

CITY COUNCIL ACTION REQUEST

Department: City Attorney	CEQA: Environmental Impact Report for CityView Plaza Project, File No. H19-016	Coordination: Economic Development and Cultural Affairs, Planning, Building, and Code Enforcement, and City Manager’s Budget Office	CAO Approval: /s/ Cameron Day
Council District: 3			

SUBJECT: FIRST AMENDMENT TO THE AGREEMENT FOR LEGAL SERVICES BETWEEN THE CITY OF SAN JOSE AND MATTEONI, O’LAUGHLIN & HECHTMAN, APC

RECOMMENDATION:

Adopt a resolution authorizing the City Attorney, to negotiate and execute a First Amendment to the Agreement for Legal Services between the City of San Jose and Matteoni, O’Laughlin & Hechtman, APC to increase the maximum compensation by \$75,000 for a total contract amount not to exceed \$395,000, and extend the term of the agreement through December 31, 2022.

BASIS FOR RECOMMENDATION:

On November 3, 2020 City Council adopted a resolution authorizing the City Manager to negotiate and execute a Real Property Purchase and Sale and Cost Payment Agreement (“Reimbursement Agreement”) with SJ CityView LLC (“Developer”) requiring the Developer to reimburse the City of San José for City-incurred costs, fees and expenses associated with the acquisition of a ±6,224 square foot portion of real property located at Park Avenue, between Almaden Boulevard and Market Street (“Acquisition Project”). As part of this project, the City of San José executed a confidential Agreement for Legal Services (“Legal Services Agreement”) with Matteoni, O’Laughlin & Hechtman, APC (“Consultant”) for their assistance with the Acquisition Project.

The Legal Services Agreement is set to terminate on December 31, 2021 with a maximum compensation of Three Hundred Twenty Thousand Dollars (\$320,000). The Consultant has been working with Developer and City to conduct due diligence and assist with the Acquisition Project since July 2020. Costs for their services have reached the original maximum compensation threshold. Due to the ongoing status of the Acquisition Project, staff recommend amending the Legal Services Agreement to increase the maximum compensation threshold by Seventy-Five Thousand Dollars (\$75,000), bringing the not-to-exceed total to Three Hundred Ninety-Five Thousand Dollars (\$395,000), and extend the termination date of the agreement to December 31, 2022.

Under the terms of the Reimbursement Agreement, the Developer prefunded a City reimbursement account and the City used the funds from that account to pay for Consultant’s services assuring that there are no costs to the City. The same terms will apply to this First Amendment to the Legal Services Agreement. Developer has already funded an additional Seventy-Five Thousand Dollars (\$75,000) to the City’s reimbursement account in anticipation of these additional costs, assuring that there are no costs to the City. Note that staff and the City Attorney’s Office was hopeful that no additional compensation would be necessary to complete the underlying legal proceedings. However due to delays in the court system and changes in the status of the heirs, the proceedings have required more time and outside council has expended commensurate additional time.

Climate Smart San Jose:

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input:

No commission recommendation or input is associated with this action.

COST AND FUNDING SOURCE:

Upon approval, the budget actions necessary for the recommendation in this memorandum will be included as part of the 2020-2021 Annual Report process, scheduled to be heard by City Council on October 19, 2021. The recommended increase amount of \$75,000 will be recognized for fiscal year 2021-2022 to the Office of Economic Development and Cultural Affairs Non-Personal/Equipment appropriation (APPN 0182) in the General Fund and is subject to annual appropriations.

FOR QUESTIONS CONTACT: Cameron Day, Deputy City Attorney, (408) 535-1202.