



City of Killeen

Legislation Text

File #: PH-18-014A, **Version:** 1

Consider a memorandum/resolution ratifying an agreement with Naman Howell Smith & Lee for legal services related to McLean Construction v. The City of Killeen.

DATE: June 12, 2018

TO: Ronald L. Olson, City Manager

FROM: Kathy Davis, City Attorney

SUBJECT: Ratify Agreement with Naman Howell Smith & Lee for Legal Services

BACKGROUND AND FINDINGS:

On February 23, 2018, the City of Killeen was sued by McLean Construction related to a dispute over the responsibility for failing roadway work performed on Stagecoach Road and Lowes Boulevard by McLean Construction. In a previous closed session on this matter, Council indicated its desire to strongly defend this lawsuit, to include hiring outside counsel. In light of that guidance, the City Attorney's Office engaged the services of Naman Howell Smith & Lee ("NHSL") to assist as this lawsuit is not covered by TML's services. NHSL has a construction law expert on staff, David LeBas, as well as Roy Barrett, who has been the city's primary litigator for many years and is very familiar with the City.

Based upon our past experience with litigation costs, we initially believed that formal City Council approval would not be required for the engagement letter, and it was signed by Assistant City Manager Dennis Baldwin on February 27, 2018. However, we have since been advised that litigation involving construction disputes are more expensive than other types of litigation in which the City is usually involved and will also require the hiring of an expert, which further increases the expense. As a result, we will spend more than \$50,000 in a single fiscal year. Accordingly, the City Council is being asked to ratify the Assistant City Manager's signature on the engagement letter. Expenses related to retaining an attorney are professional services and are exempt from competitive purchasing procedures.

THE ALTERNATIVES CONSIDERED:

The Council's alternatives are: (1) to ratify the Assistant City Manager's signature; or (2) not ratify the Assistant City Manager's signature.

Which alternative is recommended? Why?

It is recommended that the City Council ratify the Assistant City Manager's signature. Failure to do so will cause the City to expend more than \$50,000 with a single vendor in a fiscal year, which would put the City in violation of its policies.

CONFORMITY TO CITY POLICY:

Ratification of the Assistant City Manager's signature is in compliance with state law and city policy.

FINANCIAL IMPACT:

What is the amount of the expenditure in the current fiscal year? For future years?

It is estimated that between \$60,000 and \$100,000 will be required in this fiscal year. If this case is fully prepared and tried in a court of law, expenditures in the next fiscal year could reach \$400,000. The total estimated cost for legal services is \$500,000 over a period of two fiscal years.

Is this a one-time or recurring expenditure?

It is estimated that between \$60,000 and \$100,000 will be required in this fiscal year. If this case is fully prepared and tried in a court of law, expenditures in the next fiscal year could reach \$400,000.

Is this expenditure budgeted?

A budget amendment is required.

If not, where will the money come from?

Funding for the professional services agreement will come from the fund balance of the General Fund.

Is there a sufficient amount in the budgeted line-item for this expenditure?

Upon approval of the budget amendment.

RECOMMENDATION:

Staff recommends that the City Council ratify the Assistant City Manager's signature on the engagement agreement with Naman Howell Smith & Lee.

DEPARTMENTAL CLEARANCES:

Finance
Purchasing
City Manager

ATTACHED SUPPORTING DOCUMENTS:

Engagement Letter