



Item Number: 13

City Council / Board of Directors

Written Communications

Meeting of: March 21, 2023

Submitted By:

Keith Metzler, City Manager
Andre de Bortnowsky, City Attorney

Subject:

Approval of an Attorney Client Contingency Fee Agreement with the Law Office of Bryan M. Grundon

Recommendation:

It is the recommendation that the Honorable City Council consider approval of an Attorney Client Contingency Fee Agreement with the Law Office of Bryan M. Grundon to pursue collection of the judgement amount awarded to the City of Victorville (the "City") and the Southern California Logistics Airport Authority (the "Authority") in the KND lawsuit and authorize the execution thereof by the City Manager.

Fiscal Impact:

This is a contingency fee arrangement whereby the Law Office of Bryan M. Grundon will seek to recover a judgement in favor of the City and the Authority in the total amount of \$728,130.59. Under the Contingency Fee Agreement, the City will be obligated to pay an initial amount of \$1,500.00 plus 30% of any gross recovery amount collected along with certain related costs and expenses incurred in connection with the collection efforts. No additional appropriations will be required at this time.

Background:

This matter arises from the successful defense of a lawsuit previously filed by Kinsell, Newcomb, and DeDios Inc. ("KND") against the City and the Authority. The lawsuit was filed by KND in 2016 seeking compensation for amounts incurred by KND in connection with the prior Securities Exchange Commission ("SEC") investigation of the 2007 Southern California Logistics Airport Authority Bond Issue, which resulted in KND being found liable for violation of Section 17(a)(2) of the Federal Securities Act.

In connection with the SEC action, KND had previously entered into a Mutual Settlement and Release Agreement ("MSRA") in 2015. Notwithstanding that agreement, KND argued

that it was entitled to indemnification under a Forward Bond Purchase Agreement that was associated with the bond financing transaction.

The Superior Court of the State of California found in favor of the defendants, the City and the Authority, and found that the MSRA was a valid settlement agreement that barred any indemnification under the separate Bond Purchase Agreement. The MSRA covered SEC action as well as any future actions related thereto.

After successfully defending the lawsuit, the City and the Authority sought an award of attorney's fees, which was granted on December 9, 2022.

Discussion:

Attached for City Council consideration is a proposed Attorney-Client Contingency Fee Agreement with the Law Office of Bryan M. Grundon for the purposes of having said law firm pursue collection of the Court's judgement award in the amount of \$728,130.59.

The proposed agreement is a hybrid contingency arrangement in that the City will pay an initial amount of \$1,500.00 and then will compensate the firm in the amount of 30% of any gross recovery amount that the law firm is able to obtain. In addition, the agreement provides for the payment of costs and litigation expenses provided, however, that to the extent such costs are expected to exceed the amount of \$500, the firm will require further approval from the City.

Staff is seeking the City's approval of the Contingency Fee Agreement and authorization to have the City Manager sign said agreement.

Attachments: A. Contingency Fee Agreement