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Title: CONSIDER APPROVING AMENDMENT NO.5 WITH BURHENN & GEST LLP TO CONTINUE TO PROVIDE LEGAL REPRESENTATION REGARDING REIMBURSEMENT CLAIM FOR UNFUNDED MANDATES AND APPROPRIATE FUNDS FOR THE COST OF THE SERVICES (CITY COUNCIL)

Sponsors:

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Attachments: 1. AMENDMENT NO. 5 TO AGREEMENT WITH BURHENN & GEST LLO

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, March 17, 2020

Consent

SUBJECT:

CONSIDER APPROVING AMENDMENT NO.5 WITH BURHENN & GEST LLP TO CONTINUE TO PROVIDE LEGAL REPRESENTATION REGARDING REIMBURSEMENT CLAIM FOR UNFUNDED MANDATES AND APPROPRIATE FUNDS FOR THE COST OF THE SERVICES (CITY COUNCIL)

I. SUMMARY

The County of Los Angeles, the City of Carson, and other cities including Bellflower, Commerce, Covina, Downey, and Signal Hill retained the law office of Burhenn & Gest, LLP as Special Counsel to file test claims with the Commission on State Mandates to seek reimbursement from the State of California for obligations imposed under the 2001 National Pollution Discharge Elimination System (NPDES) and the Los Angeles County Municipal Storm Water Permit.

The test claim evolved into a litigation against the mandate and is now before the California Supreme Court. There are two separate unfunded mandate cases that the City of Carson is part of and that Burhenn & Gest is representing. One is an administrative case that dates back to June 23, 2014. The second is an appeal case that is in litigation in the courts.

Staff is requesting the City Council to authorize continued representation by the Special

Counsel via the approval of the attached amendment to the agreement (Exhibit No. 1), which also clarifies their scope of work, and the funding and payment of an additional estimated \$90,000 to the law firm to complete the case for a new total not-to-exceed amount of \$145,500.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE continued representation by Burhenn & Gest LLP regarding the claim for state reimbursement for unfunded mandates.
2. AUTHORIZE the Mayor to execute the attached amendment to the professional services agreement with Burhenn & Gest LLP, in a form approved by the City Attorney.
3. AUTHORIZE the increase in the cost of the agreement with Burhenn & Gest LLP by an estimated \$90,000, for a new total not-to-exceed amount of \$145,500.

III. ALTERNATIVES

1. TAKE whatever action the City Council deems appropriate.

IV. BACKGROUND

The Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill joined the Los Angeles County (County) in filing test claims with the Commission on State Mandates (Commission) over two mandates. The consortium of Cities and the County challenged the mandates issued by the Los Angeles Regional Water Quality Control Board in the 2001 NPDES Permit. The first mandate requires the installation and maintenance of trash receptacles at every transit stop in the City resulting to additional cost for installation and maintenance as well as littering where no litter previously existed. The second requires the cities to conduct storm water inspection on state-permitted commercial and industrial facilities.

The consortium retained the services of Burhenn & Gest LLP to handle the test claim and seek reimbursement for the cost of the mandates. The Carson City Council authorized Burhenn & Gest LLP to represent the City as its Special Counsel at its meeting held on October 2, 2007. On July 31, 2009 the Commission agreed with the test claimants and made a finding that the trash receptacle and inspection requirements were state mandates. However, on July 20, 2010, the State Department of Finance and the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board filed a petition for a writ of mandate in the Los Angeles Superior Court (Superior Court) seeking to reverse the Commission's ruling. The Superior Court found that the Commission erred in finding that the 2001 Permit requirements were state mandates. The Consortium appealed after losing at the trial court. On October 16, 2013, the California Court of Appeal upheld that the Commission erred in ruling that the 2001 Permit constituted unfunded state mandates subject to reimbursement under the California Constitution, Article XIII B.

At the recommendation of Special Counsel to the consortium, the consortium petitioned the Supreme Court for review of the adverse opinion from the Court of Appeals. Applying for the Supreme Court hearing and successfully defending the reimbursement claim are important as the unfunded mandates have far-reaching ramifications with respect to the obligations imposed under the 2011 and the new 2012 Municipal Stormwater Permit. This could be a precedent for the state to impose additional unfunded programs without reimbursing the cities for the added cost to implement the mandates.

All the legal work to get to the California Supreme Court has been completed by Special Counsel. The cost, as in the past, is being shared among the county and the cities with Carson paying 1/7th of the total. To-date, Carson has paid \$62,900.39 to the Special Counsel and payment of an outstanding invoice of \$10,819.83 for the appeal case is pending. To cover the outstanding invoice and to provide funds to complete the unfunded mandate litigation, staff is recommending that the City Council authorize the \$90,000 increase in the existing contract. This increase will bring the amended contract amount to \$145,500.

V. FISCAL IMPACT

Funds to cover the estimated cost of completing the unfunded mandate litigation are included in the adopted general fund budget for FY 2019-2020.

VI. EXHIBITS

Amendment to the agreement for professional services by and between the City of Carson and Burhenn & Gest LLP. (pgs. 4-7)

Prepared by: Sharon Landers, City Manager