



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 19, 2019

Agenda Item 6-P

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

Department: Finance and Administrative Services
Prepared By: Michael Johnston, Management Analyst

Subject: *CODE ENFORCEMENT LEGAL SERVICES*

Fiscal Impact: Yes, adequate funds are provided in the FY 2019-20 budget. It is anticipated that revenue generated from these services will cover a portion of the costs incurred.

Summary: Staff recommends that the City Council approve contracts with Silver & Wright LLP. The purpose of the Agreements are to provide code enforcement and OCSD citation support services.

**Background/
Discussion:** At the January 17, 2017 City Council meeting, staff presented to the City Council a report from Matrix Consulting on Code Enforcement. As a result of City Council approval, staff begun the process of implementing the various recommendations provided by Matrix Consulting.

In accordance with one of the recommendations put forth by Matrix Consulting, staff began seeking prosecution services for code enforcement. After reviewing the matter with the City Attorney, the firm of Silver & Wright LLP was determined the most qualified provider for these needed services. It is important to note that Best, Best & Krieger (BBK) provides City Attorney services and that their contractual responsibility remains unchanged with this recommendation. BBK maintains the lead role of protecting the legal interests of the City. BBK has had this type of relationship with Silver & Wright LLP, which is a critical aspect to the success of these proposed legal services.

Pursuant to Policy #201-2-3, Selection of Professional Services Contractors, staff recommended an exemption based on meeting two of the three criteria set forth in the policy that determination. Of the three criteria for exemption, two of the criteria are fulfilled:

7.1.1- The project is of a critical nature and, due to time constraints, compliance with the policy requirements would jeopardize timely completion;

7.1.2- The proposed professional services provider has unique familiarity with the project, subject area, or possesses other attributes that make the professional services provider uniquely qualified to provide the services.

Silver & Wright LLP is a law firm specializing in municipal law, code enforcement, police services, receiverships, land-use, zoning, and cost recovery. Silver & Wright LLP provide a streamlined and cost effective approach to the legal process to abating code enforcement violations while achieving cost recovery for some of their services. Silver & Wright LLP provides Code Enforcement legal services to a number of cities, including: Santa Barbara, Ventura, Santa Ana, and Chino.

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 Villa San Clemente, LLC (\$200,000), and for additional Code Compliance support, increasing the not-to-exceed amount to \$291,000 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 \$167,000 in various City costs, unpaid fines, abatement costs and fees. However, it is necessary to continue to contract with Silver & Wright LLP to pursue Code Enforcement related legal issues, where necessary.

In addition, the City has also utilized their legal services for pursuing 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 public safety benefit for the City.

At this time, staff is seeking to terminate the outstanding agreement with Silver & Wright LLP for legal services and start a new separate contract for code enforcement legal services and OCSD citation support services.

Recommended Action:

STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor to execute a contract with the law firm of Silver & Wright LLP for code enforcement legal services for a not-to-exceed amount of \$186,000 for FY 2019-20, and renew annually each fiscal year, subject to approval through the annual budget adoption.
2. Approve and authorize the Mayor to execute a contract with the law firm of Silver & Wright LLP for municipal citation legal services for a not-to-exceed amount of \$99,600 for FY 2019-20, and renew annually each fiscal year, subject to approval through the annual budget adoption.
3. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$91,000 to Code Compliance Other Legal Services, Account #001-451-43640-000-00000.

Attachments:

1. Professional Services Agreement – Code Enforcement
2. Professional Services Agreement – Municipal Citation Support
3. Professional Services Agreement and Staff Report dated February 21, 2017
4. First Amendment and Staff Report dated June 20, 2017
5. Second Amendment and Staff Report dated March 6, 2018
6. Third Amendment and Staff Report dated November 20, 2018
7. Fourth Amendment and Staff Report dated May 21, 2019

Notifications:

None.

