



Midpeninsula Regional
Open Space District

R-15-05
Meeting 15-01
January 14, 2015

AGENDA ITEM 5

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Amend Legal Services Contract with Howard, Rome, Martin & Ridley for a Total Authorized Amount of \$45,000

GENERAL MANAGER'S RECOMMENDATION

Amend the existing contract for legal services to increase the contract amount by \$20,000 for a total not to exceed amount of \$45,000, for legal and subject-matter expert support of litigation settlement efforts, coordination with the County, and related legal issues.

SUMMARY

The District has a contract with Howard, Rome, Martin & Ridley (HRMR) to represent the District's interests as they relate to a nuisance abatement action on the Gullicksen property immediately adjacent to the Saratoga Gap Open Space Preserve. The original agreement was executed under the General Manager's authority on April 7, 2011. Due to long court delays exceeding the typical five-year time horizon for most lawsuits, and the complexity of this action which includes multiple defendants, it is necessary to continue to retain HRMR to represent the District's interests through to resolution of this litigation. An additional \$20,000 is required to monitor the mediation and litigation, for a total not to exceed amount of \$45,000.

DISCUSSION

In 2008, an encroachment was discovered on Saratoga Gap Open Space Preserve consisting of construction waste which was illegally dumped on the unstable hillside of an adjacent private property. District lands are downhill of the dumped materials, and it appears that a portion of the illegal landfill is encroaching on District property. An unnamed stream at the base of the hill on District property is threatened by potential discharges of the waste.

In 2009, Santa Clara County commenced an administrative action against the private property owner in an effort to require the owner to remove the waste. The District was at one point named in the County's administrative action, though we were successful in persuading them to remove us. The County subsequently filed a nuisance abatement lawsuit against the property owner (County of Santa Clara v. Gullicksen, Santa Clara County Superior Court Case No. 1-09-CV141882). A number of construction firms that had dumped material on the property were brought into the lawsuit as defendants, and it became apparent that the litigation would be lengthy and the potential effects on the District difficult to abate and resolve.

In April 2011, under the General Manager's spending authority, the District retained the law firm of HRMR to monitor the ongoing litigation. The contract for legal services was not to exceed \$25,000. Since that time, HRMR has provided very cost-effective services in representing the District's interests in the County's litigation of this public nuisance. Due to a recently discovered accounting system data-entry error, the current contract has been overspent by \$817.38. This is included in the additional \$20,000 requested.

Currently, renewed mediation is ongoing among the parties, there is an upcoming trial scheduled in 2015, and one of the parties has appealed an initial ruling in favor of the County. The additional legal services of HRMR will allow the District to efficiently monitor this case until the matter reaches resolution.

FISCAL IMPACT

The FY2014-15 Real Property Department budget includes \$10,000 for this project. The remaining \$10,000 will be included in the Real Property Department's FY2015-16 budget request.

BOARD COMMITTEE REVIEW

There was no Committee review for this agenda item. This issue has come to the full Board in the past in closed session.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. No additional notice is required.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

Upon Board authorization, the General Counsel and General Manager will amend the contract with HRMR, and will continue to work with outside counsel to monitor the ongoing litigation.

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