



Legislation Details (With Text)

File #: 22-657 **Version:** 1 **Name:** Legal Services Agreement with Castillo, Moriarty, Tran Legal Services Agreement with CMTR

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Title: Adopt a Resolution to Approve and Authorize the City Manager to Execute a Legal Services Agreement Between the City of San Leandro And Castillo, Moriarty, Tran & Robinson for Tort Litigation Services

Sponsors:

Indexes:

Code sections:

Attachments: 1. Att A - Reso LSA Castillo, Moriarty, Tran, and Robinson, 2. Att B - LSA Compensation Schedule, 3. Att C - Scope of Work for LSA

| Date | Ver. | Action By | Action | Result |
|------------|------|--------------|----------|--------|
| 11/21/2022 | 1 | City Council | Approved | Pass |

Adopt a Resolution to Approve and Authorize the City Manager to Execute a Legal Services Agreement Between the City of San Leandro And Castillo, Moriarty, Tran & Robinson for Tort Litigation Services

COUNCIL PRIORITY

- Fiscal Sustainability and Transparency

SUMMARY

The consulting services agreement before City Council sets forth that Castillo, Moriarty, Tran & Robinson represent the City of San Leandro and its officers in tort litigation matters. The litigation services under the agreement are to be provided after a notice or summons is served upon the City of San Leandro regarding tort claim litigation, as follows:

1. Counsel shall meet and confer with the City of San Leandro on options for litigation strategy and receive approval for the City's preferred course of action;
2. Counsel shall prepare responsive pleadings for federal and state court proceedings including, but not limited to, appropriate motions to dismiss or answer;
3. Counsel shall meet with City personnel, investigate the case and provide an explanation of the legal proceedings;
4. Counsel shall prepare for and meet and confer with opposing counsel on preparation of joint case management conference (CMC) statement and appear in Court on behalf of the City for initial CMC;

5. Counsel shall prepare a discovery plan, propound and respond to written discovery, and analyze plaintiffs' discovery responses;
6. Counsel shall prepare clients and attend alternative dispute resolution (ADR) as ordered by federal or state court;
7. Counsel shall prepare clients and defend clients' depositions, prepare for and depose plaintiff(s) and depose other witnesses as necessary and relevant;
8. Counsel shall prepare a Motion for Summary Judgment (MSJ), or other dispositive motion(s), upon authority from the City and after meet and confer with clients on options and preferred strategy;
9. Counsel shall prepare for and attend settlement conferences, including meet and confer with clients and opposing counsel; and
10. Where a case is not resolved by MSJ or settlement, upon client's approval counsel shall prepare for and attend jury trial of the case and review with clients appellate strategy and options following verdict and post-verdict motions, if necessary.

RECOMMENDATIONS

Staff recommends that the City Council approve by resolution the legal services agreement between the City of San Leandro and Castillo, Moriarty, Tran & Robinson, for legal services related to tort litigation matters.

BACKGROUND

The consulting services agreement provides that upon the City of San Leandro's request, counsel shall advise City staff, including the City of San Leandro Police Department command staff on necessary policy changes, revisions, and legal implications and provide officers with training to limit civil liability and future claims.

Patrick Moriarty, Joanne Tran, and Vincent Castillo are partners at Castillo, Moriarty, Tran & Robinson and members of the firm's public entity practice group. Mr. Moriarty and Mr. Castillo shall serve as lead counsel on behalf of the firm.

Mr. Moriarty specializes in defending police officers and departments in civil rights litigation. His experience includes fourteen years as a prosecutor with the Alameda County District Attorney's Office where Mr. Moriarty tried 37 jury trials to verdict. In 2012, Mr. Moriarty worked for the California Attorney General where he wrote responses to criminal appeals and argued before the California Court of Appeal.

Ms. Tran specializes in defending public entities in civil litigation, including law enforcement agencies, and general government departments, including public works, engineering, and transportation departments. Her work includes defending civil rights cases, premises liability, and personal injury.

Mr. Castillo specializes in the defense of general liability, product liability, whistleblower, and employment-related claims. He has extensive experience representing clients involved in the railroad

and busing industries, including investigation and litigation of catastrophic accidents resulting in serious personal injury and death. Mr. Castillo also represents clients in investigations conducted by the National Transportation Safety Board and local law enforcement agencies and handles employment-related claims arising under the Federal Railroad Safety Act, the California Fair Employment and Housing Act, and various federal laws. Mr. Castillo has tried numerous cases to verdict in federal and state courts in California and Nevada.

Castillo, Moriarty, Tran & Robinson will serve as counsel for the City of San Leandro and its officers named in any action in tort litigation matters effective December 1, 2022, through June 30, 2024. Services will be provided at an hourly rate of: \$260 Partner; \$210 Associate; and \$95 Paralegal, in an amount not to exceed \$500,000.

Analysis

Attorneys from Bertrand, Fox, Elliot, Osman & Wenzel (BFEOW), and Allen, Glaessner, Hazelwood & Werth (AGHW) have combined into a new firm Castillo, Moriarty, Tran & Robinson (CMTR). These attorneys have historically provided excellent services and expertise to the City in tort liability claims and litigation. Due to the successful outcomes on litigated matters, staff requests, with the City Attorney's approval, the continued use of partners who have created Castillo, Moriarty, Tran & Robinson.

Between 2013 - 2022 the City of San Leandro contracted \$2,749,999 on Legal Services Agreements including amendments with BFEOW. In addition to BFEOW, the City of San Leandro contracted legal services with Allen, Glaessner, Hazelwood & Werth in 2021 for \$250,000 for litigation support.

Staff proposes a new contract for CMTR with an effective date that aligns with the next biennial budget cycle and a not to exceed limit of \$500,000. Additionally, staff recommends Council approve the City Manager to authorize change orders up to 10% of the total contract amount or \$50,000. This authority would allow the City Manager and Risk Management to adjust contractual spending limits to an uncertain risk landscape during this next budget cycle.

Previous Actions

BFEOW

- 2014-083: Authorizing an agreement with BFEOW (NTE \$50K)
- 2015-155: Amendment #1 to BFEOW agreement (NTE \$285K)
- 2016-020: Amendment #2 to BFEOW agreement (NTE \$500K)
- 2018-032: Amendment #3 to BFEOW agreement (NTE \$1.1M)
- 2021-338: Authorizing an agreement with BFEOW (NTE \$500K)
- 2022-301: Amendment #1 to BFEOW agreement (NTE \$500K)

AGHW

- 2022-015: Authorizing an agreement with AGHW (NTE \$250k)

Legal Analysis

City Attorney approves this legal services agreement.

Financial Impacts

The Self-Insurance budget account 689-19-004-5110 for legal services has enough funds available.

1. This Council action will not impact fund balance because there are funds available in the legal budget FY2022-2023 adopted budget.

ATTACHMENTS

Att A: Resolution LSA Castillo, Moriarty, Tran & Robinson

Att B: Scope of Work for LSA

Att C: LSA Compensation Schedule

PREPARED BY: Megan Stephenson, Risk Manager, City Manager's Office