**AGREEMENT BETWEEN SILVER & WRIGHT, LLP
AND THE CITY OF SAN CLEMENTE
FOR CODE ENFORCEMENT LEGAL SERVICES**

1. PARTIES AND DATE.

This agreement ("Agreement") is made and entered into on November 19, 2019 by and between the CITY OF SAN CLEMENTE ("City"), and SILVER & WRIGHT LLP, a California limited liability partnership engaged in the practice of law in the State of California ("Consultant"). Consultant and the City are sometimes individually referred to herein as "Party" and collectively as "Parties." In consideration of the mutual promises set forth herein, the parties agree to the terms of this Agreement as set forth herein.

2. RECITALS.

2.1 The City wishes to engage the services of Consultant to provide code enforcement services as described further in this Agreement. Consultant wishes to provide all such services and has the necessary expertise and competency to provide such services.

3. TERMS.

3.1 Scope of Services. Consultant shall provide legal advice, representation and assistance to the City regarding code enforcement matters, including criminal, civil and administrative in nature, as assigned to Consultant by City.

3.2 Responsibilities of Attorneys and Client. Consultant shall fully cooperate with the City and will keep the City and its staff informed of the status and progress of all pending matters and all legal matters of importance with which Consultant is involved. Consultant will manage and control the delivery of all legal services described hereunder in a professional, competent, and cost-effective manner. The City agrees to provide all information and documentation necessary for the attorneys at Consultant to perform their obligations under this Agreement.

3.3 Compensation. For all legal services provided in this Agreement, the City will pay fees to Consultant which shall not exceed \$186,000 per fiscal year on a net basis without approval of the City.

3.4 Cost Reimbursement. The City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in providing legal services under this Agreement, including charges for printing and copying expenses at \$.16 for black and white copies and \$.60 for color copies, postage, research, litigation costs, courier and messenger services and automobile mileage at the current IRS rate for travel on behalf of the City. However, no separate charge shall be made by Consultant for secretarial or word processing services.

3.5 Statements and Billing. Consultant shall submit monthly invoices to the City indicating attorney fees and costs incurred for the legal services provided under this Agreement. The monthly invoice shall describe the nature of the work performed, the attorney performing the work and the time spent for each task as well as the nature of any reimbursable expenses incurred.

Upon the request of and as directed by the City, Consultant shall generate separate invoices pertaining to specific accounts, matters and/or departments. The City shall process and cause such invoices to be paid promptly, typically within thirty (30) days of receipt. If no attorneys' fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month.

3.6 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of the attorneys at Consultant were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of the City. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the City.

3.7 Conflicts of Interest. Consultant shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving the City and matters upon which Consultant is providing legal services under this Agreement. Consultant shall not reveal confidential information of the City except with the consent of the Board of Supervisors or as otherwise required by law. Consultant shall notify the City of any conflict of interest related to matters upon which it is providing legal services under this Agreement upon discovery of any such conflicts. In the event that such conflict is not or cannot be waived or resolved City shall retain legal counsel and Consultant shall assist and cooperate with legal counsel retained by the City on the matter for which the conflict arose.

A. Consultant represents that neither Consultant for any of its attorneys or other persons employed by Consultant have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of City that may be affected by the services to be provided to City pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public.

B. If Consultant or an attorney or other person employed by Consultant acquires such an interest while this Agreement remains in effect, Consultant will immediately disclose such interest to the City, and the interested individual shall not participate in or influence the performance of the services to be provided to the City pursuant to this Agreement.

C. In addition to the prescriptions regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, Consultant agrees that unless waived in writing by the City, neither Consultant nor any attorney employed by Consultant shall represent clients before any board, commission, committee or department of City or represent a client adverse to City for a period of one (1) year from the date of completion of the services to be provided to City pursuant to this Agreement or the early termination of the Agreement as provided for in Section 3.10.

3.8 Client Files.

A. At the conclusion of this Agreement, the original client files for the work performed under this Agreement for the City shall be made available to City. Consultant will be entitled to make copies of the client files. At the conclusion of this Agreement, (whether or not

City takes possession of the client files), City shall take possession of any and all original documents that may be in the client files and Consultant shall have no further responsibility with regard to such documents.

