



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 17-0036, Version: 1

SUBJECT

Approve the Second Amendment to Outside Counsel Agreement with Burke, Williams & Sorensen, LLP for Litigation Services

REPORT IN BRIEF

Approval is requested for a Second Amendment to the Outside Counsel Agreement with the law firm of Burke, Williams & Sorensen, LLP for legal services and representation of the City in the matter of *City of Sunnyvale v. Summit Public Schools, et al.*, Santa Clara County Superior Court Case No. 1-13-CV-255504. This Second Amendment is needed to cover the costs associated with monitoring and enforcing the judgment against Summit Public Schools and defending the Appeal filed by Summit Public Schools, and will increase the not-to-exceed amount of the Agreement by \$27,000 for a new not-to-exceed amount of \$127,000.

BACKGROUND

John R. Yeh, a trial attorney who specializes in representing and advising school districts in charter school, labor and employment, and litigation matters, and partner in the law firm of Burke, Williams & Sorensen, LLP, was retained by the City Attorney under Section 908 of the City Charter to represent the City and provide legal services and representation in the matter of *City of Sunnyvale v. Summit Public Schools, et al.* Mr. Yeh has extensive litigation experience and has successively litigated cases on behalf of school districts and public agencies in court, with a significant number of claims dismissed or adjudicated in favor of school districts and public agencies. The Agreement was entered in May 2014, and the not-to-exceed amount has been increased once to the current not-to-exceed amount of \$100,000. The term of the Agreement expires in April 14, 2017.

DISCUSSION

Mr. Yeh is providing advice and representation in this case against Summit Public Schools. This current case involves a nuisance action filed by the City of Sunnyvale against Summit Public Schools for operating a school at 495 Mercury Drive, Sunnyvale without zoning authorization. On November 1, 2016, the Superior Court issued its Statement of Decision and Judgment, finding that Summit Public School's use and occupation of the Mercury Drive site was a nonconforming use and a nuisance per se. The Court ordered that Summit Public Schools cease use of the Mercury Drive site as a school and stayed the enforcement of the judgment until January 1, 2017. On January 3, 2017, the Court extended the stay of the enforcement of the judgment until January 17, 2017; then on January 17 the Court dissolved the stay of the injunction until 5:00 p.m. on January 2017. Summit Public Schools has been making progress on the installation of modular units at the 539 E. Weddell site and it is anticipated that the units will be installed and ready for occupancy by January 27, 2017. This will permit the remaining 100 students at the 495 Mercury Drive site to be relocated to the 539 E. Weddell site on January 27, 2017. Since the issuance of the judgment the City has incurred legal costs associated with monitoring and enforcing the judgment. In addition, on December 28, 2016, Summit Public Schools filed a Notice of Appeal of the Superior Court's November 1st Judgment, which will involve substantial additional work and appellate argument preparation. The additional

costs associated with the judgment and the appeal requires an increase of the not-to-exceed amount of the Agreement by \$27,000 for a new not-to-exceed amount of \$127,000.

In addition as the term of the Agreement is set to expire on April 14, 2017, it is necessary to extend the term and staff recommends that the term be extended for an additional three years or until April 13, 2020. This should be a sufficient amount of time for the continued provision of legal services through the appeal of the case to the California Appellate Court, Sixth District.

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 2016/17 City Attorney's Outside Counsel 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

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 Burke, Williams & Sorensen, LLP, to extend the term of the Agreement until April 13, 2020, and to increase the not-to-exceed amount by \$27,000, for a new not-to-exceed contract amount of \$127,000.

Prepared by: Nichole G. Anglin, Paralegal

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

ATTACHMENT

1. Draft Second Amendment to Outside Counsel Agreement