

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: January 5, 2007

IBA Report Number: 07-04

City Council Docket Date: January 9, 2007

Item Number: 331

Subject: Authorization of Contract for Independent Oversight Monitoring Services

OVERVIEW

This item requests funding for and approval of a contract with an Independent Consultant for three years as required by the Securities and Exchange Commission order of November 14, 2006. In addition, the consultant will serve the function of the Oversight Monitor as recommended by the Audit Committee in their report of August 8, 2006.

FISCAL/POLICY DISCUSSION

The Mayor is proposing contracting with Edwards Angell Palmer & Dodge LLP, with Stanley Keller as lead, to serve as the Independent Consultant. As recommended by Kroll, the Mayor has made this selection in consultation with representatives of the City Council, as well as other City officials. During December, three candidates were interviewed by the Mayor and his staff as well as representatives from the City Council, the City Attorney and his staff, the IBA and others. Based on Mr. Keller's excellent qualifications, and that of the firm, the IBA concurs with the Mayor's selection.

Pursuant to the SEC Order, the City must retain this Independent Consultant at its own cost. The proposal is a not-to-exceed contract of \$4 million, \$2 million of which is expected to be expended during the balance of Fiscal Year 2007. This accelerated rate of expense in the initial stages is due to a requirement that the Consultant submit the first report within 120 days of his engagement and the inevitably steep learning curve for this short period of time. Funding is provided in accordance with the approved cost allocation methodology, across City funds. Since the General Fund's Public Liability Fund is exhausted, a transfer from the Unallocated Reserve is required. No update on the status of the Unallocated Reserves is provided with this action, as this office has requested many times. The Council should always have before them the latest "reserves status" when they are being asked to transfer these funds. Based on the IBA's latest approximation as reported in IBA Memo 06-30 on December 1, 2006, we estimate that

the balance of the Unallocated Reserve would stand at \$49,923,337 after the transfer of \$1,417,400 to the Public Liability Fund. We suggest that the CFO provide an update on the reserves status at the earliest opportunity and no later than with the next action that may request City Council action to withdraw further monies from the reserve.

Review of the contract shows that the Mayor and City Attorney have taken pains to provide strong accountability for consultant expenditures. There are firm reporting and invoicing requirements, a requirement for a submission of their budget to the Mayor, City Council and City Attorney, and precise clauses for revisions to budget, extenuating circumstances, qualifying expenses and extensions to the contract. In addition, this contract does provide a full scope of work that is consistent with the SEC Order.

Based on the materials provided and the SEC Order, the IBA supports the recommendation of the Mayor on this item. The IBA suggests one clarification with respect to the Consultant's reporting requirements as detailed on page 2. The contract states that "Not later than 120 days after the date of this Agreement, and thereafter within 60 days of the anniversary date of this Agreement, the Firm shall provide to the City a report as required by the SEC's Order concerning its review and/or assessment of the City's internal policies, procedures and internal controls regarding financial disclosures...". The IBA suggests that these reports shall be required to be delivered to the City at a public meeting of the City Council in order to provide for enhanced understanding for City officials and the public. We note that provision B3 of the contract states that "the Firm shall make itself available to the City at least biannually at such times as the City shall reasonably require in order to report to the City Council regarding implementation of the SEC Order." While this does not specifically provide for an annual presentation of the reports to the City Council, we recognize that it should allow for a frequency greater than every other year when reasonable. We suggest that the Council clarify that presentation of the reports be specifically acknowledged as a reasonable request for the Consultant's appearance more frequently than the biannual provision.

CONCLUSION

The IBA supports the approval of this contract and the required funding, in compliance with the SEC's Order. Additionally, we recommend that the City Council require the annual public reports as described above.

[SIGNED]

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[SIGNED]

APPROVED: Andrea Tevlin
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