B. If City does not take possession of the client files at the conclusion of the Agreement, Consultant shall store such client files for a period of at least one (1) year. At any time after the conclusion of such one (1) year period, Consultant may send to City a notice, advising of Consultant's intention to dispose of the client files. The City shall have ninety (90) days from the date of such notice to take possession of the client files. If City does not take possession of the client files during that time, City agrees that Consultant may dispose of the client files without further notice, provided Consultant has no reason to believe that the items proposed to be destroyed are things required by law to be maintained or that would be reasonably necessary to the City to establish a right or a defense to a claim. If Consultant has reason to believe that the files contain items that are required by law to be retained or that the City will reasonably need to establish a right or a defense to a claim, Consultant will inspect the files for such items and will retain the items for the period required by law or according to the reasonably foreseeable needs of the City, at the discretion of the City Manager.

3.9 Independent Contractor. No employment relationship is created by this Agreement. Consultant shall perform all legal services required under this Agreement as an independent contractor of the City and shall remain a wholly independent contractor of the City with only such obligations as are required under this Agreement. Neither the City, nor any of its employees, shall have any control over the manner, mode, or means by which Consultant, its agents or employees, render the legal services required under this Agreement or its internal employment or compensation decisions, except as otherwise set forth herein.

3.10 Term; Termination of Agreement. The term of this Agreement shall commence on the Effective Date set forth in this Agreement and shall continue in full force and effect until terminated as provided herein. City or Consultant may terminate this Agreement at any time, with or without cause, on thirty (30) days' written notice to the other party. In the event of such termination, Consultant shall comply with all provisions of the Rules of Professional Conduct for the termination of a client relationship and the City shall pay Consultant professional fees and costs, in accordance with this Agreement, for all services provided and costs incurred through the date of termination of this Agreement. The City agrees to execute, upon request, a stipulation in such form as to permit Consultant to withdraw as attorneys of record in any legal action then pending. Consultant shall cooperate to transition representation to a new attorney or firm in an expedient manner and make available to the City, or to counsel designated by the City, all documents and records of the legal services provided to the City and shall assist to the fullest extent possible in the orderly transition of all pending matters to the City's new counsel.

3.11 Insurance Coverage. Consultant shall carry errors and omissions insurance of not less than One Million Dollars (\$1,000,000) per year in the aggregate, and any additional insurance required by the State of California. Consultant shall furnish to the City proof of insurance required by this Agreement upon request, and shall notify the City of any changes to the insurance.

3.12 Amendment; Modification. This agreement may be modified through a written instrument signed by both parties or by an oral agreement to the extent it is carried out.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

3.14 Time of Performance; Efficiency of Services; Cooperation. The services of Consultant shall be performed expeditiously in light of the purposes of this Agreement. Consultant shall follow all procedures as established by the City consistent with its duties. Consultant shall work cooperatively with appropriate City staff and keep them informed on all matters of importance as they arise.

3.15 Non-Discrimination. In the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, marital status, age, sexual orientation, or medical condition.

3.16 Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement: (1) shall be deemed effective unless it is in writing and signed by City; (2) shall be deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

3.17 Governing Law and Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. The section captions and headings in this Agreement have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

3.18 Severability. If any portion or all of this Agreement is held to be unenforceable for any reason, the remainder of that provision and the remainder of the Agreement shall remain in full force and effect.

3.19 Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Consultant:

3 Corporate Park
Suite 100
Irvine, CA 92606
(949) 385-6431
(Fax) (949) 385-6428
Attn: Matthew Silver

To City:

910 Calle Negocio
San Clemente, CA 92673
(949) 361-8200
Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.20 Confidentiality. The parties agree to keep this Agreement confidential to the greatest extent permissible under the law. This Agreement is exempt from disclosure under the Public Records Act pursuant to Government Code sections 6254(k) and 6255(a), Evidence Code sections 952 and 954, and Business and Professions Code section 6149.

