

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: TERESA STRICKER, CITY ATTORNEY
SUBJECT: APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH
BURKE, WILLIAMS, & SORENSEN, LLP FOR LEGAL
REPRESENTATION AND AMENDMENT TO THE FISCAL YEAR
2023-24 ADOPTED BUDGET WITHIN GENERAL FUND

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney that the Council, by resolution, 1) approve a Professional Services Agreement with Burke, Williams, Sorensen, LLP for legal representation in the matter of *Bay Cities Paving & Grading, Inc. v. City of Santa Rosa*, Sonoma County Superior Court Case No. SCV-265333, in an amount not to exceed \$725,000, with a retroactive effective date of October 25, 2023; and 2) authorize the Chief Financial Officer to amend the fiscal year 2023-24 General Fund operating budget, increasing expenditure appropriations by \$725,000 from unassigned General Fund reserves.

EXECUTIVE SUMMARY

Bay Cities Paving & Grading, Inc. v. City of Santa Rosa, Sonoma County Superior Court Case No. SCV-265333, concerns a complex public works construction contract dispute arising out of Phase 2 of the Stony Point Road Widening Project. The City awarded the bid to Bay Cities Paving and Grading as low bidder in May of 2015 and work began that August. Disputes arose almost immediately and continued throughout the project. In October 2019 Bay Cities filed suit alleging breach of contract.

Last October, the City decided to move the case from Meyers Nave, a Professional Corporation (Meyers) to Burke, Williams, Sorensen, LLP (Burke). Since that time, Burke has conducted extensive discovery not previously conducted by prior outside counsel to prepare the City's defense for a two-week jury trial, currently scheduled for March 22, 2024.

The City Attorney's Office recommends that a Professional Services Agreement with Burke be entered into, with a retroactive effective of October 25, 2023, when work first began, in the amount of \$725,000 to cover representation by Burke through trial, and that 2023-24 General Fund Operating Budget be amended to increase expenditure appropriations by the same amount from General Fund reserves.

BACKGROUND

On January 13, 2020, the City entered into a Legal Services Agreement (LSA) with Meyers in the amount of \$100,000 for legal services related to a complex public works construction contract dispute involving Bay Cities Paving & Grading and GHD in connection the Stony Point Road Widening Project, also known as *Bay Cities Paving & Grading, Inc. v. City of Santa Rosa*, Sonoma County Superior Court Case No. SCV-265333.

The City subsequently entered into a First Amendment in January 2021 and a Second Amendment in July 2023 increasing compensation up to \$400,000 to handle continued legal proceedings in the matter, given the complexity of issues and volume of documents involved in the case. Meyers billings for work billed through November 2023 has amounted to \$512,923.47 and the City Attorney's Office is in discussions with Meyers about the billings.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

Last October, it was determined that it is in the City's best interest to transfer the City's representation in the case to Burke from Meyers. Burke began representing the City of Santa Rosa at that time, quickly getting up to speed in the case and conducting extensive discovery not previously conducted by the City's prior outside counsel in preparation for the March 2024 trial.

FISCAL IMPACT

Funding for this agreement is not included in the fiscal year 2023-24 operating budget. General Fund unassigned reserves will be appropriated with the approval of this resolution for \$725,000. This impact to General Fund reserves has not been accounted for in any previous financial projections or results.

ENVIRONMENTAL IMPACT

The proposed 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 that no further environmental review is required.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BURKE,
WILLIAMS, & SORENSEN, LLP FOR LEGAL REPRESENTATION
PAGE 3 OF 3

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution / Exhibit A – Professional Services Agreement (Bay Cities)

PRESENTERS

Teresa Stricker, City Attorney
Adam Abel, Assistant City Attorney