

Meeting Date: 9/15/2015

Report Type: Consent

Report ID: 2015-00798

**Title: Final Legal Expenses for the Entertainment and Sports Center Term Sheet Litigation
(Published for Review 09/03/2015)**

Location: Downtown Plaza, District 4

Recommendation: Pass a Resolution: 1) authorizing the City Manager or his designee to transfer \$550,000 from the Arco Arena Debt Service Fund (4010) to the FY2015/16 General Fund fund balance; 2) authorizing the City Manager or his designee to transfer \$1.5 million from FY2015/16 General Fund fund balance to the Entertainment and Sports Center project budget (I02000500) in order to reimburse the City's outside legal counsel for final expenses incurred in the defense of the City in the Gonzalez et al. v. Johnson et al. litigation; 3) authorizing the City Attorney or his designee to increase the contract with the City's outside legal counsel Meyers Nave Riback Silver and Wilson (Meyers Nave) by \$1.32 million, to a final amount not to exceed \$3.7 million.

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Presenter: Matt Ruyak, Assistant City Attorney, (916) 808-5346, Office of the City Attorney

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

9/2/2015 5:19:41 PM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 9/2/2015 1:35:14 PM

Description/Analysis

Issue Detail: Staff is seeking Council authorization of an additional \$1.32 million contract amendment, and a total fund transfer of \$1.5 million, for the payment of final expenses associated with the *Gonzalez et al. v. Johnson et al.* litigation. The lawsuit brought by three Sacramento residents (James Cathcart, Julian Camacho, and Isaac Gonzalez) and their attorneys (Jeff Anderson and Patrick Soluri), alleging fraud; challenging the validity of the City Council's approval of the preliminary term sheet; and challenging Council's subsequent approval of the project and the bonds financing the City's contribution to the Entertainment and Sports Center (now named the Golden 1 Center). These amounts will cover the final expenses incurred by the City's outside legal counsel, Meyers Nave, in defense of the City.

The funding recommendation in this report includes all the City's remaining expenses associated with this litigation. The expenses exceed previous estimates because of plaintiffs' and plaintiffs' counsel's extensive litigation strategies. The amount being requested is approximately \$116,000 less than Meyers Nave's actual billings, but Meyers Nave has agreed to discount its total billings.

In order to make the final payment staff is recommending that the existing contract amount with Meyers Nave be increased by \$1.32 million, to a total not-to-exceed amount of \$3.7 million. Please note that the City Attorney's contract with Meyers Nave includes both the eminent domain and the *Gonzalez* litigation. The total cost of the eminent domain litigation was approximately \$750,000. That amount has been spent and was reimbursed per the City's agreements with Sacramento Downtown Arena LLC. The remainder (\$2.95 million) is for expenses associated with the *Gonzalez* case, which are not reimbursable. Of that amount, \$1.45 million has been expended. and an additional \$1.5 million is needed to reimburse Meyers Nave for their defense of the City.

Policy Considerations: This funding is required to fully reimburse Meyers Nave for its defense of the City throughout the litigation.

Economic Impact: Not applicable.

Environmental Considerations: 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 March 26, 2013 approval of the preliminary non-binding term sheet for the ESC project. Funding is required to reimburse the City's outside legal counsel for their final expenses associated with the trial. While original cost estimates have been exceeded, the litigation tactics of plaintiffs and their attorneys, the extent of the evidence presented, the number of witnesses, and the duration of the trial caused the actual costs to increase substantially.

Financial Considerations: Council previously authorized \$2.38 million for this contract. An additional \$1.5 million is requested. To cover this amount, \$950,000 will be transferred from the FY2015/16 General Fund fund balance and \$550,000 will come from the Arco Arena Debt Service Fund (Fund 4010). Excess resources in the Arco Arena Debt Service Fund resulted from the April 2005 payoff of a Risk Fund loan by the former owners of the Kings. An appropriation will be established in the General Fund for these expenses.

The difference between the combined \$1.5 million and the contract amendment of \$1.32 million is an unexpended amount earmarked for the eminent domain action, which amount will be part of the fund transfers. Any of these funds not used to reimburse Meyers Nave will be returned to the General Fund contingency.

Local Business Enterprise (LBE): Not applicable.

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. In December 2013, petitioners filed a First Amended Petition. 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. Plaintiffs' counsel – Jeff Anderson and Patrick Soluri – filed a Third Amended Petition that did not comply with court's demurrer, and the City thus needed to force them to file a Revised Third Amended Petition. That Petition included a bond validation cause of action as well as the original fraud and taxpayer causes of action.

