

and penalties assessed for such violations. The Plaintiffs may continue the lawsuit if the motion is successful in establishing the Open Meetings Act was violated even though the violations were not intentional.

The 2006 contract for services has been amended administratively to cover billings to date for fees and costs totaling \$73,720.04 on both the civil suit and the recall petition litigation. It is estimated that additional fees and costs for 2006 will be approximately \$20,000. It is recommended that the council approval include the 2007 stand-by contract amount that has been written for \$25,000 in past years so that funds will be available in 2006 if the estimate is exceeded.

Voting on the contract amendment is limited to councilmembers not benefiting from the defense unless the Council lacks a quorum to take action without the recused members. Defense is provided under the City's reservation of rights to indemnification if there is a finding of intentional violations (see attached reservation of rights letter). This amendment will not affect the existing reservation of rights.

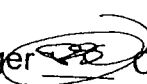

FINANCIAL IMPACT:

It is expected that a budget amendment will be needed to the City Attorney's budget before the end of the year to cover the increase in this services contract for 2006 (\$20,000). Staff will be doing a budget amendment in November to capture a number of unexpected items (i.e., additional emergency management grant, additional recycling grant, etc.) including this item. Other expenditures, within the City Attorney's Office, are inflexible (principally salary and benefits and prosecution contract payments) and not expected to create savings sufficient to offset this expense.

RECOMMENDATION

It is recommended that Council move to approve an amendment to the contract with Foster Pepper PLLC extending the contract from December 31, 2006 to December 31, 2007 and increasing the total contract payments from \$75,000 to an amount not to exceed \$120,000 over the new contract term.

Approved By:

City Manager  City Attorney 

ATTACHMENTS

- Reservation of rights letter accepting defense