



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 20, 2022

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: APPROVE THE ANNUAL LEGAL BUDGET FOR LAW FIRM OF THOMPSON COBURN IN AN AMOUNT NOT TO EXCEED \$535,000; INCREASE TO THE COLANTUONO, HIGHSMITH & WHATLEY BUDGET IN AN AMOUNT NOT TO EXCEED \$27,500; INCREASE THE EXPERT BUDGET IN SAMANO V. CITY IN AN AMOUNT NOT TO EXCEED \$50,000

ISSUE:

To consider approval of the annual legal budget for FY 2022-2023 for the law firm of Thompson Coburn in an amount not to exceed \$535,000, of an increase to the legal budget for Colantuono in an amount not to exceed \$27,500 and an increase to the expert budget in the Samano v. City of Riverside matter an amount not to exceed \$50,000.

RECOMMENDATION:

That the City Council:

1. Approve the annual legal budget for FY 2022-2023 for the law firm of Thompson Coburn in an amount not to exceed \$535,000;
2. Approve an increase to the legal budget for the law firm of Colantuono, Highsmith & Whatley in an amount not to exceed \$27,500; and
3. Approve a \$50,000 increase to the expert budget for the Samano v. City of Riverside matter for a total amount not to exceed \$100,000.

DISCUSSION:

City Charter section 702, "Eligibility, powers and duties of City Attorney," provides, in part, that "the City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein."

The City Council has previously approved the retention of each law firm (Thompson Coburn and Colantuono). Each law firm has executed an Attorney Services Agreement with the City of Riverside for the provision of legal services. Through the annual budgeting process, the City has approved funds for the use of outside legal counsel. The City Council has previously

approved budgets for each of these law firms and the City Attorney's Office is now seeking either the approval of an annual budget (Thompson Coburn), an increase to an existing budget (Colantuono, Highsmith & Whatley). The original expert budget of \$50,000 for the *Samano v. City of Riverside* matter was within the City Attorney's approval limit, and the increased amount of \$50,000 will result in a total budget not to exceed \$100,000.

Thompson Coburn

Thompson Coburn is a law firm based in Washington DC that specializes in representing publicly owned electric utilities. In general, their work for the City includes monitoring and assisting with nearly all aspects of federal regulatory activity within the purview of the Federal Energy Regulatory Commission ("FERC") that may affect the City's electric utility. Under the Federal Power Act ("FPA"), FERC regulates public utilities that engage in wholesale energy sales and/or provide interstate transmission services. Although the City's electric utility, as a department of a municipality, is not directly subject to FERC regulation under Part II of the FPA, FERC does regulate the California energy markets and transmission system administered by the California Independent System Operator Corporation (the "CAISO") and the activities of Southern California Edison Company ("SCE"), the utility with which the City's electric system is interconnected. Thus, FERC's regulations, policies, and adjudications can significantly impact the City's electric utility. These impacts may be direct or indirect financial impacts, or they may consist of impacts to the City's resource procurement, transmission and/or distribution system access, market participation, and/or compliance activities. For the same reasons, Thompson Coburn closely monitors and actively participates in stakeholder initiatives relating to the CAISO energy markets and transmission system.

For FY2022-23, Thompson Coburn estimates a budget of \$535,000 and the City Attorney is asking for approval for that expenditure. The Thompson Coburn budget for FY 2020/21 was \$715,000, of which \$534,000 was expended. The Thompson Coburn budget for FY 2021/22 was \$600,000, of which \$445,000 was expended.

The budget varies year to year, based upon the uncertainty of FERC filings by other CAISO members and other FERC regulatory proceedings. For example, in FY 2021/22, there were reduced activities related to CAISO transmission matters, primarily because the three California investor owned utilities (SCE, Pacific Gas & Electric, San Diego Gas & Electric) did not make rate-recovery filings at FERC during this time to implement changes in the formula rates used to calculate their transmission revenue requirements. This could certainly change in the upcoming months. Thompson Coburn also anticipates a relatively high level of CAISO activity in the second part of 2022 in connection with the CAISO's efforts to revise its day ahead markets to accommodate participation by other utilities in the WECC footprint.

The City realizes a cost savings from the retention of Thompson Coburn. For example, FERC's regulation of the transmission system administered by the CAISO includes approving the rates charged by the CAISO for use of the transmission lines. The City, when it uses the transmission lines administered by the CAISO, pays that rate. The rates are based upon the costs submitted to FERC by the transmission owners who have turned over operational control of their transmission lines to the CAISO. The City reviews all cost submissions from these transmission owners and submits objections to FERC, through Thompson Coburn, of any inappropriate costs.

