



Legislation Text

File #: 23-1729, **Version:** 1

Resolution to Approve Amendment Number 3 to the Professional Services Agreement with Rosati, Schultz, Joppich, & Amtsbuechler P.C., for Legal Services Relative to *Platt Convenience, Inc. v. City of Ann Arbor* (\$315,000.00 amendment; \$1,125,000.00 total contract)

Below for your review and approval is a resolution to approve Amendment Number 3 to the Professional Services Agreement with Rosati, Schultz, Joppich, & Amtsbuechler P.C., for Legal Services Relative to *Platt Convenience, Inc. v. City of Ann Arbor*.

In October 2021, Platt Convenience, LLC, filed a lawsuit directly with the Michigan Court of Appeals on behalf of a purported class challenging the City's stormwater fees as unlawful taxes imposed in violation of the Headlee Amendment, Mich. Const. 1963, Art 9, Secs 25-33, seeking to invalidate the City's ability to charge stormwater fees and for the return of stormwater fees collected from the purported class for the period starting one year prior to the date the complaint was filed (October 22, 2021) through judgment (if any) and fees and expenses.

The City Attorney's Office selected Rosati, Schultz, Joppich & Amtsbuechler, P.C. as the law firm to provide specialized legal services for the *Platt Convenience* litigation because of its experience in defending other communities against similar utility fee lawsuits, its familiarity with the plaintiff's attorneys, its specialized experience in municipal law and municipal litigation, because it was already handling the *Hahn* litigation on the City's behalf, and its ability and capacity to handle the defense of this lawsuit.

In December 2021 Council approved an initial contract with the Firm for \$90,000.00 for the initial response stage of the litigation, and as the litigation progressed and as the extent of legal services needed to defend the lawsuit became known, in July 2022, Council approved Amendment 1 for an increase of \$520,000.00, and Amendment 2 in June 2023 for an additional \$200,000.00 which is expected to be exhausted soon.

Since the approval of Amendment 2, there has been intensive litigation relating to the parties' cross-motions for summary disposition and the plaintiff's motion for class certification, which has culminated in the Special Master's Report from Judge Julia Owdziej of the Washtenaw County Circuit Court in August 2023.

Additional funding is needed for legal services from Rosati Schutz relating to proceedings before the Michigan Court of Appeals as it considers the Special Master's Report and possibly proceedings beyond that.

The City Attorney requests approval of Amendment Number 3 to the Professional Services Agreement with Rosati, Schultz, Joppich, & Amtsbuechler P.C. in the amount of \$315,000.00 for legal services relative to *Platt Convenience*, which will result in a total contract amount of \$1,125,000.00.

Rosati, Schultz, Joppich, & Amtsbuechler P.C. complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances.

Budget/Fiscal Impact: Funding for these services is available in the approved FY 24 Stormwater Sewer System Operations and Maintenance budget.

Prepared by: Atleen Kaur, City Attorney
Tim Wilhelm, Deputy City Attorney

Reviewed by: Marti Praschan, Chief Financial Officer

Approved by: Milton Dohoney Jr., City Administrator

Whereas, Platt Convenience, Inc. has filed a lawsuit against the City of Ann Arbor;

Whereas, The Rosati, Schultz, Joppich, & Amtsbuechler P.C. law firm was selected to provide specialized legal services for the City relative to its defenses in the *Platt Convenience* litigation;

Whereas, City Council approved an initial Professional Services Agreement with the Firm in the amount of \$90,000.00 and Amendment Number 1 in the amount of \$520,000.00 (total amount of \$610,000.00) and Amendment Number 2 in the amount of \$200,000.00 (total amount of \$810,000.00) all of which is nearing exhaustion due to intensive litigation in the case;

Whereas, The City has a continued need for specialized legal services to defend the *Platt Convenience* litigation, and Rosati, Schultz, Joppich, & Amtsbuechler P.C. is well qualified to continue to provide such legal services;

Whereas, Funding for these services was included in the FY24 Stormwater Sewer System Fund Operations and Maintenance Budget; and

Whereas, Rosati, Schultz, Joppich, & Amtsbuechler P.C., complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances;

RESOLVED, That City Council approve Amendment Number 3 to the Professional Services Agreement with Rosati, Schultz, Joppich, & Amtsbuechler P.C., in the amount of \$315,000.00 for continued legal services relative to *Platt Convenience, Inc. v. City of Ann Arbor* for a total contract amount of \$1,1250,000.00;

RESOLVED, That the funding for these legal services, as appropriate, is made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to sign the amendment after approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That the City Administrator be authorized to take the necessary actions to implement this resolution.