



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 11/9/2021

Item Creation Date: 10/12/2021

LGL - Professional Services Agreement for McKool Smith, Korein Tillery, and Ashcroft
Sutton Reyes

Agenda Item#: 21.

Summary:

ORDINANCE approving and authorizing Professional Services Contingent Fee Agreement between City of Houston, Texas and **THE LAW FIRMS OF MCKOOL SMITH, P.C.; ASHCROFT SUTTON REYES LLC;** and **KOREIN TILLERY, LLC,** for Legal Services in connection with recovery of Unpaid Video Services Franchise Fees; making certain findings as required by State Law; providing for a Contingent Fee

Background:

The City Attorney recommends City Council approve an ordinance authorizing and approving an agreement between the City of Houston ("City") and McKool Smith, P.C.; Ashcroft Sutton Reyes LLC; and Korein Tillery, LLC law firms ("Firms") to represent the City in litigation to recover unpaid video services franchise fees from Netflix, Inc., Hulu LLC, and Disney+.

Netflix, Inc., Hulu LLC, and Disney+ ("VSPs") are providing video service in the City of Houston ("City") via broadband internet through wirelines facilities located at least partially in the public right-of-way. Chapter 66 of the Texas Utilities Code ("Chapter 66") requires entities that provide video service to pay each municipality in which it provides such service five percent of its gross revenue. These VSPs have not been paying the City Chapter 66 fees. Firms estimate that the damages could be \$4.9 million annually for future payments and \$22.38 million through 2019, exclusive of interest, penalty and attorney's fees for past due payments through 2019.

The City Attorney recommends the Firms because they specialize in complex litigation, have experience recovering unpaid municipal taxes and fees, and have knowledge of how VSPs and Chapter 66 operate. The Firms are representing the City of Dallas in the same lawsuit. Other Texas cities may be joining the lawsuit filed by the Firms. The Firms will represent the City on a contingency fee basis. Firms will fund the cost of litigation up front, so that no City funds need to be used to initiate and pursue litigation. Firms will be compensated by a percentage of the amount recovered from VSPs.

Legal services contingent fee agreements approved by municipalities are effective and enforceable after the Texas Attorney General reviews and approves the agreement under Section 2254.1038 of the Texas Government Code.

This recommendation is made pursuant to subsection 252.022(a)(4) of the Texas Government Local Code, which provides that "a procurement for personal, professional, or planning services" is exempt from the competitive requirements for purchase.

Hire Houston First: This procurement is exempt from the City's Hire Houston First Ordinance based on the department's determination that compliance with the ordinance would unduly interfere with contract needs.

Pay or Play: The Agreement requires compliance with the City's Pay or Play ordinance regarding health benefits for employees of City contractors. The Firm provides health benefits to eligible employees in compliance with City policy.

Fiscal Note: Revenue for this item is not included in the FY2022 Adopted Budget. Therefore, a Fiscal Note is required as stated in the Financial Policies.

M/WBE Participation: This professional services contract is being issued with a 10% MWBE goal, a goal reduction approved by the Mayor's Office of Business Opportunity. Firms have designated the law firm of Ana Hernandez and Associates PLLC, as their certified MWWBE.

Departmental Approval Authority:

DocuSigned by:

Arturo G Michel

Arturo G. Michel, City Attorney
Legal Department

Amount and Source of Funding:

\$0 Contingent Fee Agreement

Contact Information:

YuShan Chang

Senior Assistant City Attorney

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ATTACHMENTS:

Description

Public Notice
MWBE-McKool
MWBE-KT
POP-McKool
POP-KT
POP-Ashcroft
Affidavit of Ownership-Ashcroft
Affidavit of Ownership-McKool
Affidavit of Ownership- of Control
Fair Campaign -Ashcroft
Fair Campaign KT
Fair Campaign-McKool
Insurance-KT2
Insurance KT1
Insurance-McKool
Drug Forms - Ashcroft
Drug Forms-KT
Drug Forms-McKool
Ordinance`
Contract

Type

Public Notice
Backup Material
Backup Material
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Ordinance/Resolution/Motion
Contract/Exhibit