



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 17-0145, Version: 1

REPORT TO COUNCIL

SUBJECT

Approve the Third Amendment to Outside Counsel Agreement with Bertrand, Fox & Elliot for Litigation Services

REPORT IN BRIEF

Approval is requested for a Third 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 *Rivera v. City of Sunnyvale*, Case No. 113CV240935, currently pending in the Santa Clara County Superior Court. This Third Amendment is needed to cover the costs associated with the co-defendant's recently filed motion to amend their cross-complaint to include a new cause of action for dangerous condition of public property and 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 2013, and the not to exceed amount has been increased twice to the current not to exceed amount of \$225,000. The term of the Agreement expires in December 2018.

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 a dangerous condition lawsuit against the City from tree root damage to sewer lines on the property. The City settled its case with the original plaintiff, Rivera; however, the co-defendant, Casa de Amigos Mobilehome Park (Casa), filed a cross-complaint against the City for declaratory relief, indemnification, apportionment of fault, an injury to property, for which the City is still incurring defense costs. Casa is alleging that Shamel Ash trees are damaging its sewer system and causing its sewer system to back up, has caused damage to mobilehome driveways and foundations along the Persian and Tasman perimeter of the property, which is subjecting Casa to claims filed by its renters. The trial was originally set for February 14, 2017, but Casa has recently filed a motion to amend their operative cross-complaint to include a new cause of action for dangerous condition of public property. On January 31, 2017, the Court vacated the trial date, which will result in a trial setting hearing being set for some time in March 2017. It is estimated that the City will incur an additional \$100,000 in legal fees associated with this new cause of action. Therefore, it is necessary to amend the Agreement to allow for an additional \$100,000 in potential legal expenses, for a new not-to-exceed amount of \$325,000.

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 2016/17 Liability and Property Insurance Fund for this Third 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 Third 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 \$325,000.

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

ATTACHMENT

1. Draft Third Amendment to Outside Counsel Agreement