



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 17-0834, Version: 1

REPORT TO COUNCIL

SUBJECT

Approve the Second Amendment to Outside Counsel Agreement with Rankin Stock Heaberlin for Litigation Services in the case of *Mollins vs. Sunnyvale*

REPORT IN BRIEF

Approval is requested for a Second Amendment to the Outside Counsel Agreement with the law firm of Rankin Stock Heaberlin for legal services and representation of the City in the matter of *Mollins vs. Sunnyvale.*, Santa Clara County Superior Court Case No.

1-14-CV-269592. This Second Amendment is needed to cover the costs associated with continued representation through trial, and will increase the not-to-exceed amount of the Agreement by \$52,000 for a new not-to-exceed amount of \$142,000

BACKGROUND

David J. Stock, a partner in the law firm Rankin Stock Heaberlin in San Jose, is a trial lawyer specializing in construction law, civil litigation, business law, personal injury, estate litigation, insurance coverage and defense, mediation, and arbitration. Mr. Stock and his 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 case in litigation. The Agreement was originally entered in October 2014, with an original not-to-exceed amount of \$40,000. In July 2016, a first amendment was executed, which increased the not-to-exceed amount by another \$50,000 for a total compensation amount of \$90,000. The term of the Agreement expires in December 2017. As a trial date may not occur until February 2018, it is recommended that the term of the Agreement be extended until June 30, 2018.

DISCUSSION

Rankin Stock Heaberlin has represented the City in many personal injury cases during the past years. This current case involves a trip and fall accident that occurred on September 26, 2013. Plaintiff Mollins alleges she was injured when she tripped on El Camino Real between Fair Oaks Avenue and Cezanne Drive in front of the Arbor Terrace Apartments. She filed a negligence suit in Superior Court on August 18, 2014 against the apartment owners and the City for personal injuries. She asserts that trees along the sidewalk caused displacement, causing her to trip and fall. A motion for summary judgment was initially set for February 7, 2017, and then continued to June 1, 2017, but has since been continued by court order to October 17. The judge granted plaintiff's ex parte application to amend the complaint, and the plaintiff filed a First Amendment to the Complaint, alleging that the City had actual notice of the dangerous condition of the sidewalk. All defendants filed an answer to the First Amended Complaint in May 2017. The motion of summary judgment will address the issues raised by plaintiff in the amended complaint. The trial setting conference is set for September 26, with an expectation that a trial will be set in February 2018. Plaintiff's counsel has pursued a very aggressive approach to discovery in the case (e.g., document production and

deposition of City employees and agents and employees of the other named defendants). It is anticipated that the City may incur an additional \$33,000 to \$52,000 in legal fees for this case assuming it goes to trial without settling or being disposed of by the City's motion for summary judgment. Therefore, it is necessary to amend the Agreement to allow for an additional \$52,000 in potential legal expenses, for a new not-to-exceed amount of \$142,000.

In addition, the term of the Agreement is set to expire on December 31, 2017, it is necessary to extend the term and staff recommends that the term be extended until June 30, 2018. This should be enough time to resolve the lawsuit.

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 Second 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 Second Amendment, in substantially the same form as Attachment 1 to the report, to the Outside Counsel Agreement with the law firm of Rankin Stock Heaberlin, to extend the term of the Agreement until June 30, 2018, and to increase the not-to-exceed amount by \$52,000, for a new not-to-exceed contract amount of \$142,000.

Prepared by: Nichole G. Anglin, Paralegal

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

ATTACHMENT

1. Draft Second Amendment to Outside Counsel Agreement