



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 16-0957, Version: 1

SUBJECT

Approve the Second Amendment to Outside Counsel Agreement with Goldfarb Lipman for Litigation Services pertaining to the three lawsuits related to the dissolution of the Redevelopment Agency.

REPORT IN BRIEF

Approval is requested for a Second Amendment to the Outside Counsel Agreement with the law firm of Goldfarb Lipman for legal services and representation of the City in the matters of (i) *Sunnyvale Successor Agency v. Ana Matasantos* (Sac SC # 34-2013-800001499) ("Sunnyvale #1"); (ii) *Santa Clara Office of Education et al. vs Successor Agency to the Sunnyvale Redevelopment Agency* (Sac SC # 34-2013-800001627) ("Sunnyvale #2"); and (iii) *Sunnyvale vs. Michael Cohen* (Sac SC #34-2015-80002067) ("Sunnyvale #3"). This Second Amendment is needed to cover the costs associated with the filing of the opening and reply briefs in the appeal of Sunnyvale #3, and to have sufficient funding for the costs associated with oral arguments in Sunnyvale #1, #2 and #3 when scheduled. These costs are estimated to be approximately \$40,000.

BACKGROUND

Karen Tiedemann, a partner in the law firm Goldfarb Lipman in Oakland, is a lawyer specializing in the areas of real estate transactions, affordable housing, nonprofit organization and environmental law. Ms. Tiedemann and her firm were retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services, consultation and advice concerning the above referenced cases in litigation. The Agreement was entered in June 24, 2013, and the First amendment was entered into in April 2016, with a current not to exceed amount of \$160,000. The term of the amended Agreement expires on May 19, 2019.

DISCUSSION

The Goldfarb law firm has represented the City in many matters concerning the dissolution of the Redevelopment Agency during the past years. In October 2014, the City Council gave authority by a 7-0 vote to pursue appellate review in Sunnyvale #1 and Sunnyvale #2. Sunnyvale #1 and Sunnyvale #2 involve approximately \$13.8 million that the former RDA paid to the City in FY 2010-11 and 2011-12 under the 1977 Repayment Agreement between the City and the former RDA. The California Department of Finance (DOF) and the County of Santa Clara contend that the payments were not authorized by the 2011 law that dissolved redevelopment agencies.

Sunnyvale #3 involves a 2012 Re-entered Agreement that authorized the Successor Agency to repay the City approximately \$12.5 million for the 1998 Certificates of Participation that were issued to refinance the RDA's prior debt for the construction of the downtown parking garage. The City filed a separate lawsuit after it was rejected by the DOF.

It is anticipated that the City will incur an additional \$40,000 in legal fees for completion of the appeals in Sunnyvale #1, #2 and #3. Therefore, it is necessary to amend the Agreement to allow for an additional \$40,000 in legal expenses, 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

Funding for RDA Counsel Fees in FY 2016/17 has been appropriated in the General Fund.

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

City Council:

Authorize the City Attorney to execute a Second Amendment, in substantially the same form as Attachment 1 to the report, to the Outside Counsel Agreement with the law firm of Goldfarb Lipman to increase the not-to-exceed amount by \$40,000, for a new not-to-exceed contract amount of \$200,000.

Redevelopment Successor Agency:

Authorize the Agency Counsel to execute a Second Amendment, in substantially the same form as Attachment 1 to the report, to the Outside Counsel Agreement with the law firm of Goldfarb Lipman to increase the not-to-exceed amount by \$40,000, for a new not-to-exceed contract amount of \$200,000.

Prepared by: Nichole Anglin, Paralegal

Reviewed and Approved by: John A. Nagel, City Attorney and Agency Counsel

ATTACHMENT

1. Draft Second Amendment to Outside Counsel Agreement