



# City Council Memorandum

City of Arts & Innovation

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**TO: HONORABLE MAYOR AND CITY COUNCIL      DATE: NOVEMBER 14, 2023**

**FROM: CITY ATTORNEY'S OFFICE                      WARDS: ALL**

**SUBJECT: REQUEST TO APPROVE EXPENDITURE OF \$389,875 TO RETAIN OUTSIDE COUNSEL THEODORE L. SENET, PARTNER AT GIBBS GIDEN**

**ISSUE:**

Requesting approval of a \$389,875 budget (including an estimated \$150,000 for expert witness fees and other legal expenses) for the City Attorney's Office to retain Theodore L. Senet at Gibbs Giden, to serve as associated counsel to handle the case of *Griffith Company v. City of Riverside*, Riverside Superior Court Case No. CVRI2303544, and to authorize the City Attorney to execute the Outside Counsel Engagement Letter.

**RECOMMENDATION:**

1. That the City Council: approve the \$389,375 budget to retain Theodore L. Senet at Gibbs Giden, who is already on the City's panel of approved outside counsel; and
2. Authorize the City Attorney to execute the Outside Counsel Engagement Letter

**DISCUSSION:**

The City Attorney's Office has developed an in-house legal services team. However, there are times when it is necessary to employ a panel firm to provide legal services, if for example, there is a conflict of interest or there are inadequate office resources due to unforeseen circumstances.

The case of *Griffith Company v. City of Riverside* ("Griffith") concerns a May 2021 Agreement for Construction ("Contract") between the Griffith and the City of Riverside ("City") related to the Wells Avenue and Cypress Avenue Water Main Replacement Project, Phase II, in Wards 6 and/or 7. Plaintiff filed this breach of contract lawsuit alleging that the City interfered with Griffith's performance under the contract, which caused delays, inefficiencies, and additional work resulting in increased costs to Griffith. Specifically, Griffith claims the extra work was necessary for reasons including the City's failure to identify site conditions differing from those identified in plans specifications (which were allegedly known to the City but were not disclosed to Griffith); interference with Griffith's planned construction means and methods resulting in the loss of productivity and additional costs; the City allowing necessary infrastructure to fail; and the issuance of excessive punch list items for Griffith to complete.

Griffith claims that due to these City created issues, the City failed to pay \$132,356.90 of the Contract balance to Griffith and likewise caused additional costs, delays, disruptions, and inefficiencies in Griffith's Contract performance valued at \$1,056,074.24. Accordingly, Griffith

alleges the City's breach of the Contract caused damages to Griffith in an amount not less than **\$1,188,431.14**. Further, the complaint alleges an entitlement to attorneys' fees pursuant to statute.

The above-referenced lawsuit was filed in Riverside County Superior Court on July 14, 2023. The City of Riverside was served with the Summons and Complaint on July 17, 2023. This case is currently assigned to Senior Deputy City Attorney Michael Verska and Deputy City Attorney Edward Reid for handling. Recently, the City challenged Griffith's operative complaint by way of a demurrer. The hearing of the City's demurrer is set for late November.

In August 2023, Plaintiffs propounded written discovery on the City. Included with the written discovery was a demand for production of documents, which we learned from City personnel would require production of tens of thousands of pages of email communications and other documents related to the project. Each of these documents will need to be carefully reviewed by counsel to identify and redact privileged and/or irrelevant material. An undertaking such as this will require a significant time investment, which the City Attorney's Office does not have given its current workload.

Because of the complex nature of this case, the issues with discovery, including the necessary resources to review the voluminous records associated with the case and the current workload of all assigned attorneys, outside counsel assistance is required to prepare for trial in this case. Theodore L. Senet is a partner at Gibbs Giden and is already on the City's pre-approved panel of outside counsel. Mr. Senet specializes in construction, environmental, and real property law and has been involved in planning and represents private and public entities in complex construction defect and environmental litigation, construction delay claims, and class action litigation. Mr. Senet has submitted a total proposed budget of \$389,875 for attorneys' fees and proposed expert costs.

**FISCAL IMPACT:**

It will cost the City up to \$389,875 to retain Mr. Senet to work with in-house Senior Deputy City Attorney Michael Verska and Deputy City Attorneys Edward Reid to litigate this case. The funds to cover all costs are currently budgeted in the Liability Trust Fund account 1310000-421100 for attorney's fees in the amount of \$239,875 and Liability Trust Fund account 1310000-428200 for legal costs in the amount of \$150,000 (which includes the cost of experts).

**STRATEGIC PLAN ALIGNMENT:**

This item aligns with the following *Strategic Priority and Goal* from the Envision Riverside 2025 Strategic Plan: high performing government. In addition, it aligns with the following *Cross-Cutting Threads*:

1. **Fiscal Responsibility** – The City Attorney's Office went through a formal RFP process for outside counsel. Competitive procurement was used to secure qualified law firms at competitive rates for legal services.

Prepared by: Edward J. Reid, Deputy City Attorney

Certified as to availability  
of funds:

Edward Enriquez, Assistant City Manager/Chief Financial Officer

Approved by: Mike Futrell, City Manager  
Approved as to form: Phaedra A. Norton, City Attorney

Attachment:

1. Proposed Budget for Griffith Company v. City of Riverside
2. Outside Counsel Engagement Letter