3.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

CITY OF SAN CLEMENTE

By: _____
James Makshanoff
City Manager

Dated: November ____, 2019

Approved as to form only

CITY CLERK of the City of
San Clemente, California

Dated: November ____, 2019

By: _____
Scott C. Smith
City Attorney

SILVER & WRIGHT LLP

By: _____
Matthew Silver
Partner

Dated: November ____, 2019

**AGREEMENT BETWEEN SILVER & WRIGHT, LLP
AND THE CITY OF SAN CLEMENTE
FOR MUNICIPAL CITATION LEGAL SERVICES**

1. PARTIES AND DATE.

This agreement ("Agreement") is made and entered into on November 19, 2019 by and between the CITY OF SAN CLEMENTE ("City"), and SILVER & WRIGHT LLP, a California limited liability partnership engaged in the practice of law in the State of California ("Consultant"). Consultant and the City are sometimes individually referred to herein as "Party" and collectively as "Parties." In consideration of the mutual promises set forth herein, the parties agree to the terms of this Agreement as set forth herein.

2. RECITALS.

2.1 The City wishes to engage the services of Consultant to provide municipal citation support services as described further in this Agreement. Consultant wishes to provide all such services and has the necessary expertise and competency to provide such services.

3. TERMS.

3.1 Scope of Services. Consultant shall provide legal advice, representation and assistance to the City regarding Orange County Sheriff's Department or City issued municipal citations and act as the primary prosecuting authority on the City's behalf.

3.2 Responsibilities of Attorneys and Client. Consultant shall fully cooperate with the City and will keep the City and its staff informed of the status and progress of all pending matters and all legal matters of importance with which Consultant is involved. Consultant will manage and control the delivery of all legal services described hereunder in a professional, competent, and cost-effective manner. The City agrees to provide all information and documentation necessary for the attorneys at Consultant to perform their obligations under this Agreement.

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Suite 100
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(Fax) (949) 385-6428
Attn: Matthew Silver

To City:

910 Calle Negocio
San Clemente, CA 92673
(949) 361-8200
Attn: City Manager

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CITY OF SAN CLEMENTE

By: _____
James Makshanoff
City Manager

Dated: November ____, 2019

Approved as to form only

CITY CLERK of the City of
San Clemente, California

Dated: November ____, 2019

By: _____
Scott C. Smith
City Attorney

SILVER & WRIGHT LLP

By: _____
Matthew Silver
Partner

Dated: November ____, 2019

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AND THE CITY OF SAN CLEMENTE
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3.3 Compensation. 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 \$30,000 per fiscal year on a net basis without approval of the City.

3.4 Cost Reimbursement. The City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in providing legal services under this Agreement, including charges for printing and copying expenses at \$.16 for black and white copies and \$.60 for color copies, postage, research, litigation costs, courier and messenger services and automobile mileage at the current IRS rate for travel on behalf of the City. However, no separate charge shall be made by Consultant for secretarial or word processing services.

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A. Consultant represents that neither Consultant for any of its attorneys or other persons employed by Consultant have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of City that may be affected by the services to be provided to City pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public.

B. If Consultant or an attorney or other person employed by Consultant acquires such an interest while this Agreement remains in effect, Consultant will immediately disclose such interest to the City, and the interested individual shall not participate in or influence the performance of the services to be provided to the City pursuant to this Agreement.

C. In addition to the prescriptions regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, Consultant agrees that unless waived in writing by the City, neither Consultant nor any attorney employed by Consultant shall represent clients before any board, commission, committee or department of City or represent a client adverse to City for a period of one (1) year from the date of completion of the services to be provided to City pursuant to this Agreement or the early termination of the Agreement as provided for in Section 3.10.

3.8 Client Files.

A. At the conclusion of this Agreement, the original client files for the work

performed under this Agreement for the City shall be made available to City. Consultant will be entitled to make copies of the client files. At the conclusion of this Agreement, (whether or not City takes possession of the client files), City shall take possession of any and all original documents that may be in the client files and Consultant shall have no further responsibility with regard to such documents.

B. If City does not take possession of the client files at the conclusion of the Agreement, Consultant shall store such client files for a period of at least one (1) year. At any time after the conclusion of such one (1) year period, Consultant may send to City a notice, advising of Consultant's intention to dispose of the client files. The City shall have ninety (90) days from the date of such notice to take possession of the client files. If City does not take possession of the client files during that time, City agrees that Consultant may dispose of the client files without further notice, provided Consultant has no reason to believe that the items proposed to be destroyed are things required by law to be maintained or that would be reasonably necessary to the City to establish a right or a defense to a claim. If Consultant has reason to believe that the files contain items that are required by law to be retained or that the City will reasonably need to establish a right or a defense to a claim, Consultant will inspect the files for such items and will retain the items for the period required by law or according to the reasonably foreseeable needs of the City, at the discretion of the City Manager.

