

Meeting Date: 6/5/2014

Report Type: Consent

Report ID: 2014-00348

Title: Entertainment and Sports Center Project Assistance Services

Location: Downtown Plaza, District 4

Recommendation: Pass a Resolution 1) authorizing the City Manager to adjust project revenue and expenditure budgets as necessary for the ESC Project (I02000500) to account for reimbursable expenses as set forth in the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement; 2) authorizing City Manager or his designee to enter into or amend agreements related to reimbursable ESC project expenses under the terms of the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement in an amount not to exceed \$400,000; 3) authorizing City Attorney or his designee to enter into or amend agreements related to reimbursable ESC legal expenses under the terms of the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement in an amount not to exceed \$1.18 million; and 4) authorizing the City Manager or his designee to move \$435,000 in expenditure budget from the ESC Project (I02000500) to the Parking Fund Contingency.

Contact: Desmond Parrington, ESC Project Manager, (916) 808-5044; John Dangberg, Assistant City Manager, (916) 808-5704, Office of the City Manager

Presenter: None

Department: City Manager

Division: Executive Office

Dept ID: 02001011

Attachments:

1-Description/Analysis

2-Background

3-Resolution

City Attorney Review

Approved as to Form

Matthew Ruyak

5/29/2014 11:42:21 AM

Approvals/Acknowledgements

Department Director or Designee: John Dangberg - 5/29/2014 11:26:21 AM

Description/Analysis

Issue Detail: City staff is seeking Council authorization for additional professional services, including legal, outreach and sports-related expertise, to advise City staff, safeguard the City's interests, and support the timely completion of the ESC project. The additional recommended project services are summarized below. These expenses, as listed in the table below, are reimbursable by Sacramento Basketball Holdings, LLC (SBH) and its affiliates, including Sacramento Downtown Arena LLC (ArenaCo), under the provisions of the Arena Design and Construction Agreement (Resolution 2014-0132) and the Property Acquisition Cost, Defense and Indemnity Agreement (Motion No. 2013-0215; and as amended per Resolution 2014-0132). These were approved by Council on May 20, 2014 and August 13, 2013 respectively.

ESC Project Services	Responsibility	Amount
ESC Legal and Transaction Counsel	City Attorney	450,000
Eminent Domain Issues and ESC Litigation*	City Attorney	730,000
<i>Subtotal:</i>		<i>1,180,000</i>
Sports Facility Design and Construction Advisor	City Manager	250,000
Communications and Outreach Assistance	City Manager	100,000
Sign District Consultant	City Manager	50,000
<i>Subtotal:</i>		<i>\$400,000</i>
Grand Total		\$1,580,000

*Note: *Gonzalez et al. vs. City of Sacramento suit (term sheet litigation) is not covered by the reimbursement agreements.*

In addition, City staff is seeking Council authorization to move the expenses (\$435,000) associated with the parking study for the City's parking system from the ESC Project (I02000500) to the Parking Fund Contingency (Fund 6004). This study is integral to the City's parking modernization effort launched in August 2012 and was needed regardless of the ESC project.

Policy Considerations: The development of the ESC will transform Downtown Plaza into a center of entertainment and activity. Completion of the ESC will fulfill several critical policy objectives. However, given the complex nature of the project and the City's investment, it is important that staff have the expertise and professional services needed to ensure the completion of the project.

Economic Impact: Not applicable.

Environmental Considerations: This report identifies consultant services needed for technical and legal services. The actions in this report do not have any potential for significant effect on the environment and are exempt under CEQA Guidelines section 15061(b)(3).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Development of the ESC is a complicated endeavor and the City should ensure that it has the necessary technical and legal information to protect the City's interests and ensure timely completion of the project.

Financial Considerations: The Arena Design and Construction Agreement (Resolution 2014-0132) and the Property Acquisition Cost, Defense and Indemnity Agreement (Motion No. 2013-0215; and as amended per Resolution 2014-0132) provide reimbursement for City-incurred ESC project expenses and the on-going expenses associated with the eminent domain case for 600 K Street, the future site of the ESC.

Local Business Enterprise (LBE): Not applicable.

