



Midpeninsula Regional
Open Space District

R-24-22
Meeting 24-05
February 28, 2024

AGENDA ITEM 4

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Amend a Legal Services Agreement with Jarvis Fay, LLP

GENERAL MANAGER'S RECOMMENDATION

Authorize an amendment in the amount of \$55,000 to an existing agreement with the firm of Jarvis Fay, LLP to provide specialized local government legal advice and litigation services, for a not-to-exceed total contract amount of \$185,000.

SUMMARY

The General Manager and General Counsel recommend adding an additional \$55,000 to an existing \$130,000 agreement for a total not-to-exceed contract amount of \$185,000. There is sufficient funding in the Fiscal Year 2023-24 (FY24) budget to cover the cost of the recommendation.

BACKGROUND

The Midpeninsula Regional Open Space District (District) has an existing agreement with Jarvis Fay, LLP, (Jarvis Fay) that was first entered into by the General Manager and General Counsel in 2021, for a not to exceed amount of \$35,000, and then subsequently amended in 2023 by the Board of Directors, increasing the contract expenditures to a total of \$130,000. The agreement has been used for special legal advice relating to specific District programs, including contracts, and focused on preventing litigation. The existing agreement was then utilized when an unforeseen lawsuit was filed against the District in late 2022 and the General Counsel's office determined that the firm was the best qualified to handle the litigation. Additional funds are now needed to continue defending the District in litigation.

General Counsel initially selected and retained Jarvis Fay to provide as-needed advice particularly focused on construction contracts. In selecting this firm, the District examined qualifications from a number of firms with a strong background in public contracts and municipal law expertise that could provide advice as needed, at a fair and reasonable price. The District selected Jarvis Fay as a highly reputable public law firm in the Bay Area whose partners are very accessible, at rates geared towards public agencies. The partners at Jarvis Fay have a wide variety of transactional and litigation experience.

The District entered into an agreement with Jarvis Fay LLP in 2021. The firm has provided advice regarding a variety of projects, including implementation of the Design Build process, and solicitation and award for the Administrative Office construction contract. The District's

need for the services of Jarvis Fay increased due to unforeseen litigation in late 2022, resulting in the need for additional funds exceeding the General Manager's contracting authority.

DISCUSSION

The legal department typically utilizes outside special counsel services on an as-needed basis to assist on specialized substantive areas of the law, such as personnel/employment, public contracts, and tort/personal injury. The legal department's services budget of \$110,000 is used to obtain assistance on issues that are not easily attributed to a project budget within a specific District department, and/or to retain temporary services in the event of an urgent or special project that exceeds the legal office's capacity.

At the end of November 2022, a lawsuit was filed against the District related to a legislative action taken by the Board of Directors. The case is *Ashford v. MROSD*, Santa Clara County Superior Court Case number 22CV407741. The Board authorized the General Counsel to defend the District in the case (*Ashford v. MROSD*, Santa Clara County Superior Court Case number 22CV407741). Fortunately, Jarvis Fay is one of the most highly qualified firms in the state of California to represent local government agencies in this specialized area of the law. The Board previously authorized the General Manger and General Counsel to increase the authorized amount of the contract in 2023 and the District has thus far been successful in that the court has found that no aspect of the plaintiff's complaint has sufficient merit for the case to move forward. The plaintiff filed a notice of appeal on January 31, 2024, seeking appellate court review of the superior court's decision to dismiss the complaint. Therefore, additional funds are now required to continue defending the District in the appellate phase of litigation.

Additionally, the District has a need to obtain additional legal services regarding updating District contract forms to comport with changes in state law. Contract support services were initially the intent of the agreement with Jarvis Fay when the contract was entered into in 2021. Cumulatively, an increase of \$55,000 to the existing contract is therefore recommended in order to obtain necessary legal services from Jarvis Fay for litigation and public contract advice.

FISCAL IMPACT

The FY24 Budget includes sufficient funding to execute a contract amendment with Jarvis Fay to provide specialized local government legal advice and litigation services. Should further funds be needed within this fiscal year, the General Counsel's office will request a quarterly budget amendment as appropriate.

PRIOR BOARD AND COMMITTEE REVIEW

None

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project under CEQA.

NEXT STEPS

Pending Board approval, the General Manager and General Counsel will amend the agreement with Jarvis Fay, LLC.

Responsible Department Head / Prepared by:
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