- Resolution / Exhibit A (Sixth Amendment to PSA)

PRESENTER

Teresa Stricker, City Attorney