

CITY COUNCIL REGULAR SESSION

Resolution authorizing execution of amendment No. 2 to the Professional Services Agreement with Pacifica Law Group LLP, outside counsel for the City, in the amount of \$205,000, plus applicable taxes, for legal services in the litigation involving the design and construction of the 120th Avenue (Stage 2) road widening project. This project was part of the Transportation Capital Investment Program (CIP Plan No. PW-R-164).

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EXECUTIVE SUMMARY

This amendment to the Professional Services Contract is necessary to fund the existing contract through the next stage of the litigation process. This pending litigation is scheduled for mediation in March.

RECOMMENDATION

Move to adopt Resolution No. 9556.

If approved, effective date: 02/19/2019

BACKGROUND/ANALYSIS

During the construction of the 120th Avenue NE (Stage 2) road widening project, issues arose regarding the retaining walls on the west side of the project. Three of the walls had to be redesigned and reconstructed, resulting in an additional \$3.2 million in costs to the City. Experts engaged by the City determined the wall failure was due to structural design and geotechnical issues. The City unsuccessfully attempted to settle the claim with the responsible design and geotechnical firms prior to litigation. The City engaged Pacifica Law Group LLP to assist the City through the initial mediation and to initiate litigation when the mediation failed (*City of Bellevue v. WSP USA, Inc., et. al*, King County Superior Court Cause No. 18-2-13554-1 SEA). The firms which handled the drilling for the installation of the walls and the construction of the project have since been added to the litigation. All parties are scheduled to participate in a mediation in March.

A Professional Services Contract was originally executed with Pacifica Law Group in January 2018 for \$75,000. The agreement was amended in June 2018 to a total not to exceed \$240,000. A second amendment in the amount of \$205,000, plus applicable sales taxes, is necessary to continue the legal services in preparation for the upcoming March mediation.

POLICY & FISCAL IMPACTS**Policy Impact**

City policy provides that professional services contracts in excess of \$90,000 require Council approval.

Fiscal Impact

This action obligates the City to increase the total contract amount for legal services provided by Pacifica Law Group LLP by \$205,000, plus applicable sales taxes, for the 120th Avenue NE (Stage 2) project (CIP Plan No. PW-R-164).

Professional Services Agreement with Pacifica Law Group LLP	
Authorized Contract (No. 1850024)	\$75,000
Amendment No. 1	165,000
Proposed Amendment No. 2	205,000
New Contract Total Amount	\$445,000

The following table provides the project financial status for PW-R-164:

	(\$000)				<i>This Action</i>
	Current Budget	LTD Expenditures	Total Projected Expenditures	Projected Balance	
Phase I (Design)	\$3,802	\$4,350	\$4,350	(\$548)	\$0
Phase II (Right-of-Way)	18,005	18,275	18,275	(270)	0
Phase III (Construction)	23,588	22,699	23,518	70	205
Total	\$45,395	\$45,324	\$46,143	(\$748)	\$205

Funding for this project includes a right of way vacation that is currently in process and resolution of the litigation associated with wall design/construction that has been initiated by the City. . Staff will balance the overall project budget as outstanding issues are resolved.

OPTIONS

1. Adopt the Resolution authorizing execution of amendment No. 2 to the Professional Services Agreement with Pacifica Law Group LLP, outside counsel for the City, in the amount of \$205,000, plus applicable taxes, for legal services in the litigation involving the design and construction of the 120th Avenue (Stage 2) road widening project. This project was part of the Transportation Capital Investment Program (CIP Plan No. PW-R-164).
2. Do not adopt the Resolution and provide alternative direction to staff.

ATTACHMENTS & AVAILABLE DOCUMENTS

Proposed Resolution No. 9556

AVAILABLE IN COUNCIL LIBRARY

Amendment #2 to the Professional Services Agreement