

To: Mayor and Council Members

Date: June 3, 2016

From: City Attorney

Subject: Resolution of the Council of the City of Beaumont Authorizing the Payment of Reasonable Legal Fees Incurred by Current City Professional Service Providers That May Be Called As Witnesses to Provide Documents, Evidence and Testimony in Furtherance of the Securities & Exchange Commission Investigation

Recommendation

It is recommended that the City Council consider adopting the proposed Resolution authorizing the payment of legal fees by current City professional service providers that may be called as witnesses to provide documents, evidence and testimony in furtherance of the SEC investigation of the City.

Discussion

As Council is aware, the SEC has initiated a non-public investigation relating to City activities. In connection with the investigation, the SEC has and will continue to gather documents, evidence and testimony.

The current City Council's efforts to move forward and place the City on a sustainable path will require the continued assistance of qualified professionals such as financial advisors, auditors, accountants and municipal management professionals. Cities of comparable size as Beaumont customarily engage the services of these types of professional services providers. These services are imperative for the City to continue on its path forward. However, in light of the SEC's investigation, the City's professional service providers may be called as witnesses in connection with the SEC investigation. It will be difficult for the City to secure and retain the assistance of the necessary and essential professional service providers if professionals hired by the City are forced to incur legal fees as witnesses in the SEC investigation of the City.

Section 995.9 of the California Government Code authorizes the City to defend witnesses called to testify in criminal, civil or administrative proceedings when providing such a defense would serve public interests. Authorization of such payment is necessary to ensure that professional service providers currently assisting the City with budgeting, reconciliation, auditing, financial and related services are not forced to incur legal expenses due to providing the City with these essential services as they work to assist the City with investigating and correcting past City practices and placing the City on a sustainable path.

In summary, Staff is requesting that the City Council find that payment of the reasonable legal fees contemplated herein is essential to the City's ability to secure and retain qualified professional service providers and therefore is in the public's interest and serves a valid public purpose. The proposed resolution authorizes the City to pay reasonable legal fees incurred by said entities or individuals in providing documents, evidence and testimony to the SEC as witnesses in furtherance of the SEC's pending investigation. The legal fees contemplated herein are for a maximum combined sum of \$75,000 as further set forth in the attached Resolution. The Resolution also reserves the City's right to approve legal counsel and to reject payment of fees that are not reasonable or that do not serve a public purpose.

John O. Pinkney, Esq.
Beaumont City Attorney

Resolution No. 2016

**RESOLUTION OF THE COUNCIL OF THE CITY OF
BEAUMONT AUTHORIZING THE PAYMENT OF
REASONABLE LEGAL FEES INCURRED BY CURRENT CITY
PROFESSIONAL SERVICE PROVIDERS THAT MAY BE
CALLED AS WITNESSES TO PROVIDE DOCUMENTS,
EVIDENCE AND TESTIMONY IN FURTHERANCE OF THE
SECURITIES & EXCHANGE COMMISSION INVESTIGATION.**

WHEREAS, the Securities & Exchange Commission (“SEC”) has initiated a non-public investigation relating to City activities and said investigation will likely involve the testimony and production of documents by witnesses who are currently providing professional services to the City and otherwise assisting the City of Beaumont (“City”) in its recovery, budgeting, auditing and reconciliation efforts. These professional service providers may be requested to provide the SEC with documents, evidence and testimony in furtherance of the SEC’s investigation of the City; and

WHEREAS, Section 995.9 of the California Government Code authorizes the City to defend witnesses called to testify in criminal, civil or administrative proceedings when providing such a defense would serve public interests; and

WHEREAS, such authority is discretionary, and may be based on any relevant factors including, but not limited to, whether providing such defense serves the public interest; and

WHEREAS, the current City Council’s efforts to move forward and change past City fiscal and management practices and place the City on a sustainable path will require the assistance of qualified professionals, including but not limited to, financial advisors, auditors, accountants and municipal management professionals. The City’s ability to secure and retain the assistance of such professional service providers will be severely impaired if said providers are forced to incur legal fees as witnesses in the SEC investigation of the City; and

WHEREAS, the public’s interest and a public purpose will be served by the City’s payment of reasonable legal fees incurred by current City professional service providers that are requested to provide documents, evidence and testimony to the SEC as witnesses in the SEC’s pending investigation. Authorization of such payment is necessary to ensure that professional service providers currently assisting the City with budgeting, reconciliation, auditing, financial and related services are not forced to incur legal expenses due to providing the City with these essential services as they work to assist the City in correcting past City practices and to place the City on a sustainable path.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Beaumont as follows:

1. The above Recitals are true and correct and are incorporated herein by reference.
2. The City Council finds that payment of the reasonable legal fees contemplated herein is essential to the City's ability to secure and retain qualified professional service providers and therefore is in the public's interest and serves a valid public purpose.
3. Upon written request by an individual or entity currently providing services described herein to the City, the City may pay reasonable legal fees incurred by said entities or individuals in providing documents, evidence and testimony to the SEC as witnesses in furtherance of the SEC's pending investigation of the City. City Council approval shall be required prior to payment of legal fees contemplated herein and only legal fees from law firms or attorneys approved by the City Manager and the City's SEC legal counsel shall be eligible for payment by the City. The Council reserves the right, in its discretion, to reject fees it determines are unreasonable.
4. The total expenditures for legal fees authorized herein for all current City professional service providers called as witnesses in the SEC investigation shall not exceed a combined sum of \$75,000. Any request to increase this limit shall be submitted to the City Council for consideration.
5. Notwithstanding anything herein to the contrary, the City may at any time, in its sole discretion, cease to pay or refuse to pay legal fees incurred by a witness/professional service provider where the Council determines that the payment of said fees is not in the public's interest and/or does not serve a public purpose. The City shall not pay legal fees for any witness/professional service provider where any of the following occurs:
 - Criminal charges are initiated against the witness/professional service provider or his/her company/firm;
 - The SEC issues a Wells notice or initiates any type of civil or administrative proceeding against the witness/professional service provider or his/her company/firm;
6. This resolution authorizes the payment of legal fees only and in no way obligates the City to provide any witness/professional service provider with indemnity.

MOVED, PASSED AND ADOPTED this 7th day of June, 2016 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Mike Lara, Mayor

ATTEST:

CITY CLERK