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REPORT NO. R22-0111
April 6, 2022

REPORT RE:

**RETENTION OF OUTSIDE COUNSEL
FOR
PRIVATE DEVELOPMENT CEQA PANEL
(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:

This report requests the City Council to re-authorize the City Attorney to extend its outside counsel program, *at no cost to the City*, an additional three-year period for litigation challenging private development projects on CEQA and other land use grounds. (Outside Counsel Program). The Outside Counsel Program originally was authorized by the Council on December 16, 2014, and re-authorized on February 7, 2018 (CF 14-1606) and has proven to be an effective way to manage the significant caseload averaging 60 CEQA and or CEQA/land use cases involving private development projects at any given time. These cases comprise approximately half of the overall case load managed by the Land Use Division.

In 2014 and 2017 the City Attorney utilized a competitive process to select a panel of outside law firms to represent the City in litigation challenging private development projects. As the City Attorney is satisfied with the performance of the six (6) firms on this panel it recommends that this panel be approved. The retention of

outside law firms is under the sole control and direction of the City Attorney, not the private developer. The goal of the proposal remains the same, the free up City Attorney resources that would otherwise be spent defending private project, thereby allowing such resources to be used to defend litigation concerning the City's own projects, as well as provide CEQA and land use advice to various departments.

Background

Opponents of private development projects continue to 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 names as a defendant on the basis that the applicant is the real party in interest. The frequency of these Real Party lawsuits increases, not only due to the demand and approval of entitlement projects, but also because CEQA incentivizes these lawsuits by authorizing attorneys' fees to certain types of prevailing petitioners.

For the past seven years, Real Party litigation has proceeded pursuant to the Outside Counsel Program. Outside counsel save attorneys time by taking the laboring oar in administrative record preparation, initial drafts of briefs and law and motion practice. The City Attorney, however, does not merely turn over the responsibility of the litigation to outside counsel. Rather, the Office is actively engaged and controls all aspects of the litigation, including establishing legal strategy, ensuring consistency of arguments, and reviewing and approving briefs.

CEQA and land use litigation is complex and time-intensive, and cases are seldom resolved absent appellate review. Without the Outside Counsel Program, the capacity of the limited number of attorneys in this Office experienced to handle CEQA/land use cases would be severely strained, which, in turn, would make it more difficult for them to provide timely CEQA advice to City departments and defend the City in CEQA/land use litigation impacting the City's own public projects, such as updates to the various elements of the City's General Plan.

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. The City now regularly asserts its right to an applicant-funded defense. This report seeks to continue this practice. Doing so will allow our environmental legal staff to continue to focus on providing CEQA advice to City departments and defending the City in litigation involving City projects, while at the same time ensuring consistency and quality of work when appearing before the court in the outside counsel cases. 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 sole 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

As part of the reauthorization of this Outside Counsel Program in 2018, 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 with funds our Office receives from applicants whose land use approvals had been conditioned upon the applicant agreeing to defend the City in such litigation.

Twelve firms responded to the RFP. Seven of the responding firms were recommended for including on the proposed panel. Since those seven firms were selected, one of the firms, Jenkins & Hugin, LLP was absorbed by another firm on the City's panel. As our Office has been satisfied with the performance of the remaining six law firms, we recommend the following six firms for inclusion on the proposed panel: (1) Remy Moose & Manley, LLP; (2) Burke Williams & Sorensen, LLP; (3) Meyers Nave; (4) Downy Brand LLP; (5) Thomas Law Group; and (6) Best Best & Krieger, LLP.

Firms were evaluated based on their demonstrated experience in advising and litigating land use and CEQA 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 third parties would pay the fees and costs. In conjunction with this request for reauthorization of this Outside Counsel Program each firm has provided updated rate sheets to reflect the current rates these firms charge to public agencies. Each of the recommended firms demonstrated a high level of subject matter expertise and a history 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 continue is Land Use/CEQA Panel by executing three-year term contracts for legal services to defend the City in land use and CEQA litigation with: (1) Remy Moose & Manley, LLP; (2) Burke Williams & Sorensen, LLP; (3) Meyers Nave; (4) Downy Brand LLP; (5) Thomas Law Group; and (6) Best Best & Krieger, LLP.

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 Managing Senior Assistant City Attorney Terry Kaufmann Macias at (213) 978-8233. She or another member of this Office will be present when you consider this matter to answer any questions that you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
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