Over a 10 year period, from June 2012 through June 2022, the City estimates that it has saved \$29,096,786 in reductions to the rates ultimately approved by FERC and paid by the City, as a

result of the objections filed by Thompson Coburn on behalf of the City. This cost estimate does not include certain cases still pending before FERC in 2022. During this same time frame (*i.e.*, from January 2010 through August 2021), the City expended the sum of \$3,067,267 on attorney fees and related consulting costs for such transmission issues. (In the last fiscal year, the City expended the sum of \$534,000 in attorneys fees, as noted above.)

Colantuono, Highsmith & Whatley

On September 12, 2018, a petition for writ of mandate entitled *Parada v. City of Riverside* was filed against the City seeking to invalidate, rescind and void under Proposition 26 the Electric System's rates approved by City Council on May 22, 2018 (which took effect on January 1, 2019), challenging the portion of the electric rates that are attributable to the General Fund transfer. The trial court divided the case into two stages for hearings: a liability phase and a damages phase. On April 17, 2020, the Court in the liability phase hearing of the *Parada* litigation entered a tentative ruling finding the City's electric rates attributable to the General Fund transfer violate Article XIII C of the California Constitution. The formal hearing on the matter took place on June 5, 2020, but the Court asked for further briefing on the issue of whether or not the plaintiffs failed to exhaust their administrative remedies. On October 9, 2020, the Court confirmed its tentative ruling and entered an order denying the City's request for interlocutory remand.

On May 17, 2021, after a mediation, the City and the Paradas entered into a conditional settlement agreement. This settlement was conditioned on: (1) the Riverside City Council's placement of a ballot measure on City ballots in November 2021 to approve the City's General Fund transfer practices as a general tax ("Ballot Measure"); and (2) voter approval of the Ballot Measure. The City Council placed the Ballot Measure on the ballot for the November 2, 2021 election. The Parties stayed the lawsuit until certification of the results of the Ballot Measure. If voters approved the Ballot Measure, the City agreed to refund to customers of its electric utility an amount equal to \$24 million less the amount awarded to Plaintiffs' counsel in fees, paid over a five-year period beginning no later than February 1, 2022. If voters did not approve the Ballot Measure, the litigation would then resume.

On or about September 16, 2021, a petition for writ of mandate entitled *Riversiders Against Increased Taxes (RAIT) v. City of Riverside, et al.* was filed against the City challenging the Ballot Measure on the grounds that the Ballot Measure cannot be adopted at the November 2021 election because that election is a "special" election and under Proposition 218, a ballot measure to impose a general tax can only be submitted to voters at a general election. On November 9, 2021, the *RAIT* court set a trial date for this lawsuit for January 7, 2022 and ordered a stay of the certification of the Ballot Measure Election results pending the January 7th hearing, but did not otherwise delay or cancel the election for the Ballot Measure.

The election was held on November 2, 2021, and the initial report from the County Registrar of Voters, as of November 3, 2021, was that Measure C was approved by voters. However, the election results had not yet been certified by the City, as noted above, and the *Parada* lawsuit continued to be stayed pending certification of the results. The *Parada* court set a hearing for February 24, 2021, to set a briefing schedule for determining appropriate remedies /damages in the case.

The *RAIT* trial court subsequently ruled that the November 2021 was a special, not a general election, in violation of Prop. 218. The City has since appealed the *RAIT* trial court's judgment.

Concurrently, the City Council approved an amendment to the *Parada* settlement agreement that was executed on May 12, 2022. The amended terms included the following: refunds to ratepayers would start by October 1, 2022; if the City prevailed in the appeal of the trial court's decision in the *Riversiders Against Increased Taxes v. City of Riverside*, no additional refund is due to the ratepayers; if the City did not prevail in the appeal of the trial court's decision in the *RAIT* lawsuit, an additional refund will be implemented in the amount of \$705,882 per month, from November 2021 up to when the City (i) sets new electric rates; (ii) voters approve a valid ballot measure for the GFT or (iii) the City otherwise stops collecting the electric GFT; and no certification of the November 2021 election results was required to implement the settlement agreement. The *Parada* case was subsequently dismissed and the City has started implementation of the settlement agreement.

The plaintiffs in the *RAIT* lawsuit filed several motions in the *Parada* lawsuit seeking to intervene in the case and set aside the dismissal. The City successfully defended against those motions, and the *Parada* lawsuit continues to be dismissed.