Background

On March 26, 2013, City Council approved the preliminary term sheet for the potential development of an ESC in Downtown Plaza. At that time, the City required technical, financial, and legal advisory services to complete due diligence and prepare definitive agreements for the financing and development of the ESC.

As set forth in the term sheet, the Kings' ownership group, Sacramento Basketball Holdings LLC (SBH), is responsible for predevelopment costs incurred by the City for the Entertainment and Sports Center project. On September 25, 2013, the City Council approved a Predevelopment Expenses Agreement (Resolution No. 2013-0321) between the City and SBH whereby SBH agreed to reimburse the City for predevelopment costs associated with the ESC project. On May 20, 2014, Council approved the Arena Design and Construction Agreement (Resolution 2014-0132), which extended the reimbursement obligations of SBH and its affiliate, Sacramento Downtown Arena LLC (ArenaCo), to cover all the reimbursable expenses originally set forth in the Predevelopment Expenses Agreement and incurred by the City through final completion.

Furthermore, the City Council also entered into the Property Acquisition Cost, Defense and Indemnity Agreement (Motion No. 2013-0215) with SBH on August 13, 2013 and amended that agreement on May 20, 2014 (Resolution 2014-0132). The agreement provides for the reimbursement of City expenses associated with the acquisition of 600 K Street, the site of the former Macy's Men's Store and the future site of the ESC (arena). This agreement remains in effect until the resolution of the eminent domain case involving 600 K Street.

On June 25, 2013, Council authorized staff to allocate up to \$1.755 million for specialized consultant services are needed to represent the City's interests in the preparation of definitive agreements with Sacramento Basketball Holdings LLC and to prepare for the planning, financing and construction of the proposed ESC. This included the expenditures in the following table:

Reimbursable Project Expenses	
ESC Facility and Finance Advisor	\$200,000
Sports Facility Design/Construction Advisor	\$250,000
Parking Consultant	\$425,000
ESC Revenue Analysis	\$ 80,000
Transaction Attorneys and Legal Counsel	\$550,000
Real Estate Services	\$200,000
<u>Communications/Outreach Assistance</u>	<u>\$ 50,000</u>
Total	\$1,755,000

The professional services covered under the reimbursable expenses were rendered during the preparation of the definitive agreements as well as the planning, design, financing and outreach efforts leading up to the May 20 Council approval of the project. To date, SBH has reimbursed the City \$426,374. Invoices for the remainder were sent in late May and reimbursement is anticipated shortly.

Additional reimbursable expenses to cover professional are required for City-incurred ESC project expenses, including those summarized below:

Entertainment and Sports Center Legal and Transaction Counsel: Continuous legal representation with expertise in the field of entertainment and sports facilities transaction agreement structure and documentation is required along with representation in other areas including real estate transactions and financing, among others. Legal services agreements are also needed to assist with sign district formation, pending litigation, and ongoing eminent domain related activities. Please note that the ongoing lawsuit, *Gonzalez et al. vs. City of Sacramento* also known as the term sheet litigation is not covered by the reimbursement agreements since it predates these agreements. Recommended reimbursable amount: \$1.18 million (\$450,000 [Legal and Transaction Counsel] and \$730,000 [Eminent Domain/ESC Litigation Services]).

Sports Facility Design and Construction Advisor: Weston Sports and Entertainment continues to serve as the City's technical consultant and project monitor for the ESC project. Weston has extensive experience serving as public and private sector advisors and owner's representatives for sports facility projects across the country. Weston assisted the City during the ESC design process and the preparation of the definitive agreements. Staff is recommending that Weston Sports continue to assist the City particularly with the review of ESC demolition and construction activities. Recommended reimbursable amount: \$250,000.

Communications and Outreach Assistance: During the demolition and construction of the ESC, outreach with the general public, businesses, property owners, other stakeholders, the media and various interested parties will be critical. The City requires additional consultant expertise to provide continuing assistance with planning, outreach, social media, multimedia, and publications regarding the development of the Downtown ESC Project. Recommended reimbursable amount: \$100,000.

