



## Legislation Text

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**File #:** 19-095, **Version:** 1

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*Report Prepared by: Phaedra A. Norton, City Attorney*

**SUBJECT:** Approval of Retention of Atkinson Farasyn, LLP as Special Counsel to Assist with the Negotiation and Preparation of Development Agreements, Including Pre-Annexation Development Agreements, for the Not to Exceed Amount of the Cost of Services Related to a Developer's Specific Project; Authorization of a Budget Amendment for Fiscal Year 2018/2019 to Accept and Appropriate Developer Deposits to Pay for the Cost of the Negotiation and Legal Review of Development Agreements, Including Pre-Annexation Development Agreements

### REPORT IN BRIEF

Considers retaining the law firm of Atkinson, Farasyn, LLP as Special Counsel for pre-annexation development agreements and appropriating developer deposits to pay for the cost associated with the negotiation and legal review of said agreements.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Amending the Fiscal Year 18/19 budget to receive the funds and increase cost recovery revenue for special counsel services and continually appropriate any funds received to pay for the costs related to the negotiation and legal review of development agreements; and,
- B. Authorizing the establishment of any additional accounts and/or revenue and expenditure lines within the City Attorney's budget as determined necessary and appropriate by the City's Finance Officer; and,
- C. Approving the Professional Services Agreement with Atkinson, Farasyn LLP to assist in the negotiation and legal review of Development Agreements, including Pre-Annexation Development Agreements, and authorize the City Manager or the Assistant City Manager to execute the same.

### ALTERNATIVES

- 1. Approve as recommended;
- 2. Modify the recommendation and provide direction to staff for further action; and,
- 3. Deny the request.

### AUTHORITY

Charter of the City of Merced Section 200 *et seq.*  
Government Code Section 65864.  
City Resolution 2005-101

## **DISCUSSION**

### Background

In 2005, the City Council adopted Resolution 2005-101, which outlines procedures to consider new development agreements by the City. Government Code Section 65865(b) authorizes cities to enter into pre-annexation agreements with those having a legal or equitable interest in real property within the City's sphere of influence. The pre-annexation agreement, once adopted, cannot become operative until the annexation process is complete. The agreement must provide a time period during which the annexation is to be completed. If the annexation is not completed within the time specified in the agreement, or any extension thereto, the agreement becomes null and void and of no legal effect.

Resolution 2005-101 also provides that a developer desiring a development agreement must provide some public benefit to balance the City's commitment to retain current regulations. This is designed to ensure that the City receives a good deal in return for development commitments. The procedures require a developer who desires to have a development agreement to deposit funds with the City to pay for the costs associated with negotiation and legal review of the agreement.

When this process was implemented in 2005, the City retained a former City Attorney from the City of Sunnyvale to assist us with negotiation and preparation of the Pre-Annexation Development Agreements. Valerie Armento served as the City Attorney of Sunnyvale for 14 years and as the City Attorney for South San Francisco for 4 ½ years. She has practiced public law since 1979. In addition to a law degree, she has her master's degree in regional planning. Ms. Armento's expertise in this area and familiarity with the City's pre-annexation development agreement procedures will greatly expedite the process for developers. Ms. Armento is currently with the firm of Atkinson, Farasyn, LLP, and she is available to assist the City. Her hourly rate is \$265.00 per hour, which is very reasonable for the level of expertise and experience of Ms. Armento.

The City would pay Ms. Armento's bills from the developer's deposit and either reimburse the developer with any balance remaining in the deposit if the fees and costs are less than the amount on deposit or bill the developer for the costs and fees if they exceed the deposit. As such, the special counsel services provided should not have a financial impact on the City.

The City Attorney recommends that the City Council approve the Agreement with Ms. Armento and make her services available on the City's behalf.

## **IMPACT ON CITY RESOURCES**

Fees associated with Developer's pre-annexation is paid with deposits from developers. No appropriation of City's funds needed.

## **ATTACHMENTS**

1. Legal Services Agreement with Atkinson Farasyn, LLP