



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: FEBRUARY 27, 2024

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

**SUBJECT: AUTHORIZE A THREE-YEAR LEGAL SERVICES AGREEMENT WITH THE
LAW FIRM OF JARVIS FAY; APPROVE TWO LEGAL BUDGETS IN THE
AMOUNTS NOT TO EXCEED \$198,000 EACH, FOR SPECIALIZED LEGAL
ASSISTANCE- SUPPLEMENTAL APPROPRIATION**

ISSUE:

To (1) consider approval of a three-year legal services agreement with the law firm of Jarvis Fay; and (2) approve two legal budgets for the law firm of Jarvis Fay in amount not to exceed \$198,000 each to defend the City in the cases entitled *Simpson v. City of Riverside* and *Pongs v. City of Riverside*, reverse validation lawsuits challenging the validity of City-adopted water rates, funded by a supplemental appropriation approved by at least five votes.

RECOMMENDATION:

That the City Council

1. Approve a three-year legal services agreement with the law firm of Jarvis Fay; and
2. Approve two legal budgets for the law firm of Faye Jarvis in amounts not to exceed \$198,000, each, to defend the City in the cases entitled *Simpson v. City of Riverside* and *Pongs v. City of Riverside*, both reverse validation lawsuits challenging the validity of City-adopted water rates; and
3. With five affirmative votes, authorize the Chief Financial Officer, or designee, to record a supplemental appropriation in the amount of \$396,000 in the General Fund, City Attorney Legal Fees account.

BACKGROUND:

On September 19, 2023, the City adopted Resolution No. 24042, adopting and establishing new water rates for the City of Riverside. Two reverse validation lawsuits have been filed seeking to invalidate those water rates: *Simpson v. City of Riverside* and *Pongs v. City of Riverside*. These lawsuits were brought pursuant to Code of Civil Procedure sections 860 et seq., and are known as reserve validation lawsuits.

In general, both Plaintiffs allege violations of Proposition 218, unconstitutional “takings” that occur through the imposition of illegally inflated water rates that the City imposes for the improper diversion to the General Fund, the City’s unconstitutional overcharging of its water utility customers, and the City’s unconstitutional use of water utility fees and charges.

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 law firm of Jarvis Fay provides specialized legal services in litigating and advising clients on local taxes, fees, and assessments, including issues arising under Propositions 13, 26, 62, and 218. Jarvis Fay has litigated property tax allocations, business license taxes, transient occupancy taxes, utility user taxes, parcel taxes, development impact fees, user fees, regulatory fees, fees for services, and special assessments. The City Attorney’s Office does not currently have that specialized legal knowledge.

STRATEGIC PLAN ALIGNMENT: The retention of experienced outside counsel to provide legal advice and supports all priorities of the City of Riverside’s Envision Riverside 2025 Strategic Plan, as such advice is provided to all departments of the City, the City Council, Boards and Commissions.

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 specific areas of the law supports and aids the making of such decisions.
2. **Equity** – Use of outside counsel that specialize in specific areas of the law benefits the entire community by ensuring that such efforts comply with all aspects of the law.
3. **Fiscal Responsibility** – The City Attorney’s Office is expending funds in a careful and judicious manner balanced against the need for specialized legal counsel when the circumstances warrant.
4. **Innovation** – The retention of specialized legal counsel to provide specialized legal advice supports City innovation efforts by ensuring that such efforts comply with all aspects of the law.
5. **Sustainability & Resiliency** – The retention of specialized legal counsel to provide specialized legal advice supports City goals of sustainability and resiliency by ensuring that such efforts comply with all aspects of the law.

FISCAL IMPACT:

The approval of the two budgets for the law firm of Jarvis Fay is in an amount not to exceed \$198,000 for each lawsuit and is for specialized legal assistance.

Upon Council approval, a supplemental appropriation will be recorded in the amount of \$396,000 in the General Fund, City Attorney Legal Fees Account No. 1300000-421100.

Prepared by: Phaedra A. Norton, City Attorney

Certified as to
availability of funds: Kristie Thomas, Finance Director / Assistant Chief Financial Officer

Attachment: Attorney Services Agreement