Sign Ordinance Consultants: Sussman Prejza & Company is the City's advisor for the preparation and development of an outdoor advertising district for the Downtown Plaza area including the ESC. Additionally, GM Consulting is providing services related to the advertising demand, types of advertisers, economics of signage, and comparison of other sign districts in markets similar to Sacramento. Staff recommends that these

advisors be retained to assist with the development of a signage district and ordinance. Recommended reimbursable amount: \$50,000.

The parking consultant services have been reconsidered as a reimbursable expense. The parking analysis prepared by Walker Parking Consultants was originally considered necessary as part of the City's parking modernization effort which was launched in August 2012 independently of the current ESC plan. The objectives were comprehensive in nature and sought to analyze the broad capital needs and opportunities of the citywide parking enterprise. The studies costs were to be absorbed by the parking enterprise.

These costs were subsequently included as a reimbursable cost in June 2013 as a component of the ESC non-profit financing model that was originally proposed to fund the City's contribution to the ESC. The City's financing model has since changed to a lease-revenue bond. While the City is looking to the parking enterprise to help service the ESC debt it is no longer directly connected to the finance model underwriting. Further, the study is far more comprehensive than required for the ESC financing. Given that the study was originally contemplated and is needed independently of the ESC, staff determined that it was not an appropriate reimbursable expense. Due to additional analysis needed for the report, the cost was increased by \$10,000 to \$435,000.

RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

AUTHORIZING REIMBURSABLE BUDGET APPROPRIATIONS AND PROFESSIONAL SERVICES EXPENSES FOR THE DOWNTOWN ENTERTAINMENT AND SPORTS CENTER PROJECT

- A. On March 26, 2013 the City Council approved a preliminary term sheet between the City and the investor group led by Vivek Ranadivé for the financing and development of an entertainment and sports center (ESC) in Downtown Plaza.
- B. In that term sheet, the investor group known as Sacramento Basketball Holdings, LLC (SBH) was responsible for all eligible City pre-development expenses.
- C. On September 25, 2013, Council approved the Predevelopment Expenses Agreement with Sacramento Basketball Holdings, LLC (SBH) to ensure reimbursement of City predevelopment expenses associated with the Entertainment and Sports Center project.
- D. Furthermore, on August 13, 2013, Council also approved the Property Acquisition Cost, Defense and Indemnity Agreement (Motion No. 2013-0215 and as amended per Resolution 2014-0132) with SBH to provide for the reimbursement of City expenses associated with the acquisition of 600 K Street.
- E. On May 20, 2014, Council approved the Arena Design and Construction Agreement; which supersedes the Predevelopment Expenses Agreement, but maintains SBH's responsibilities as well as those of its affiliates including Sacramento Downtown Arena LLC (ArenaCo) to reimburse the City for eligible costs associated with the development of the ESC.
- F. Professional advisory services, including legal, design, outreach and sports-related expertise, continue to be needed by City staff to safeguard the City's interests and support the timely completion of the ESC project given the complex nature of this project. It is in the City's best interests to authorize the City Manager and City Attorney to

supplement existing contracts or enter into new contracts for these services.

- G. The parking study prepared by Walker Parking Consultants is no longer integral to the project, but it is central to the City's parking modernization effort that was launched in August 2012 prior to the term sheet. Therefore, as originally envisioned, the costs of the parking study should be part of the City's parking modernization effort rather than an expense under the ESC project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to adjust project revenue and expenditure budgets as necessary for the ESC Project (I02000500) to account for reimbursable expenses as set forth in the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement.
- Section 2. The City Manager or his designee is authorized to enter into or amend agreements related to reimbursable ESC project expenses under the terms of the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement in an amount not to exceed \$400,000.
- Section 3. The City Attorney or his designee is authorized to enter into or amend agreements related to reimbursable ESC legal expenses under the terms of the Arena Design and Construction Agreement and the Property Acquisition Cost, Defense and Indemnity Agreement in an amount not to exceed \$1.18 million
- Section 4. The City Manager or his designee is authorized to move \$435,000 in expenditure budget from the ESC Project (I02000500) to the Parking Fund Contingency.