



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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File #: 23-0085, Version: 1

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### REPORT TO COUNCIL

#### **SUBJECT**

Approve the Third Amendment to Outside Counsel Agreement with Bertrand, Fox, Elliot, Osman & Wenzel for Litigation Services in the matter of *Casa De Amigos v. City of Sunnyvale*.

#### **BACKGROUND & DISCUSSION**

*Casa De Amigos v. City of Sunnyvale*, Case No. 18CV321477, currently pending in Santa Clara County Superior Court, involves Plaintiff Casa de Amigos Mobile Home Park who is alleging injury to property, nuisance, and maintenance of a dangerous condition on public property relating to City sewer lines which run north to south from Persian Drive to and across Highway 237. Plaintiff alleges a series of depressions and elevations in the City's Persian Main affect their ability to empty sewage into the City of Sunnyvale's system that have caused multiple sewer backups into Casa de Amigos' private property.

This case was consolidated with the matter of H. Rivera v. City of Sunnyvale, et al., Case No. 2013-1-CV-240935 and is set for trial in February 2023. The court has set a Settlement Conference prior to trial on January 11, 2023, so that the parties may attempt to settle prior to the trial date.

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, Osman & Wenzel 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. The Agreement was entered in February 2018, and the not to exceed amount has been increased twice, most recently on December 9, 2020, increasing the compensation by \$350,000 and extending the term of the agreement to February 19, 2024 (RTC No. 20-1000).

Approval is requested for a Third Amendment to the Outside Counsel Agreement to allow for an additional \$235,000 in potential legal expenses, including costs associated with the Settlement Conference and other costs associated with proceeding to trial, for a new not-to-exceed amount of \$585,000.

#### **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 2022/23 Liability and Property Insurance Fund for this Third Amendment. The City has met its Self-Insured Retention set by the California Joint Powers Risk

Management Association and will be reimbursed for all of the upcoming fees and expenses at the conclusion of the case.

### **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 Public Library, Senior Center, Community Center and in the Department of Public Safety Lobby. In addition, the agenda and report are available at the Sunnyvale Public Library, 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 \$235,000, for a new not-to-exceed contract amount of \$585,000.

Prepared by: Anais Martinez Aquino, Assistant City Attorney

Reviewed by: Tim Kirby, Director of Finance

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENT**

1. Draft Third Amendment to Outside Counsel Agreement