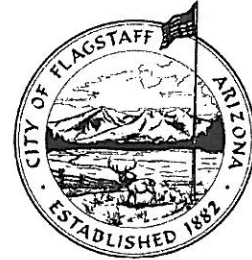


**CITY OF FLAGSTAFF
STAFF SUMMARY REPORT**

To: Honorable Mayor and City Council
From: Harry M. Lane, Deputy City Attorney, ext. 2401
Date: June 2, 2010
Meeting Date: June 8, 2010

Title: Authorization of Payment for Legal Services to Mangum Wall Stoops & Warden, P.L.L.C., Concerning A. Miner Contracting, Inc. v. City of Flagstaff and Related Presidio in the Pines Bankruptcy Issues.

Recommended Action: Authorize payment for legal services to Mangum Wall Stoops & Warden in the amount of \$35,000 for services rendered and authorize payment of up to an additional \$40,000 to conclude the matters discussed below.

ACTION SUMMARY:

The City retained the Flagstaff law firm of Mangum Wall Stoops & Warden, P.L.L.C. ("Mangum Wall") to defend an action against the City and other parties for mechanic's lien foreclosure, unjust enrichment and other counts filed by A. Miner Contracting, Inc. ("A. Miner") with a demand amount of \$1,825,043, plus interest, on or about December 5, 2007, in Coconino County Superior Court arising out of certain work alleged to have been performed by A. Miner at the Presidio in the Pines subdivision ("Presidio") in Flagstaff. Mangum Wall's services also include providing legal advice concerning Presidio bankruptcy issues, including negotiations with the performance bond surety, ACIC, regarding disposition of the performance bonds for public infrastructure at Presidio.

DISCUSSION:**Background/History:**

The A. Miner lawsuit arose out of Presidio's developing financial problems, which culminated in Presidio's owners filing a Chapter 11 bankruptcy petition, which was later converted into a Chapter 7, liquidation, bankruptcy. The A. Miner litigation commenced in Coconino County Superior Court and Mangum Wall presented a well pled motion to dismiss the complaint. The Bankruptcy Court stayed the Superior Court case before the City's motion was considered by the court, and the parties agreed to transfer the case to the Bankruptcy Court to resolve the issue in a more timely manner.

Mangum Wall filed another motion to dismiss for determination by the Bankruptcy Court, which

was denied by that court. The City has authorized Mangum Wall to file a motion for leave to file an appeal of the Bankruptcy Court's decision to the U. S. District Court, and the City currently awaits a ruling on that motion.

The City Council has previously authorized payments to Mangum Wall of up to \$55,000 in connection with this litigation, which has been exhausted. Additional fees and costs have accrued in the amount of \$35,000 for the A. Miner litigation, as well as for related matters concerning the Presidio bankruptcy, Presidio's inability to complete public infrastructure, and use of the performance bonds for the public infrastructure. In addition to requesting authorization for payment of approximately \$35,000 to Mangum Wall as discussed above, City staff seeks authorization to pay Mangum Wall up to a further \$40,000 for services to be performed to, hopefully, conclude the A. Miner litigation and either reach an agreement with ACIC, the surety behind the performance bonds, or call the bonds. The total amount of authorization requested is \$75,000, of which \$35,000 is for amounts accrued to date.

Key Considerations:

Approval of the legal services fees with Mangum Wall would allow the City to compensate the law firm for services rendered and allow the City to continue to employ Mangum Wall for the ongoing A. Miner litigation, any further Presidio bankruptcy related matters and continued negotiations with ACIC regarding the public improvement bonds.

Community Benefits and Considerations:

The City's continued use of Mangum Walls' services would benefit the City in the continued defense against the A. Miner lawsuit and conclusion of that matter, and Mangum Wall's assistance in either structuring an agreement with ACIC or calling the bonds for further development of the Presidio public infrastructure would benefit the community at large.

Community Involvement:

Community Development staff have held numerous meetings with Presidio lot owners and their representatives regarding completion of public and private infrastructure at Presidio and use of the performance bond funds.

Financial Implications:


The City has paid Mangum Wall approximately \$55,000.00 in legal fees and costs to date in connection with the A. Miner litigation and anticipate paying an additional \$35,000 for accrued but unpaid fees and up to the further amount of \$40,000 to conclude all current matters discussed in this report. However, due to the uncertainties of the litigation process, the longer-term financial implications are difficult to ascertain.

Options and Alternatives:

Approve payments of legal fees as proposed.
Approve payments of legal fees as modified.

Attachments/Exhibits:

N/A



Department Head

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
_____	BIDS/PURCHASES	_____	_____	FINANCE/BUDGET	_____
_____	GRANTS/CONTRACTS	_____	_____	IGAS	_____
_____	LEGAL	_____	_____	_____	_____

DATE OF COUNCIL APPROVAL: _____