The initial budget approved by the City Council for the *Parada v. City of Riverside* lawsuit was \$247,500, which was based upon the expectation of one hearing on the merits and no mediation. Instead, the City has had one hearing (on liability but not damages), a mediation, two settlement agreements and subsequent motions to intervene by the plaintiffs from the *RAIT* lawsuit, which caused expected legal fees to increase beyond the approved budget. An increase to the budget in the amount of \$27,500 is being requested to close out this litigation.

Samano v. City of Riverside (Riverside Superior Court Case No. RIV1818668) This personal injury action arises from a vehicle vs. pedestrian accident which occurred at approximately 5:28 a.m. on November 16, 2017 when then twenty-five-year-old Plaintiff Steven Samano was struck by a Riverside Police Department Ford Explorer driven by Officer Kyle Morgan eastbound Van Buren Blvd., 113' west of the intersection of Wood Road. Plaintiff claims he suffered significant orthopedic injuries and a traumatic brain injury as a result of being struck by Officer Morgan's vehicle at 48 mph. This case proceeded to trial in August 2022 and the jury rendered a verdict in favor of the City. The City retained Jon Landerville as (an accident reconstructionist) and Robert Morales (as a civil engineer) – both from Momentum Engineering. To date the City has paid a total of \$60,909.70 for their services. The experts have not provided their final invoices for the trial presentations. Although these two experts would normally have a budget up to \$50,000 each, the invoices that Momentum Engineering provided do not distinguish who performed what work. As a result and in the spirit of transparency, the City Attorney's Office is seeking authority of up to \$100,000 for their combined expert work through trial.

STRATEGIC PLAN ALIGNMENT:

The retention of experienced outside counsel to assist the City's electric utility in the licensing of a new transmission line and monitoring Federal and State legal proceedings that could impact electric rates and the cost of infrastructure supports the priorities of the City of Riverside's Envision Riverside 2025 Strategic Plan, by contributing to Strategic Priority No. 4 Environmental Stewardship, by supporting the following:

Goal 4.1– Rapidly decrease Riverside's carbon footprint by acting urgently to reach a zero carbon electric grid with the goal of reaching 100% zero-carbon electricity production by 2040 while continuing to ensure safe, reliable and affordable energy for all residents.

Goal No. 4.6 –Implement the requisite measures to achieve citywide carbon neutrality no later than 2040.

The retention of experienced outside counsel to assist in the defense of Proposition 218 and Proposition 26 lawsuits against the City's electric general fund transfer supports the priorities of the City of Riverside's Envision Riverside 2025 Strategic Plan, by contributing to Strategic Priority No. 5 High Performing Government, by supporting the following:

Goal No. 5.4. Achieve and maintain financial health by addressing gaps between revenues and expenditures and aligning resources with strategic priorities to yield the greatest impact.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Use of outside counsel that specialize in certain areas of the law promote trust in the community.
2. **Equity** –Use of outside counsel that specialize in areas of the law related to regulation of the City's electric utility will support RPU as RPU provides equitable opportunities for all customers to become more sustainable which benefits the entire community.
3. **Fiscal Responsibility** – The City Attorney's Office is expending funds in a careful and judicious manner in order to achieve cost savings for the City through pro-active legal scrutiny of Federal and State proceedings that could impact electric rates and the cost of transmission infrastructure.
4. **Innovation** – The retention of specialized legal counsel to support transmission and generation projects supports innovation projects because such legal representation will promote reliable electric service at an affordable price.
5. **Sustainability & Resiliency** – Riverside is committed to providing safe, reliable and affordable energy for all residents while allowing the importation of 100% zero-carbon electricity production by 2040. Use of outside counsel that specialize in areas of the law related to regulation of the City's electric utility will allow the City to accomplish that goal.

FISCAL IMPACT:

The approval of the budget for FY 2021-2022 for Thompson Coburn will have a financial impact of \$535,000, and funds will come from the following RPU accounts: Power Resources (\$510,000) Account 6120000-421100; and Legislative & Regulatory Risk (\$25,000) Account 6025000-421100.

The increase in the budget for Colantuono, Highsmith & Whatley will have a financial impact of \$27,500, and funds will come from the Liability Trust Fund – Outside Legal Fees Account 1310000-421100.

The \$50,000 increase to the expert budget for the Samano v. City of Riverside matter for a total amount not to exceed \$100,000 will have a financial impact of \$50,000, and funds will come

from the Liability Trust Fund - Legal Costs Account 1310000-428200.

Prepared by: Phaedra A. Norton, City Attorney

Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer

Attachment: Estimates of Savings to Riverside as a result of participation in CAISO
Transmission Rate Filings