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Title: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AUTHORIZING THE CITY MANAGER TO EXECUTE A LEGAL SERVICES AGREEMENT WITH SHER EDLING LLP TO REPRESENT THE CITY OF SAN PABLO ON A CONTINGENCY FEE BASIS IN LITIGATION OVER PCB CONTAMINATION

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Attachments: 1. RES 2022-124 Sher Edling LLP Contingency Agr, 2. Proposed PCB LSA Sher Edling - City of San Pablo

Date	Ver.	Action By	Action	Result
8/10/2022	1	City Council	adopted	Pass

PREPARED BY: TERESA L. STRICKER

DATE OF MEETING: 8/10/22

SUBJECT:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AUTHORIZING THE CITY MANAGER TO EXECUTE A LEGAL SERVICES AGREEMENT WITH SHER EDLING LLP TO REPRESENT THE CITY OF SAN PABLO ON A CONTINGENCY FEE BASIS IN LITIGATION OVER PCB CONTAMINATION

CITY MANAGER RECOMMENDATION

Adopt Resolution

COMPLIANCE STATEMENTS

The proposed legal services agreement is consistent with the major policy goals *Enhance Community Resilience (specifically, Item 202: Develop and Implement Long-Term Environmental Stewardship Goals; and Item 203: Assess Environmental Impacts Over the Long-Term to Assist Resiliency Planning)* and *Economic Development and Diversification (specifically, Item 403: Create a Sustainable Economic Ecosystem; and Item 405: New Revenue Enhancements)* under the FY 2021-23 Council Adopted Priority Workplan, effective March 15, 2021, as amended September 20, 2021 through Resolution 2021-128.

CEQA Compliance Statement

This action does not constitute a project and therefore does not require CEQA clearance.

BACKGROUND

Polychlorinated Biphenyls (PCBs) are a group of manufactured chemicals that have been determined to have carcinogenic effects on fish, wildlife and humans. Under the National Pollutant Discharge Elimination System (NPDES) Permit issued by the Regional Water Quality Control Board (Water

Board), the City of San Pablo is required to remove PCBs from the environment by building infrastructure and implementing policies that remove PCBs from stormwater before it enters the City's storm drain network and subsequently the creeks and the Bay. The City of San Pablo has the potential to recover damages to help offset these costs.

As reported out after closed session on July 5, 2022, the City Council followed the lead of Contra Costa County and a growing number of Bay Area counties and cities by deciding to opt out of the settlement in the nationwide class action brought by public agencies against Monsanto Company, the manufacturer and seller of PCBs, and instead directing the City Attorney to initiate direct litigation on behalf of San Pablo. At that time, Council directed the City Attorney to bring forward for consideration on its consent calendar a legal services agreement with an appropriate firm to represent the City on a contingency basis in direct litigation. As staff understands it, eighteen (18) of the nineteen (19) cities in Contra Costa County have decided to opt out of the class action settlement, with Antioch being the only city in the County not to opt out.

The law firm Sher Edling LLP specializes in representing public agencies in environmental cases. The firm's emphasis is holding polluters accountable for the damage they cause. The firm currently represents numerous cities and several counties in the Bay Area, including Contra Costa County, in pending or contemplated PCB litigation against Monsanto.

Because of Sher Edling LLP's expertise and experience in the area of PCB litigation, and because the firm will be representing Contra Costa County in what will be regional litigation involving significant overlapping evidence for the public agencies in the region, staff recommends that the City enter into a legal services agreement with Sher Edling LLP on a contingency fee basis, with the hope and expectation that future recovery will help offset the tens of millions of dollars the City will be required to spend to comply with NPDES Permit requirements related to PCB pollutant removal.

Contra Costa County recently approved a legal services agreement with Sher Edling with the same basic contingency fee structure set forth in the proposed agreement currently before the City Council. Under the proposed agreement, the firm will receive as compensation for its services between 7.5% and 18% of the net recovery San Pablo receives in the litigation, depending on what stage of the litigation the recovery occurs. The firm will upfront all litigation costs, and will be reimbursed for those costs from any recovery San Pablo receives in the litigation before attorney's fees are calculated. Both the attorneys' fees and litigation costs are contingent, meaning that the City will have no obligation to pay the firm for its services or reimburse the firm for any litigation costs in the absence of a recovery in litigation.

FISCAL IMPACT

The firm is being engaged on a contingency fee basis. The amount due for specialized legal services will depend on whether any litigation that may be undertaken by the City results in a recovery, as well as the size, timing and structure of the recovery and the amount of any litigation costs. Any settlement between the City and a defendant to any litigation brought by the City would be subject to City Council approval.

ATTACHMENT

1. Proposed Legal Services Agreement Between the City of San Pablo and Sher Edling LLP Regarding PCB Litigation