



Legislation Details (With Text)

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Title: Adopt a Resolution to Approve and Authorize the City Manager to Execute Amendment No. 1 to Legal Services Agreement Between the City Of San Leandro And Castillo, Moriarty, Tran & Robinson for Tort Litigation Services

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Resolution Amdt No. 1 Castillo, Moriarty, Tran, and Robinson

Date	Ver.	Action By	Action	Result
6/20/2023	1	City Council	Received and Filed	Pass

Adopt a Resolution to Approve and Authorize the City Manager to Execute Amendment No. 1 to 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 Legal Services Agreement before City Council sets forth an amendment No. 1 to Castillo, Moriarty, Tran & Robinson’s continued representation of the City of San Leandro 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 court 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) statements and appear in Court on behalf of the City for initial CMCs;

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 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
10. Where a case is not resolved by MSJ or settlement, counsel shall prepare for and attend jury trial of the case and review with clients the appellate strategy and options following the verdict and post-verdict motions, if necessary.

RECOMMENDATIONS

City staff recommends that the City Council approve by resolution Amendment No. 1 to 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 Legal 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 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 practice included 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.

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 continue to serve as tort litigation counsel for the City of San Leandro and its officers named in any action in tort litigation matters effective starting on December 1, 2022, through June 30, 2025. Services will be provided at an hourly rate of \$260 Partner; \$210 Associate; and \$95 Paralegal, in an increase of \$500,000 not to exceed \$1,000,000.

Analysis

Between 2013 - 2023 the City of San Leandro contracted \$3,249,999 on Legal Services Agreements for tort litigation defense including the 2022 CMTR contract and previous amendments with BFEOW and Allen, Glaessner, Hazelwood & Werth in 2021 for tort litigation support.

CMTR is a law firm formed from attorney's from completed Legal Services Agreements with Bertrand, Fox, Elliot, Osman & Wenzel (BFEOW), and Allen, Glaessner, Hazelwood & Werth (AGHW). These attorneys have historically provided excellent services and expertise in tort liability claims and litigation. Due to these successful outcomes on litigated matters, staff requests, with the City Attorney's approval, the continued use of partners who created CMTR.

Staff proposes an amendment to the CMTR contract with an effective date that aligns with the next biennial budget cycle and a not to exceed limit of \$1,000,000. Additionally, staff recommends Council approve the City Manager to authorize change orders up to 10% of the total contract amount-or \$100,000. 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)

CMTR

- 2022-657: Authorizing an agreement with CMTR (NTE \$500k)

Legal Analysis

City Attorney approves as to form this amendment to the current legal services agreement.

Financial Impacts

Sufficient funds are included in the fiscal year 2023-2024 Self-Insurance Fund budget in account 689-19-004-5110 to cover the costs for tort defense legal services and the change order authorization.

1. This Council action will not impact fund balance because there are funds available in the FY2022-2023 and FY2023-2024 adopted budget.

ATTACHMENT

Attachment A: Resolution (Legal Services Agreement Amendment No. 1 with CMTR)

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