



City of San Leandro

Meeting Date: February 16, 2016

Staff Report

File Number: 16-009 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.O.

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for Legal Services Agreement Amendment No. 1 with Bertrand, Fox, Elliot, Osman & Wenzel for Legal Representation Associated with Tort Liability Claims and Litigation and Request for Appropriation of \$500,000.00 from the Self-Insurance Fund Balance

SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council consider and approve a Legal Services Agreement Amendment No. 1 with Bertrand, Fox, Elliot, Osman & Wenzel to continue to provide legal representation services associated with tort liability and tort claims litigation for the City through June 30, 2018. Staff requests City Council approval to appropriate \$500,000.00 from the Self-Insurance fund balance to the general liability division's legal fees account.

BACKGROUND

The City of San Leandro originally entered into a Legal Services Agreement with Bertrand, Fox, and Elliot on June 25, 2013, to provide contract legal representation services to the City for the *Mengel et al. v. City of San Leandro* case. The original agreement was for a not to exceed amount of \$49,999.00.

On November 3, 2014, the City entered into a new agreement with Bertrand, Fox, and Elliot to provide legal representation on tort claims and litigation presented to the City on various issues for a not to exceed of \$100,000.00 and an end date of June 30, 2016.

Analysis

The City contracted with the law firm of Bertrand, Fox, Elliot, Osman & Wenzel for their proven success rate and experience representing public agencies in tort litigation. The *Mengel and Woody* litigation budget for defense costs was originally estimated to be less than \$50,000.00, and the actual defense costs totaled \$42,000.00. The firm has provided excellent service on other tort claims and litigation assigned to it.

Because of these successful outcomes, City staff requested, with the City Attorney's approval, the continued use of Bertrand, Fox, Elliot, Osman & Wenzel legal services for a variety of risk management issues and claims. Currently, the law firm is handling ten City cases. Therefore, staff requests approval of an amended legal services agreement with Bertrand, Fox, Elliot, Osman & Wenzel to use their legal expertise on as needed basis when approved by the City Attorney.

Fiscal Impacts

The agreement amendment is for a not to exceed \$500,000.00 through June 30, 2018.

For 2015-16, the Self-Insurance Fund General Liability division legal fees adopted budget is \$400,000.00. At present, based on the current number of claims and litigated matters, the budget for legal fees is insufficient. Accordingly, funds should be transferred from the Self Insurance Fund balance to cover unbudgeted legal costs. Any balance remaining at fiscal year-end for legal services from Bertrand, Fox, Elliot, Osman & Wenzel will be carried over to the next fiscal year, 2016-17.

Budget Authority

The Self-Insurance Fund General Liability division legal fees adopted budget is \$400,000.00 for fiscal year 2015-16. Staff requests Council approval to appropriate an additional \$500,000.00 from the Self-Insurance fund balance to account number 689-19-004-5110 for fiscal year 2015-16.

ATTACHMENTS

Attachment to Resolution

Amendment No. 1 to Legal Services Agreement for general liability claims and claims litigation

PREPARED BY: David Baum, Director of Finance, Finance Department



City of San Leandro

Meeting Date: February 16, 2016

Resolution - Council

File Number: 16-010 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the City Manager to Enter into a Legal Services Agreement Amendment No. 1 with Bertrand, Fox, Elliot, Osman & Wenzel for Legal Representation Associated with Tort Liability Claims and Litigation, and to Appropriate Self-Insurance Fund Balance of \$500,000.00 to General Liability Legal Services

WHEREAS, the City in accordance with its purchasing provisions has identified Bertrand, Fox, Elliot, Osman & Wenzel to provide legal representation associated with tort liability and claims litigation; and

WHEREAS, the City wishes to enter into an agreement amendment No. 1 with Bertrand, Fox, Elliot, Osman & Wenzel for said work; and

WHEREAS, the City Council is familiar with the terms of the agreement amendment No. 1; and

WHEREAS, the City Manager has recommended approval of said agreement amendment No. 1.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreement amendment No. 1 in an amount not to exceed \$500,000.00 through June 30, 2018 is hereby approved; and
2. That the terms of the agreement amendment No. 1 will be memorialized in writing by the City Manager, subject to the approval of the City Attorney; and
3. That the City Manager is authorized to execute said agreement amendment No. 1; and

4. That the City Manager is authorized to appropriate \$500,000.00 from the Self-Insurance fund balance to the General Liability Legal Services account 689-19-004-5110 in the 2015-16 budget; and

5. That an original executed agreement amendment No. 1 shall be provided to the City Clerk and be attached to this resolution.

**AMENDMENT NO. 1 TO LEGAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
BERTRAND, FOX, ELLIOT, OSMAN & WENZEL**

This **Amendment No. 1** ("Amendment") is made by and between the City of San Leandro ("City") and Bertrand, Fox, Elliot, Osman & Wenzel ("Attorney") (together sometimes referred to as the "Parties") as of February 16, 2016, and amends that certain Legal Services Agreement ("Agreement") dated July 1, 2014, between the Parties.

WHEREAS, City and Attorney have executed the Agreement, pursuant to which Attorney has provided certain legal services to City with regard to legal representation; and

WHEREAS, the Parties desire to amend the Agreement to increase the compensation for an additional not to exceed \$500,000.00.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

1. Section 1.1 of the Agreement entitled "Term of Services" is hereby amended to extend the agreement to June 30, 2018, with an option to extend agreement for an additional two years unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8.

2. Section 2 of the Agreement entitled "Compensation" is hereby amended to pay Attorney a sum not to exceed \$500,000.00; and

3. All other terms shall remain in full force and effect.

This Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Amendment as of the date first written above. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

ATTORNEY

Chris Zapata, City Manager

Greg Fox, Esq.
Bertrand, Fox, Elliot, Osman & Wenzel

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

689-19-004-5110
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney

(2015)