



## Legislation Details (With Text)

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<b>Title:</b>	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				
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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