AM No. 10-247 (C12)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: December 7, 2010

SUBJECT: **APPROVE CONTRACT AMENDMENT FOR STOEL RIVES ON BNSF CORRIDOR LEGAL SERVICES**

I. RECOMMENDED ACTION:

Approve a contract amendment allowing Stoel Rives to continue to provide legal services related to proceedings with the Surface Transportation Board. These actions are intended to preserve the City's real property rights on the former BNSF rail corridor. Stoel Rives would also continue developing easement agreements within the corridor and resolve associated legal issues related to the corridor.

II. DEPARTMENT CONTACTS:

Craig Larsen, Park and Recreation Director	425-556-2310
Carolyn Hope, Senior Park Planner	425-556-2313

III. DESCRIPTION:

Stoel Rives has been representing the City on a number of legal issues pertaining to the former BNSF corridor since late 2009 including acquisition; easement agreements with King County, Sound Transit, and Puget Sound Energy; a legal proceeding with the US Department of Transportation's Surface Transportation Board (STB); and legal claims within the corridor since acquisition. The work with the Surface Transportation Board is of great importance to the City and has significant challenges that Stoel Rives is addressing on the City's behalf. The firm has invoiced the City for 98 percent of the allotted funding in the current contract; and therefore, staff has prepared a contract amendment to continue the work until July 1, 2011.

To date, about 60 percent of the total expenditures by Stoel Rives have been spent on the negotiations leading to the June acquisition of the corridor and easement development. The remaining 40 percent of the expenditures have occurred since August, when a GNP Rly, Inc. filed a petition with the STB to reactivate freight service on the Redmond Spur. Since that time, Stoel Rives has prepared the City's Comments in Opposition to the aforementioned petition, deposed people in association with the preparation of the comments, and responded to an lengthy discovery request by GNP Rly, Inc.

IV. IMPACT:

The financial impact of approving the contract is $195,000. This funding is included in the current Park and Recreation Department capital budget. Failure to approve the contract would hinder the City's ability to defend its rights within the corridor.

V. TIME CONSTRAINTS:

Stoel Rives is essential to our defense in the ongoing proceedings before the Surface Transportation Board. In addition, it is necessary to make progress on easement agreements before the end of the year. This contract will allow this work to continue.

VI. ALTERNATIVES:

City Council could choose not to approve the contract.

VII. LIST OF ATTACHMENTS:

A. Scope, Fee, Schedule

/s/ _____ 11/19/2010
Craig Larsen, Director of Parks and Recreation Date

Approved for Council Agenda_____/s/_____ 11/22/2010
John Marchione, Mayor Date

ATTACHMENT A – Scope, Fees, Schedule

EXHIBIT A
SCOPE OF WORK

Stoel Rives shall provide legal services in support of the former BNSF Corridor, such as:

- An exchange of easements with King County, in which Redmond will receive the County's trail easement, and the County will receive a wastewater easement;
- An agreement with Sound Transit in which the City will commit to convey a transit easement when the regional transaction closes, and Sound Transit will commit to reimburse any stakeholder whose infrastructure must move to accommodate the East Link rail system;
- An exchange of easements with PSE, in which PSE will secure utility easements for its existing gas and power infrastructure within and crossing the ROW, and PSE will authorize Redmond to maintain an existing trail on a PSE power line right of way.
- Legal services in support of possible BNSF Corridor litigation or other related issues

EXHIBIT B
FEE SCHEDULE

Matthew Cohen	$350
John Glowney	$350
Hunter Ferguson	$230

EXHIBIT C
PROJECT BUDGET & SCHEDULE

Milestone	Estimated New Expenditures
October - December 2010	$110,000
January - July 2011	$85,000
TOTAL CONTRACT	**$195,000**