

Mayor and Council Communication

DATE: 10/27/20

M&C FILE NUMBER: M&C 20-0815

LOG NAME: 12GAMEROOM ADDL FUNDS OCT 2020

SUBJECT

(ALL) Adopt Resolution Authorizing an Increase of \$50,000.00 in the Total Amount to be Paid to the Law Firm of Kelly Hart & Hallman, LLP, as Outside Legal Counsel for Legal Matters Relating to Lawsuits Challenging the City's Game Room Ordinances for a Total Amount of \$520,000.00

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution authorizing an increase in the amount of \$50,000.00 to the maximum amount to be paid to the law firm of Kelly Hart & Hallman, LLP, as outside legal counsel for legal services related to lawsuits challenging the City's Game Room Ordinances, for a total amount of \$520,000.00.

DISCUSSION:

On August 18, 2015, by Mayor and Council Communication M&C G-18529 and Resolution No. 4501-08-2015, the City Council approved the Law Firm of Kelly Hart & Hallman, LLP, as legal counsel to provide legal representation regarding any lawsuit filed challenging the City's game room ordinances. The City has been sued in three separate lawsuits challenging the City's new game room ordinances. The three separate lawsuits are as follows: Cause No. 48-276440-15, *Apolonio Garcia, et ux. v. City of Fort Worth*, Cause No. 17-276483-15, *Jack Davis, et al. v. City of Fort Worth* and Cause No. 352-276568-15, *AFAD Investments, Inc. v. City of Fort Worth*. In 2017, the Court entered a judgment in the *Davis* litigation. Both parties filed an appeal and the Second Court of Appeals issued its opinion in October, 2018. The City and Plaintiffs filed petitions for review in the Texas Supreme Court. The Texas Supreme Court issued an opinion favorable to the City and remanded to the Court of Appeals which has requested briefing. Because of the complex nature of the litigation and the importance to the City, the City hired the Law Firm of Kelly Hart & Hallman, LLP, to represent the City in any litigation related to the game room ordinances.

On May 3, 2016, by Mayor and Council Communication M&C G-18724 and Resolution No. 4621-05-2016, the City Council approved an additional \$100,000.00 beyond the original \$100,000.00 for a total of \$200,000.00 to represent the City in this litigation.

On February 21, 2017, by Mayor and Council Communication M&C G-18949 and Resolution No. 4746-02-2017, the City Council approved an additional \$100,000.00 for a total of \$300,000.00 to represent the City in this litigation.

On September 19, 2017, by Mayor and Council Communication M&C G-19097 and Resolution No. 4844-09-2017, the City Council approved an additional \$50,000.00 for a total of \$350,000.00 to represent the City in this litigation.

On June 5, 2018, by Mayor and Council Communication M&C G-19288 and Resolution No. 4941-06-2018, the City Council approved an additional \$10,000.00 for a total of \$360,000.00 to represent the City in this litigation.

On January 9, 2019, by Mayor and Council Communication M&C G-19453 and Resolution No. 5033-01-2019, the City Council approved an additional \$50,000.00 for a total of \$410,000.00 to represent the City in this litigation.

On December 17, 2019, by Mayor and Council Communication M&C 19-0407 and Resolution No. 5170-01-2019, the City Council approved an additional \$20,000.00 for a total of \$430,000.00 to represent the City in this litigation.

On April 7, 2020, by Mayor and Council Communication M&C 20-0212 and Resolution No. 5208-04-2020, the City Council approved an additional \$40,000.00 for a total of \$470,000.00 to represent the City in this litigation.

The litigation is still pending and it is estimated that an additional amount of approximately \$50,000.00 beyond the current authorized \$470,000.00 will be needed for the legal services necessary to bring these lawsuits to a successful conclusion.

Adoption of this Resolution will increase the amount of compensation to be paid to the Law Firm of Kelly Hart & Hallman, LLP, by \$50,000.00, for a total amount of \$520,000.00.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are available in the current operating budget, as previously appropriated, in the Risk Financing Fund to support the approval of the above recommendation and adoption of the resolution. Prior to any expenditure being incurred, the Legal Department has the responsibility to validate the availability of funds.

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