



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT:** SEE BELOW

**DATE:** May 13, 2021

**SUBJECT: FIFTH AMENDMENT TO AGREEMENT WITH RICHARDS, WATSON & GERSHON FOR LEGAL SERVICES RELATED TO COMPLEX REAL ESTATE DEVELOPMENT AND PLANNING**

### **RECOMMENDATION**

Adopt a resolution authorizing the City Attorney to negotiate and execute a Fifth Amendment to the agreement with Richards, Watson & Gershon for legal services related to complex real estate development and planning, increasing the maximum amount of compensation by \$250,000 for a total amount not to exceed \$670,000.

### **OUTCOME**

Execution of the amendment with Richards, Watson & Gershon ("RWG") to increase the maximum amount of compensation by \$250,000 for a total amount not to exceed \$670,000 will allow the firm to continue to provide legal services related to complex real estate and planning projects in the City of San José ("City").

### **BACKGROUND**

On July 21, 2017, the City Attorney's Office issued a Request for Qualifications ("RFQ") for Real Estate Development Counsel, seeking one or more firms with expertise in complex real estate development to assist the City Attorney's Office with the negotiation and drafting of an agreement for the sale or ground lease of City-owned property for the potential construction of a mixed-use, transit-oriented development, including office and research and development space in the Diridon Station Area. Three responses to the RFQ were received.

On December 4, 2017, the City entered into an agreement with RWG for legal services related to complex real estate development in the Diridon Station Area for a 36-month term expiring on December 3, 2020 in an amount not to exceed \$50,000 ("Agreement"). On December 3, 2018, the City and RWG entered into a First Amendment to the

Agreement, increasing the maximum amount of compensation to \$125,000. On March 25, 2019, the City and RWG entered into a Second Amendment to the Agreement, increasing the maximum amount of compensation to \$175,000 and amending the scope of services to include legal services related to the negotiation, review, and drafting of real estate and planning related documents for City projects. On September 27, 2019, the City and RWG entered into a Third Amendment to the Agreement, increasing the maximum amount of compensation to \$320,000 and amending the scope of services to include legal services related to the City's purchase of real property in Coyote Valley. On December 15, 2020, the City Council authorized the City Attorney to negotiate and execute a Fourth Amendment to the Agreement increasing the maximum amount of compensation to \$420,000 and extending the term to December 31, 2021.

## **ANALYSIS**

RWG was chosen to provide specialized legal services based on the firm's expertise in complex real estate and planning laws. The purpose of the Fifth Amendment is to increase the maximum compensation to compensate RWG for assistance to the City Attorney's Office on the proposed Downtown West Mixed-Use Plan ("Google Project"). The Google Project involves an Environmental Impact Report, General Plan Amendment, Diridon Station Area Plan Amendment, Planned Development Zoning, Planned Development Permit, Vesting Tentative Maps, Major Encroachment Agreement, Parkland Agreement, Development Agreement, Property Transfer Agreements, and other approvals and agreements. The City and Google have an existing reimbursement agreement where Google will fund the proposed Fifth Amendment.

## **CONCLUSION**

To ensure the continued delivery of legal services in support of ongoing real estate and planning projects, staff recommends increasing the maximum amount of compensation by \$250,000 for a total amount not to exceed \$670,000.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s website as part of the May 25, 2021 City Council Agenda.

**COORDINATION**

This item has been coordinated with the Office of Economic Development.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION:

Original Agreement as amended	\$420,000
<i>Proposed Fifth Amendment</i>	<i>\$250,000</i>

<b>TOTAL</b>	<b>\$670,000</b>
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2. SOURCE OF FUNDING: The amendment of the contract will be funded by the Diridon Station Area Development Planning appropriation in the General Fund.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contracts recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Current Appn.	Requested Increase Amount	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	202S	Diridon Station Area Development Planning	\$3,083,441	\$250,000	IX-23	10/20/20, 30494

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**CEQA**

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

NORA FRIMANN  
City Attorney

By /s/ Johnny V. Phan  
Johnny V. Phan  
Chief Deputy City Attorney

For questions, please contact JOHNNY PHAN, CHIEF DEPUTY CITY ATTORNEY, at (408) 535-1900.

cc: David Sykes