

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 05/11/09		Item Number: <u>A-8</u>	
AGENDA ITEM: FOUR-FIFTHS VOTE REQUIREMENT - 1) Approval of an Amendment to an Existing Professional Services Agreement with Aspen Environmental Group for Assistance in the Review and Comment on the Implementation Plan and Related Documents for the Los Angeles County Baldwin Hills Community Standards District Relating to the Inglewood Oil Field ("CSD"); 2) Approval of Related Budget Amendment; and 3) Approval of Budget Amendment to Allocate Funds to the City's Legal Services Account to Cover Unanticipated Costs of Legal Services Provided by the City's Environmental Counsel, Greenberg Glusker for Litigation Filed Against the County of Los Angeles Relating to the County's Approval of the CSD and Certification of the Related Environmental Impact Report, and Supplemental Legal Review of the Implementation Plan and Related Documents for the CSD.			
Contact Person/Dept.: Sherry Jordan/CDD; and Heather Baker/City Attorney		Phone Number: (310) 253-5746; and (310) 253-5660	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: Yes ☐ No ☒		Action Item: Yes ☒ No ☐	
Public Notification: Master E-Mail Notification List (05/11/09).			
Department Approval: Sol Blumenfeld (05/06/09); Carol Schwab, City Attorney (by H. Baker) (05/06/09)		City Attorney Approval: Carol Schwab (by H. Baker) (05/06/09)	
City Controller Approval: Jeff Muir (05/06/09)		City Manager Approval: Jerry Fulwood (05/06/09)	
<u>RECOMMENDATION:</u> Staff recommends the City Council: 1) Approve an amendment to an existing professional services agreement with Aspen Environmental Group ("Aspen") for assistance in the review and comment on the Implementation Plan and related documents for the Los Angeles County Baldwin Hills Community Standards District Relating to the Inglewood Oil Field ("CSD"); and, 2) Approve a budget amendment to cover the cost of the amendment to the Aspen agreement, in the amount of \$20,000. This budget amendment requires a four-fifths vote of the City Council; and			

City of Culver City, California
City Council Agenda Item Report

3) Approve a budget amendment to allocate funds to the City's legal services account to cover unanticipated costs of legal services provided by the City's environmental counsel, Greenberg Glusker* for litigation filed against the County of Los Angeles (the "County") relating to the County's approval of the CSD and certification of the related Environmental Impact Report ("EIR"), and supplemental legal review of the Implementation Plan and related documents for the CSD, in the amount of \$100,000. This budget amendment requires a four-fifths vote of the City Council.

*As the City has an existing legal services agreement with Greenberg Glusker, which covers the scope and type of services described herein, this item does not require the approval of a contract amendment.

BACKGROUND / DISCUSSION:

Amendment to Aspen Agreement:

On June 23, 2008, the City Council approved a budget amendment and a professional services agreement with Aspen in the amount of \$148,770, to assist the City with its review and response to the Draft Environmental Impact Report (DEIR) prepared by the County for the establishment of the CSD and assist City staff with review and revisions to the City's current oil well regulations and oil drilling permit application submittal requirements.

On October 6, 2008, the City Council approved an amendment to the existing agreement with Aspen (and a related budget amendment) in the amount of \$28,796, for Aspen's continued assistance with the review and response to the CSD and DEIR due to the unexpected release of multiple versions of the CSD, which resulted in substantially more work by staff and Aspen.

Provisions contained within the adopted CSD require the County to adopt an Implementation Plan, which includes many other related documents, including, but not limited to: an Air Monitoring Plan, Odor Minimization Plan, and an Accumulated Ground Movement Plan (the "Plans"). Under the requirements of the CSD, the oil well operator, Plains Exploration and Petroleum ("PXP") is required to submit these Plans as well as others.

On Monday, April 27, 2009, the City Council directed staff to ensure that the Plans are reviewed and that comments are provided to the County. Therefore, staff is requesting that Council approve an amendment to the existing agreement with Aspen in an additional amount not to exceed \$20,000 to cover such review. As has

City of Culver City, California
City Council Agenda Item Report

been experienced throughout this process, staff may need to request additional funds as this process continues.

