

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Contract Amendment for Legal Services DEPARTMENT: City Attorney PRESENTED BY: Ian Sievers, City Attorney

PROBLEM/ISSUE STATEMENT:

The City Attorneys Office retains outside counsel to access resources available for specialized areas of municipal law, for complex litigation that would disrupt availability of in-house resources for city departments and other litigation, or for matters where a professional conflict arises. Firms are selected based on a firm's area of expertise and cost considerations. For example, in 2005 contracts were issued to five different law firms for a total of approximately \$39,000.

The City Attorney's Office has an annual stand-by contract with Foster Pepper for matters assigned by the City Attorney or the City Manager that meet the above criteria (e.g. Aurora SEPA appeal, bond counsel support). This contract is typically written for services not to exceed \$25,000 during the calendar year. For example billings for Foster Pepper were \$4,695 in 2005. The contract limits may be amended if litigation is assigned which becomes extended. Such is the case in 2006.

In February, 2006, Council authorized legal defense for Mayor Ransom, Deputy Mayor Fimia, Councilmember Way and former Councilmember Chang in a civil suit filed January 1st seeking declaratory judgment, penalties and attorney fees for violations of the Open Public Meetings Act (*King et al v. Fimia et al*, King County Sup. Ct. N0. 06-2-0803-1 SEA). The plaintiffs notified the City Attorney that he would be called as a witness at trial which creates a conflict for attorneys in the City Attorneys Office. All the City defendants have accepted a joint defense using Steve DiJulio of Foster Pepper.

On March 30th a group of citizens filed a petition with King County to recall Mayor Ransom and Deputy Mayor Fimia Deputy based on the same allegations that had been presented in the earlier civil suit. Council approved defense of this recall as allowed by state law on April 10th. This matter was also assigned to Steve DiJulio under the Foster Pepper for efficiency given the identity of issues, and in consideration of Mr. DiJulio's past experience in the recall proceedings.

The defense of the recall petition resulted in a dismissal by the court upon request of the petitioners immediately before the superior court hearing and after the City filed an extensive hearing brief. The City filed a partial summary judgment motion in the civil suit on September 25th which will be heard on October 20th. This motion requests dismissal of allegations that there was a knowing violation of the Open Meetings Act

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.

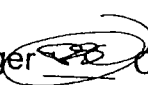
FINANCIAL IMPACT:

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



City of Shoreline

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February 13, 2006

John Chang
16229 6th Avenue NW
Shoreline, WA 98177

Maggie Fimia
729 N. 148th
Shoreline, WA 98133

Robert Ransom
16745 Burke Avenue N.
Shoreline, WA 98133

Janet Way
940 NE 147th Street
Shoreline, WA 98155

Re: *King, et. al. v., Fimia, et. al.*
King County Superior Court Cause No. 06-2-00803-1SEA

Dear Deputy Mayor Fimia, Mayor Ransom, Councilmember Way, and former Councilmember Chang:

Coverage and defense for the above captioned suit, subject to the following reservation, is offered to you for actions beginning on or about December 5, 2005 to December 27, 2005. Steve DiJulio of Foster Pepper PLLC has been assigned as defense counsel.

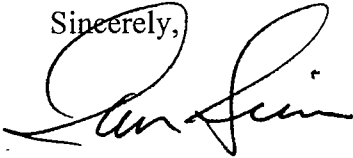
Please know, however, that the allegations if true may prove to be outside the City's coverage. Language in the complaint refers to intentional violation of the Open Public Meetings Act. Such activity, if proven, is excluded from coverage under Shoreline Municipal Code 2.40.030(A)(1).

Since the City is presently without sufficient information to make a determination regarding the occurrence of alleged events or intention of defendants, coverage and defense of this suit is being conducted under a full reservations of rights. Therefore, the City reserves its rights to determine coverage and/or defense or denial thereof until such time as the full facts are known.

Secondly, under the terms of the City Council's approval of coverage on February 13, 2006, to receive City payment of your defense costs you must reimburse legal defense costs paid by the City after February 13 in this matter if there is a final judgment entered that finds you knowingly, willfully or intentionally violated the Open Public Meetings Act. The Council, in approving this conditional coverage, determined such conduct to be outside coverage under SMC 2.40.030(A)(1) and costs for defending such claims should be reimbursed to the City.

If you choose to seek legal counsel other than or in addition to the counsel assigned by the City for your defense, please be advised that any fees and/or expenses that are incurred will be your personal responsibility.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian R. Sievers", written over a circular stamp.

Ian R. Sievers

Cc: Steve DiJulio