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REPORT NO. R 1 4 - 0 4 3 1
NOV 2 5 2014

REPORT RE:

**RETENTION OF OUTSIDE COUNSEL
(No cost to the City)**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

The City Attorney has utilized a competitive process to select and now recommend a panel of outside law firms to represent the City in litigation challenging private development projects. The retention of outside law firms as proposed is at *no cost to the City*. The goal of the proposal is to free up City Attorney resources that would otherwise be spent defending private projects, thereby allowing such resources to be used to defend litigation concerning the City's own projects.

Background

Opponents of private development projects often file lawsuits against the City because the City grants land use entitlements for projects and the City is the lead agency for project environmental clearances under the California Environmental Quality Act (CEQA). These lawsuits are typically referred to as "Real Party" litigation because the project applicant is also named as a defendant on the basis that the applicant is the real party in interest.

Attorneys in this Office have historically defended the City in these cases. These same attorneys are also responsible for providing City departments with CEQA legal advice and defending the City in CEQA litigation involving the City's own public projects.

The frequency of these Real Party lawsuits has increased over the past few years. This has strained the capacity of the limited number of attorneys in this Office experienced to handle CEQA cases which, in turn, has made it more difficult for them to provide timely CEQA advice to City departments and defend the City in CEQA litigation impacting the City's own public projects.

All land use entitlement approvals granted by the City include a condition requiring the project applicant to defend and indemnify the City in the event of Real Party litigation. However, the City has rarely asserted its right to an applicant-funded defense. This report seeks to change this practice by having the City exercise its rights to the defense and indemnification provided by project applicants. Doing so will allow our environmental legal staff to focus on providing CEQA advice to City departments and defending the City in litigation involving City projects. By the City exercising its rights, the project applicants will pay the cost of the City hiring outside legal counsel to represent the City in these Real Party lawsuits, under the oversight and direction of this Office. Inasmuch as project applicants have already agreed to defend the City, this proposal is simply the mechanism by which this defense obligation can most efficiently be implemented.

Competitive Selection Process

On November 7, 2014, this Office issued a Request for Proposals (RFP) to assemble a panel of outside law firms to defend the City in land use and CEQA litigation. Respondents to the RFP were advised that their fees would be paid by applicants whose land use approvals had been conditioned upon the applicant agreeing to defend the City in such litigation.

Twenty-one firms responded to the RFP. Five of the responding firms are recommended herein for inclusion on the proposed panel, including: (1) Jenkins & Hogin, LLP; (2) Remy Moose & Manley, LLP; (3) The Sohagi Law Group, PLC; (4) Burke Williams & Sorensen, LLP; and (5) Meyers Nave.

Firms were evaluated based on their demonstrated experience in advising and litigating land use, CEQA and Brown Act claims on behalf of public agencies, as well as their overall responsiveness to the RFP. Proposed hourly fees and costs were an important consideration, notwithstanding that the fees and costs would be paid by third parties. Each of the recommended firms demonstrated a high level of subject matter expertise and a track record of success. Each firm has a significant and long-standing presence in the Los Angeles legal community, and each enjoys an excellent reputation.

Lastly, the firms recommended have demonstrated that each possesses sufficient staffing levels to accommodate the City's needs.

Recommendation

It is recommended that the City Council:

1. Authorize the City Attorney to establish a Land Use/CEQA Panel by executing three-year term contracts for legal services to defend the City in land use, CEQA and Brown Action litigation with: (1) Jenkins & Hugin, LLP; (2) Remy Moose & Manley, LLP; (3) The Sohagi Law Group, PLC; (4) Burke Williams & Sorensen, LLP; and (5) Meyers Nave;
2. Authorize the City Attorney, without the need for further Council approval, to employ individual firms on the Land Use/CEQA Panel, to defend the City in Real Party litigation; and
3. Authorize the City Attorney to execute reimbursement contracts with project applicant(s) pursuant to which applicant(s) agree to pay the reasonable costs and fees billed by a Land Use/CEQA Panel firm retained by the City to defend a challenge to the applicant's private project.

If you have any questions regarding this matter, please contact the undersigned at (213) 978-8209. A member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
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