

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Contract Amendment for Legal Services
DEPARTMENT: City Attorney's Office
PRESENTED BY: Ian Sievers, City Attorney ; Flannary Collins, Assistant City Attorney

PROBLEM/ISSUE STATEMENT:

In February 2006, the City Council authorized legal defense for Mayor Ransom, Deputy Mayor Fimia, Councilmember Way and former Councilmember Chang in the civil suit filed January 1, 2006 for alleged violations of the Open Public Meetings Act (*King et. al v. Fimia et. al*. King County Superior Court case Non 06-2-0803-1). All the City defendants accepted a joint defense using counsel assigned for defense, Steve DiJulio of Foster Pepper. This defense was assigned as a separate matter under an existing standing contract with Foster Pepper for miscellaneous services.

In October 2006 the City Council approved a \$45,000 amendment to the Foster Pepper contract, for a new contract amount of \$120,000. Approximately \$32,000 of this contract had been spent on legal services with Foster Pepper for defense of a recall petition suit authorized by the Council in April 2006. The expectation in October 2006 was that the lawsuit would be resolved in summary judgment, so the \$45,000 amendment was projected to cover the legal fees associated with summary judgment resolution. In March 2007, the City Manager administratively approved a \$50,000 contract amendment as allowed by the City's purchasing ordinance, SMC 2.60.040(D)(c), increasing the not-to-exceed amount of the miscellaneous services contract to \$170,000 through the end of 2007. The total contract limit has been paid and Council authority is need to pay additional defense of this suit including work performed in July or any other services from Foster Pepper except bond counsel services on the Civic Center project.

ANALYSIS:

A. Status of Litigation. A confidential progress report on this case from Foster Pepper is attached to this report. The procedural highlights that have most affected price is summarized here. As promised, in October, Defendant councilmembers filed a motion for partial summary judgment. This motion requests dismissal of allegations that there was a knowing violation of the Open Meetings Act and dismissal of penalties assessed for such violations September 2006 so the Plaintiff's could be prepared to respond to the motion. The Defendants moved and were granted a continuance.

Plaintiffs' motion for partial summary judgment requested that the court find that the defendant councilmembers violated the Open Public Meetings Act regardless of

whether it was a knowing and willful violation. Plaintiffs' summary judgment was denied by the court finding that the facts were in dispute. The Defendant's motion was renoted for June 22nd. Plaintiff's still did not take depositions to prepare, and moved again to continue to allow discovery. Again the continuance was granted, moving the hearing to July 27. Plaintiff's filed a third motion to continue and finally began depositions during the week of July 17. The court has now moved the Defendant's motion for summary judgment to September 14 only ten days before start of trial. Mediation was attempted on July 27th ahead of most deposition that are now ongoing, but was unsuccessful.

At this point the City should anticipate a two to three day trial to run its course. Council was told in October, 2006 that if the case proceeded to trial additional contract authority would be needed. Substantial preparation has been underway in conducting depositions which will continue this month. Projected costs may be higher than the projections provided by Foster Pepper discussed below. On August 7th, Plaintiffs filed a motion to amend its complaint to add the City as a defendant and to add an open meetings act violation allegedly occurring in November, 2004. The City will be grossly prejudiced by this amendment adding it to the litigation and will ask that a separate action be filed or discovery cutoff and trial be substantially continued. A request for coverage has been requested of WCIA. A ruling on the motion is expected on August 14. If plaintiffs are successful will be necessary to retain a second outside counsel firm to represent the City's interest unless the Council waives the original reservation of rights.

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. This amendment will not affect the existing reservation of rights.

As with the original approval of defense, under SMC 2.40 this action must be approved by a vote of councilmembers not parties to the suit and benefiting from the defense. The legal risks of not approving continued defense costs are addressed in the confidential memo included as Attachment C.

FINANCIAL IMPACT:

In addition to arguing the summary judgment, Foster Pepper will be attending numerous depositions in the upcoming months. Finally, a non-jury trial is scheduled for September 24, 2007, which will require trial briefing, document preparation and witness preparation. Foster Pepper has estimated that the above described work will amount to approximately \$171,700 in additional contract authority to pay defense through trial. A detailed breakdown of work projected through the end of trial scheduled for September 24th is attached. Thus, the 2006-2007 contract amount is proposed to be increased to a new not-to-exceed amount of \$341,700. No additional amendments should be required to the contract unless unexpected work is required. Additionally, if the case settles prior to trial, fewer funds will be spent. It is expected that a budget amendment will be needed to the City Attorney's budget to cover the increase in this services contract for 2007 which will be presented at a later date.

RECOMMENDATION

It is recommended that Council move to approve an amendment to the 2006-2007 contract with Foster Pepper PLLC for general litigation in the amount of \$171,700, increasing the new not-to-exceed amount to \$341,700.

Approved By:

City Manager  City Attorney 

Attachments-

Case Status Memo from Foster Pepper [Confidential]

Litigation Budget Estimate [Confidential]

Memorandum Regarding Defense Cost Liability [Confidential]

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