



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 21, 2019

Agenda Item 6-4

Approvals: _____

City Manager [Signature]

Dept. Head [Signature]

Attorney _____

Finance [Signature]

Department: Finance and Administrative Services
Prepared By: Erik Sund, Assistant City Manager

Subject: *DESIGNATION OF LEGAL FEES*

Fiscal Impact: Yes, a supplemental appropriation for \$286,000 is being requested.

Summary: As significant legal matters arise, it has been staff's intent to obtain City Council approval prior to incurring substantial legal costs on the matter. Staff will provide City Council with a description of the matter and an estimated cost of the legal services required. If legal costs for the matter continue beyond the original estimate, staff will bring the item back to City Council for further review.

Discussion: At this time, there are legal matters for which staff seeks Council approval in order to proceed:

Capistrano Shores, Inc. Litigation
Best, Best & Krieger, LLP
Estimate: \$175,000

Plaintiff Capistrano Shores, Inc. ("Capistrano") is the owner of a 90-space mobile home park (the "Park") located adjacent to the Pacific Ocean at 1880 N. El Camino Real, near the intersection of El Camino Real and Avenida Pico, in the City of San Clemente (the "City"). The Park opened in 1959. The lawsuit arises out of the City's adoption of a General Plan in 1993 and a subsequent General Plan in 2014, both of which designated the area occupied by the Park as Private Open Space. Capistrano filed a complaint in Orange County Superior Court against the City in 2014. Over the course of the lawsuit, Capistrano has amended the Complaint a number of times, most recently filing a Fourth Amended Complaint ("FAC") for inverse condemnation, reverse validation, declaratory relief, violations of due process and equal protection, and writ of mandate. The City has filed an answer to the FAC and raised a number of affirmative defenses. Pursuant to a stipulation entered into by the parties, the court ordered the lawsuit stayed through June 18, 2019 to give the parties time to discuss settlement. These funds would provide for litigation and legal support by Best, Best & Krieger.

OCSD Citation Litigation
Silver & Wright, LLP
Estimate: \$111,000

At the February 21, 2017 City Council meeting, City Council approved an agreement with Silver & Wright LLP for Code Enforcement legal services for an amount not to exceed \$30,000. Since that time, the Council has approved amendments to the contract for litigation against Via San Clemente, LLC (\$200,000), and for additional Code Compliance support, increasing the not-to-exceed amount to \$180,000 annually. It was anticipated that some of these costs would be cost recoverable where authorized by law. To date, Silver & Wright LLP has assisted Code Enforcement with recovering \$89,000 in various City costs, unpaid fines, abatement costs and fees. However, it is necessary to increase the contractual authority to continue to pursue Code Enforcement related legal issues, where necessary.

In addition, and as part of Silver & Wright LLP's agreement, the City also utilized their legal services for pursuing Orange County Sheriff's Department (OCSD) issued citations, as the primary prosecuting authority for municipal code violations. While these services do not have a cost recoverable element to them, it was anticipated that pursuing these citations would be a benefit for the City.

At this time, staff is seeking an increase of \$111,000 in additional contract authority.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council:

1. Approve the estimated legal costs for the legal matters noted in this report.
2. Approve and authorize the Mayor, or designee, to execute the Fourth Amendment by and between the City of San Clemente and Silver & Wright, LLP for code enforcement legal services and add \$111,000 in additional contract authority.
3. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$286,000 to Other Legal Services, Account #001-203-43635-000-00000.

Attachments: 1. 4th Amendment to the Professional Services Agreement with Silver & Wright

Notification: None.

Attachment 1

FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR SILVER & WRIGHT LLP

This Fourth Amendment to the Professional Services Agreement for legal services, (the “Second Amendment”) is made and entered into on this 21st day of May, 2019, by and between the CITY OF SAN CLEMENTE, a municipal corporation (“City”), and Silver & Wright LLP, hereinafter referred to as the “CONTRACTOR”.

R E C I T A L S:

- A. City and Contractor entered into a Professional Services Agreement for Code Enforcement legal services (the “Agreement”) on February 21, 2017.
- B. City and Contractor entered into that certain First Amendment to Professional Services Agreement for Litigation legal services (“First Amendment”) on June 20, 2017. The Original Agreement, as modified by the First Amendment, is hereinafter referred to as the “Agreement” for a maximum amount of \$105,000.
- C. City and Contractor entered into that certain Second Amendment to Professional Services Agreement for Litigation legal services (“Second Amendment”) on March 9, 2018. The Second Amendment authorized a one-time payment of \$200,000 for legal services in litigation with Villa San Clemente. The Original Agreement, as modified by the First and Second Amendment, is hereinafter referred to as the “Agreement.”
- D. City and Contractor entered into that certain Third Amendment to Professional Services Agreement for Litigation legal services (“Third Amendment”) on November 20, 2018. The Original Agreement, as modified by the Third Amendment, is hereinafter referred to as the “Agreement” for a maximum amount of \$180,000.
- E. City and Consultant desire to amend the Agreement in the manner provided herein.

C O V E N A N T S:

Section 1: 3.3 of the Agreement is hereby amended to read as follows:

“For all legal services provided in this Agreement, the City will pay Consultant at the blended rate of \$195 per hour for attorney representation and \$120 per hour for paralegals and clerks. Fees shall increase by three percent annually beginning January 1, 2018 to offset rising costs. The attorneys’ fees to Consultant shall not exceed \$291,000 without approval of the City.

This not-to-exceed amount excludes \$200,000 in legal services in support of litigation with Villa San Clemente as approved in the Second Amendment to this Agreement.

Section 2: Except as expressly amended by this Fourth Amendment, the remaining portions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 2019

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
BEST, BEST & KRIEGER, LLP

BY: _____
Scott C. Smith, City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING:

BY: _____
Finance Authorization

SILVER & WRIGHT LLP

By: _____

Its: _____

Dated: _____, 2019