During the discovery process, plaintiffs' counsel propounded extensive demands for documents. For example, in October 2014, plaintiffs served four sets of document requests to the City, John Dangberg, John Shirey, and Mayor Johnson (the three individual defendants), totaling over 220 separate document requests. The requests were far broader in scope and time than is reasonable for a case of this nature and were wholly unexpected – they covered many City departments and every staff member who touched any aspect of the ESC at any point in time. Normally, a court would reign in such burdensome requests, but because plaintiffs' attorneys – Jeff Anderson and Patrick Soluri – continually assured the court they had uncovered fraud and illegality, the court repeatedly allowed plaintiffs great latitude to try to prove their claims of fraud and illegality. Plaintiffs initially rejected all of the City defendants' efforts to narrow the requests, but eventually agreed to a list of 18 key custodians at the City, a list of other key individuals with the Kings organization, and detailed search terms used to make the City's document production process as efficient as possible. From November 2014 to January 2015, attorneys and paralegals at Meyers Nave worked closely with City staff and the City Attorney's office to gather 756 GB of data (approximately 18 million documents), which was sent to a vendor for efficient and cost-effective processing then to Meyers Nave for review and production. Ultimately, there were 31 document productions totaling 297,853 pages.

A bench trial addressing all claims began on June 22 and concluded on July 8, 2015. During the trial, hundreds of documents were entered into evidence and approximately 18 different witnesses testified. On July 24, Superior Court Judge Timothy Frawley issued his decision soundly rejecting all the plaintiff's claims and ruling in favor of the City. As part of his ruling, the City was entitled to the recovery of certain trial costs. After the ruling, plaintiffs agreed to forgo their right to appeal and to dismiss the case in exchange for the City's waiver of costs. On August 6, 2015, the case was dismissed with prejudice by Judge Frawley.

The dismissal enabled to the City to move forward with the previously approved Forward Bond Purchase Agreement (FBPA). The City now has the proceeds from the FBPA available to fund its share of the Golden 1 Center construction costs. Furthermore, the dismissal will enable the City to issue its bonds in the long-term municipal bond market much sooner than if there was a pending appeal. As a result, the City will have much less exposure to future increases in interest rates, which could save taxpayers millions of dollars over the term of the bonds.

To date the City Council has authorized \$2,380,000 for Meyers Nave's work on two Golden 1 Center-related legal matters – the eminent domain action to acquire the property underlying the arena, and the Gonzalez lawsuit. That amount, however, does not fully cover the costs of Meyers Nave's legal services. From late 2014 until the end of the case in July 2015, the plaintiffs, through their attorneys Jeff Anderson and Patrick Soluri, forced voluminous discovery responses by the City; deposed numerous City Councilmembers and senior staff; and engaged in protracted discovery battles. And even though they achieved multiple delays of the trial date, the City prevailed in the lawsuit. But all of the plaintiffs' tactics and arguments made the cost of the City's defense of this case go beyond the initial estimates and budgets.

The City Attorney's Office believes that these fees and costs incurred by Meyers Nave are justified and reasonable. The amount being requested is approximately \$116,000 less than Meyers Nave's actual billings, but Meyers Nave has agreed to discount its total billings.

RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

AUTHORIZING BUDGET
APPROPRIATIONS FOR FINAL LEGAL EXPENSES
FOR THE CITY'S DEFENSE IN THE GONZALEZ ET
AL. V. JOHNSON ET AL. CASE INVOLVING 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 and later on Council's subsequent approval of the project and financing on May 20, 2014.
- C. There has been considerable expense associated with the defense of the City in preparation for and during the trial.
- D. The lawsuit, including trial, was longer and more complicated than anticipated.
- E. In order to reimburse Meyers Nave Riback Silver and Wilson (Meyers Nave) for the expenses it incurred in defense of the City, additional funding is necessary.

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 transfer \$550,000 from the Arco Arena Debt Service Fund (4010) to the FY2015/16 General Fund fund balance.

Section 2. The City Manager or his designee is authorized to appropriate \$1.5 million from FY2015/16 General Fund fund balance and increase the expenditure budget in the ESC Project (I02000500).

Section 3. The City Attorney or his designee is authorized to increase the contract with the City's outside legal counsel (Meyers Nave) by \$1.32 million, to a final amount not to exceed \$3.7 million.