Meeting Date: **3/3/2015**

Report Type: Consent

Report ID: 2015-00195

City of SACRAMENTO 03

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: Additional Legal Expenses Associated with the Entertainment and Sports Center Term Sheet Litigation (Reviewed 02/24/2015)

Location: Downtown Plaza, District 4

Recommendation: Pass a Resolution: 1) authorizing the City Manager or his designee to transfer $700,000 from the FY2013/14 year-end results to the Entertainment and Sports Center project budget (I02000500) for expenses associated with the ESC term sheet litigation; and 2) authorizing the City Attorney or his designee to increase the contract with the City's outside legal counsel (Meyers Nave Riback Silver and Wilson) by an additional $700,000.

Contact: Desmond Parrington, ESC Project Manager, (916) 808-5044, Office of the City Manager

Presenter: None

Department: City Manager
Division: Executive Office
Dept ID: 02001011
Attachments:
1-Description/Analysis
2-Background
3-Resolution

City Attorney Review

Approved as to Form
Matthew Ruyak
2/24/2015 2:05:45 PM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 2/18/2015 11:58:42 AM

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Description/Analysis

Issue Detail: Staff is seeking authorization to transfer $700,000 from Fiscal Year (FY) 2013/14 year-end General Fund results ($17.4 million) to cover current and future costs associated with litigation (*Gonzalez et al. v. Johnson et al.*) resulting from the City Council's approval of the preliminary non-binding term sheet for the Entertainment and Sports Center (ESC) project. This amount is in addition to the $750,000 that Council authorized on June 24, 2014 in Resolution 2014-0219. Staff's recommendation for $700,000 from the year-end results is being taken separately from other year-end appropriation requests because of the urgent nature of this funding.

The original $750,000 approved by Council on June 24, 2014 for the City's defense has been expended for outside legal counsel for the extensive discovery efforts, depositions, testimony, court hearings, and legal briefs. This additional funding is required to cover current as well as anticipated future costs associated with the *Gonzalez et al. v. Johnson et al.* lawsuit as the City prepares for the trial currently scheduled for June 22. These funds will be used to pay for the expenses incurred by Meyers Nave Riback Silver and Wilson in its continuing defense of the City in this lawsuit. Since the lawsuit was filed in advance of the Predevelopment Expenses Agreement with Sacramento Basketball Holdings LLC (SBH) and relates specifically to Council action, the expenses associated with this lawsuit <u>are not</u> eligible reimbursable costs. Funding will need to come from the City's General Fund to support the City's defense in this litigation. The total impact of this lawsuit to the City's General Fund is currently $1.45 million. In addition, it is anticipated that an additional $500,000 to $600,000 may be needed for continued assistance for the trial depending on the duration, amount of testimony, and information presented.

Staff is also recommending that the existing contract with Meyers Nave Riback Silver and Wilson be increased by $700,000 so that the law firm can continue to assist the City Attorney's office in its defense of the City in this case.

Policy Considerations: Given the ongoing nature of this case, additional resources are required for the City's legal defense costs.

Economic Impact: Not applicable.

Environmental Considerations: This report identifies funding for litigation services needed for the ESC term sheet lawsuit. The actions in this report do not have any potential for significant effect on the environment and are exempt under CEQA Guidelines section 15061(b)(3).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: A lawsuit was filed regarding the Council's approval on May 26, 2013 of the preliminary non-binding term sheet for the ESC project. Resources are needed to cover current and future costs associated with the defense of the City. This lawsuit has continued longer than anticipated and involved extensive discovery and preparation, so additional funding is needed for outside counsel.

Financial Considerations: The $700,000 needed to cover expenses associated with the defense of the City in the term sheet lawsuit would come from FY2013/14 year-end results. Any unused funds will be returned to the General Fund Administrative Contingency. This funding is being requested separately from the allocation of the $17.4 million presented in the FY2014/15 midyear report due to the immediate need to maintain outside legal assistance for this case.

Local Business Enterprise (LBE): Not applicable.

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Status of Gonzalez Case:

In May 2013, petitioners Isaac Gonzalez, James Cathcart, and Julian Camacho filed an action challenging the City Council's approval of the preliminary non-binding term sheet. The City defendants, seeking to have the case dismissed, demurred to the petition, arguing the petition failed to state any cognizable claim against them. In November 2013, the Sacramento Superior Court sustained the demurrer but allowed petitioners the opportunity to amend the petition. It also granted the City's motion to stop discovery pending the filing of an action that could state a claim. In December 2013, petitioners filed a First Amended Petition and then immediately sought depositions of City officials. The City objected to that discovery based on the court's previous rulings. After two court hearings on the issue, the court allowed the depositions to move forward. Since January 2014, the parties have been conducting extensive discovery (i.e., depositions and written requests for information and documents).

In response to the First Amended Petition, the City again responded by filing a demurrer challenging the allegations. In late May 2014, the court again sustained the demurrer but granted petitioners leave to amend. Petitioners' Second Amended Petition was filed on June 19, 2014. While part of that petition was then dismissed, the Court again granted the petitioners leave to amend. At that time, the petitioners amended their petition to include a challenge to the City's ability to issue bonds to finance the City's share of the project. As a result, the Revised Third Amended Petition includes a bond validation cause of action as well as the original fraud and taxpayer causes of action, which claim that City staff withheld information from the Council at its decision to approve the project on May 20, 2014. A bench trial set on all claims is set for June.

The City retained the law firm of Meyers Nave Riback Silver and Wilson to represent the City and assist with the case. The work on the case has included extensive written discovery; multiple depositions; Public Records Act requests; and numerous motions and court hearings. To date, the City has expended approximately $750,000 in outside legal expenses and staff estimates that another $700,000 is needed to cover ongoing costs. It is anticipated that between $500,000 and $600,000 may be needed for the trial itself, depending on the extent of continuing discovery, scope of pretrial preparations and motions, amount of testimony, and overall trial duration. Staff will return to Council later this spring with an additional funding request once staff has more information about the likely scope and length of the trial. Please note any unused funds will be returned to the General Fund Administrative Contingency.

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RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

AUTHORIZING ADDITIONAL BUDGET APPROPRIATIONS FOR LEGAL EXPENSES FOR THE CITY'S DEFENSE IN ONGOING LITIGATION RELATED TO THE PRELIMINARY TERM SHEET FOR THE DOWNTOWN ENTERTAINMENT AND SPORTS CENTER PROJECT

A. On March 26, 2013 the City Council approved a preliminary non-binding term sheet between the City and the investor group led by Vivek Ranadivé for the financing and development of an entertainment and sports center (ESC) in Downtown Plaza.

B. In May 2013, a group of petitioners filed suit against the City challenging the Council's approval of the preliminary term sheet.

C. Since January 2014, the parties have been conducting discovery and the scope of the litigation has been expanded.

D. There has been considerable expense associated with the defense of the City during the discovery and the litigation is ongoing.

E. In order to provide for the defense of the City, additional funding is necessary to cover anticipated expenses up to the June trial date.

F. As a result of the urgency of this issue it is recommended that the City Council appropriate funds from the FY2013/14 year-end results ($17.4 million) separate from City Council discussions on the use of the remainder of these funds.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or his designee is authorized to appropriate $700,000 from FY2013/14 year-end General Fund results and increase the expenditure budget in the ESC Project (I02000500).

Section 2. The City Attorney or his designee is authorized to increase the contract with the City's outside legal counsel (Meyers Nave Riback Silver and Wilson) by an additional $700,000.