



City of San Leandro

Meeting Date: April 16, 2018

Staff Report

File Number: 18-145 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.G.

TO: City Council

FROM: Jeff Kay
Interim City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution for Amendment No. 2 to a Legal Services Agreement with Bertrand, Fox, Elliot, Osman & Wenzel for Legal Representation Associated with Tort Liability Claims and Litigation for \$600,000 and to Extend the Term of the Legal Services Agreement for an Additional Three Years

SUMMARY AND RECOMMENDATIONS

Staff requests that the City Council consider and approve Amendment No. 2 to a Legal Services Agreement (Agreement) 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, 2021. Funding is available in the Self-Insurance Fund to cover the \$600,000.00 additional funds required for legal fees in 2017-18.

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 and Woody 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 the 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 amount of \$100,000.00 and an end date of June 30, 2016.

On February 16, 2016, the City amended the Agreement to extend the term for an additional two years through June 30, 2018 and increase the compensation to a not to exceed \$500,000.00 as a result of substantial tort claims filed against the City in 2015.

Analysis

The City contracted with the law firm of Bertrand, Fox, Elliot, Osman & Wenzel for its 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 law firm continues to provide excellent service on other tort claims and litigation assigned to it and charges reasonable hourly rates for service. Due to these successful outcomes of litigated matters, 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 tort claims.

The City of San Leandro's risk pool, California Joint Powers Risk Management Association (CJPRMA) highly recommended this law firm to defend the City in tort claims litigation due to its success rate and experience realized with other member cities. Since 2013, the law firm has litigated 22 tort claims with 59% settled and 41% dismissed on behalf of the City. Currently, the law firm is handling 10 open tort claims in litigation. The City has exhausted funding to support this legal services agreement and requires additional funding to cover legal costs associated with the 10 open tort claims in litigation, and any subsequent tort claims litigation. Therefore, staff requests approval of an Amendment No. 2 to the Agreement with Bertrand, Fox, Elliot, Osman & Wenzel to utilize the firm's services on as needed bases when approved by the City Attorney.

Fiscal Impacts

The agreement amendment is to increase an additional not to exceed amount of \$600,000.00 and to extend the term of the Agreement through June 30, 2021.

Since 2013 through current fiscal year, the City has expended \$650,000 for legal services relating to tort claims litigation which fully exhausts approved funding. The 2017-18 Self-Insurance Fund operating budget contains sufficient funding for tort claims litigation for the remainder of this fiscal year.

Budget Authority

The 2017-18 Self-Insurance Fund operating budget for General Liability legal fees reflects an appropriation of approximately \$822,000.00 in account # 689-19-004-5110 which has sufficient funds to cover legal services of tort claims litigation for the remainder of this fiscal year.

ATTACHMENT

None

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



City of San Leandro

Meeting Date: April 16, 2018

Resolution - Council

File Number: 18-146

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
Interim City Manager

BY: David Baum
Finance Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the City Manager to Execute Amendment No. 2 to a Legal Services Agreement with Bertrand, Fox, Elliot, Osman & Wenzel for Legal Representation Associated with Tort Liability Claims and Litigation for an additional \$600,000 and to Extend the Term of the Legal Services Agreement for an Additional Three Years

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

WHEREAS, the City wishes to amend the Legal Services Agreement with Bertrand, Fox, Elliot, Osman & Wenzel (Agreement) to extend the Agreement and increase an additional not to exceed amount of the Agreement; and

WHEREAS, the City Council is familiar with the terms of the proposed amendment to the Agreement (Amendment No. 2); and

WHEREAS, the City Manager has recommended approval of Amendment No. 2.

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

1. That said Amendment No. 2 to increase an additional not to exceed amount by \$600,000.00 through June 30, 2021 is hereby approved; and
2. That the terms of Amendment No. 2 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 Amendment No. 2; and

4. That the Self-Insurance Fund Operating Budget for Legal Services account 689-19-004-5110 in the 2017-18 budget is sufficient to cover the additional funding; and

5. That an original executed Amendment No. 2 shall be provided to the City Clerk and be attached to this resolution.

**AMENDMENT NO. 2 TO LEGAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
BERTRAND, FOX, ELLIOT, OSMAN & WENZEL
FOR
LEGAL SERVICES**

This **Amendment No. 2** ("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 April 16, 2018, 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 extend the term and increase the compensation for an additional amount not to exceed \$600,000.00.

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 term from June 30, 2018, to June 30, 2021; and
2. Section 2 of the Agreement entitled "Compensation" is hereby amended to pay Attorney an additional sum amount not to exceed \$600,000.00; 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

Jeff Kay, Interim 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)