



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 18-0220, Version: 1

SUBJECT

Approve the First Amendment to Outside Counsel Agreement with Bertrand, Fox & Elliot for Litigation Services in the Matter of Bagley v. Santa Clara County, et al.

REPORT IN BRIEF

Approval is requested for a First Amendment to the Outside Counsel Agreement with the law firm of Bertrand, Fox & Elliot for legal services and representation of the City in the matter of *Bagley v. Santa Clara County, et al.*, Case No. 16-CV-02250-PSG, currently pending in the United States District Court Northern District of California. The First Amendment to the Agreement is needed to cover the costs associated with proceeding to trial on this case, which are estimated to be \$100,000.

BACKGROUND

Gregory Fox, a trial attorney who specializes in the areas of municipal tort defense and constitutional and civil rights law, and partner in the law firm of Bertrand Fox & Elliot, was retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services and representation in tort cases and police liability and civil rights matters. Mr. Fox has extensive litigation experience and has aggressively litigated cases on behalf of the City, with a significant number of claims dismissed or adjudicated in favor of the City. The Agreement was entered in May 2016, and the not to exceed amount was \$100,000. The term of the Agreement expires in May 2019.

DISCUSSION

Mr. Fox is providing advice and representation on a number of matters, and provides on-call advice related to claims and litigation. This current case involves Plaintiff alleging civil rights violations relating to his arrest on December 22, 2012, by Sunnyvale Public Safety Officers. Plaintiff further alleges that the public safety officers somehow falsely procured a warrant and arrested him, and that he was subjected to excessive force by an unnamed public safety officer and K-9 public safety dog during his arrest and suffered injuries during the arrest. Plaintiff also alleges that persons from the offices of the Public Defender and District Attorney have conspired to violate his rights. The only cause of action left against the City is the excessive force claim. The trial is set for December 2018, and the court has ordered an Early Neutral Evaluation for April 19, 2018, in attempt to provide an assessment of the merits of the case by a neutral expert, which can possibly lead to an early resolution by settlement. Therefore, it is necessary to amend the Agreement to allow for an additional \$100,000 in potential legal expenses, including costs associated with the Early Neutral Evaluation and other costs associated with proceeding to trial, for a new not-to-exceed amount of \$200,000.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378 (b) (4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

Funds are available in the FY 2017/18 Liability and Property Insurance Fund for this First Amendment.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

RECOMMENDATION

Authorize the City Attorney to execute a First Amendment, in substantially the same form as Attachment 1 to the report, to the Outside Counsel Agreement with the law firm of Bertrand, Fox & Elliot to increase the not-to-exceed amount by \$100,000, for a new not-to-exceed contract amount of \$200,000.

Prepared by: Nichole G. Anglin, Paralegal
Reviewed and Approved by: John A. Nagel, City Attorney

ATTACHMENT

1. Draft First Amendment to Outside Counsel Agreement