Allocation of Additional Funding for Legal Services:

Because of the technical nature and the large volume of information that is needed to be reviewed relating to the DEIR and CSD within a relatively short time frame, the City Council authorized staff to utilize technical and legal consultants with expertise in analyzing the complex environmental issues that arise with oil and gas production. The legal consultant, Greenberg Glusker, is an experienced and knowledgeable firm with an expertise in land use, environmental and oil and gas production law. Greenberg Glusker successfully assisted the City in the past with other environmental issues, including the clean-up of abandoned oil wells in Culver City Park, which led to the City's ability to reclaim and use valuable park space for City recreational amenities such as the Skateboard Park and Dog Park. In addition, they have advised the City on environmental compliance issues, including NPDES permits and waste disposal.

The City Council allocated \$50,000 in the 2008-2009 budget for legal services for the review of the DEIR and CSD documents. The significant issues raised, voluminous County data which needed to be analyzed, and multiple versions of the CSD and substantial changes to the Final EIR, all required review and evaluation by Greenberg Glusker, as well as staff, which resulted in an increase in the legal costs incurred exceeding those originally contemplated during the budget process. In addition, on November 26, 2008, the City filed a lawsuit against the County challenging its approval of the CSD and certification of the Final EIR, citing inadequacies and legal defects. The costs of litigation were also not previously budgeted.

As a result, on December 22, 2008, the City Council authorized a budget amendment in the amount of \$277,000 for legal services provided by Greenberg Glusker. This amount included \$127,000 to reimburse the legal services account for the amount already expended in excess of the originally budgeted amount of \$50,000; and the amount of \$150,000 to fund the cost of the pending litigation against the County.

At this time, the litigation costs are more than anticipated due to PXP's counsel taking a very aggressive approach to this litigation. In order to continue with this litigation, we are requesting an additional \$100,000 to cover the costs of litigation through the end of the fiscal year and any supplemental legal review of the Plans for the CSD. We may need to request additional funding during the 2009-2010 budget approval process depending on the status of the litigation. While the City Attorney's Office is overseeing and participating in the litigation and review of the Plans, the

City of Culver City, California
City Council Agenda Item Report

expertise of Greenberg Glusker will be extremely valuable to achieve a successful outcome in this matter.

FISCAL ANALYSIS:

Amendment to Aspen Agreement:

Budget amendments in the total amount of \$177,566 were approved from General Fund unappropriated reserves to fund the original contract and first amendment. The total amount needed to cover both the existing contract, first amendment and the requested second amendment is \$197,566 (includes 15% contingency). This fee includes review of the DEIR and CSD standards and preparation of comments (including the comparison of the City's comments with those made by the Greater Baldwin Hills Alliance), which work has already been completed; review and revisions to the City's current oil well regulations and oil drilling permit application submittal requirements, which work is ongoing; and the most recent task of reviewing and commenting on the Implementation Plan and related documents for the CSD.

A budget amendment for \$20,000 from General Fund unappropriated reserves is needed to fund this second amendment to the existing agreement. There are sufficient available funds within the General Fund reserve to cover this request. A 4/5ths vote is required for a budget amendment.

Additional Funds for Legal Services:

A budget amendment for \$100,000 from General Fund unappropriated reserves is requested for the legal services provided by Greenberg Glusker to continue with the litigation against the County, and provide supplemental legal review of the Plans for the CSD. There are sufficient funds within the General Fund reserve to cover this request. A 4/5ths vote is required for a budget amendment.

ATTACHMENT:

None.

MOTION:

That the City Council:

City of Culver City, California
City Council Agenda Item Report

1. Approve a budget amendment to appropriate \$20,000 from General Fund unappropriated reserves to the Planning Division's Other Contractual Services account (10152100.619800); and,

A budget amendment requires a 4/5ths vote.

2. Approve an amendment to the existing professional services agreement with Aspen (Contract No. 2008-084) for an additional amount not to exceed \$20,000 (for a total contract amount not-to-exceed \$197,566); and,
3. Authorize the City Attorney to review/prepare the necessary documents and authorize the City Manager to execute such documents on behalf of the City; and,
4. Approve a budget amendment to transfer \$100,000 from General Fund unappropriated reserves to the City Attorney's Legal Services Account No. 10113100.611300 for legal services provided by Greenberg Glusker.

A budget amendment requires a 4/5ths vote.