3.9 Independent Contractor. No employment relationship is created by this Agreement. Consultant shall perform all legal services required under this Agreement as an independent contractor of the City and shall remain a wholly independent contractor of the City with only such obligations as are required under this Agreement. Neither the City, nor any of its employees, shall have any control over the manner, mode, or means by which Consultant, its agents or employees, render the legal services required under this Agreement or its internal employment or compensation decisions, except as otherwise set forth herein.

3.10 Term; Termination of Agreement. The term of this Agreement shall commence on the Effective Date set forth in this Agreement and shall continue in full force and effect until terminated as provided herein. City or Consultant may terminate this Agreement at any time, with or without cause, on thirty (30) days' written notice to the other party. In the event of such termination, Consultant shall comply with all provisions of the Rules of Professional Conduct for the termination of a client relationship and the City shall pay Consultant professional fees and costs, in accordance with this Agreement, for all services provided and costs incurred through the date of termination of this Agreement. The City agrees to execute, upon request, a stipulation in such form as to permit Consultant to withdraw as attorneys of record in any legal action then pending. Consultant shall cooperate to transition representation to a new attorney or firm in an expedient manner and make available to the City, or to counsel designated by the City, all documents and records of the legal services provided to the City and shall assist to the fullest extent possible in the orderly transition of all pending matters to the City's new counsel.

3.11 Insurance Coverage. Consultant shall carry errors and omissions insurance of not less than One Million Dollars (\$1,000,000) per year in the aggregate, and any additional insurance required by the State of California. Consultant shall furnish to the City proof of insurance required by this Agreement upon request, and shall notify the City of any changes to the insurance.

3.12 Amendment; Modification. This agreement may be modified through a written

instrument signed by both parties or by an oral agreement to the extent it is carried out.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

3.14 Time of Performance; Efficiency of Services; Cooperation. The services of Consultant shall be performed expeditiously in light of the purposes of this Agreement. Consultant shall follow all procedures as established by the City consistent with its duties. Consultant shall work cooperatively with appropriate City staff and keep them informed on all matters of importance as they arise.

3.15 Non-Discrimination. In the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, marital status, age, sexual orientation, or medical condition.

3.16 Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement: (1) shall be deemed effective unless it is in writing and signed by City; (2) shall be deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

3.17 Governing Law and Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. The section captions and headings in this Agreement have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

3.18 Severability. If any portion or all of this Agreement is held to be unenforceable for any reason, the remainder of that provision and the remainder of the Agreement shall remain in full force and effect.

3.19 Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

To Consultant:

3 Corporate Park
Suite 100
Irvine, CA 92606
(949) 385-6431
(Fax) (949) 385-6428
Attn: Matthew Silver

To City:

100 Avenida Presidio

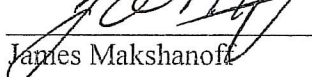
San Clemente, CA 92672
(949) 361-8200
Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.20 Confidentiality. The parties agree to keep this Agreement confidential to the greatest extent permissible under the law. This Agreement is exempt from disclosure under the Public Records Act pursuant to Government Code sections 6254(k) and 6255(a), Evidence Code sections 952 and 954, and Business and Professions Code section 6149.

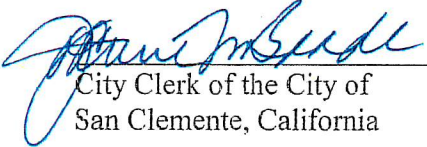
3.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

CITY OF SAN CLEMENTE

By: 
James Makshanoff
City Manager

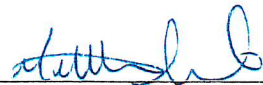
Dated: March 17, 2017

Attest:


City Clerk of the City of
San Clemente, California

Dated: March 31, 2017

Approved as to form only:

By: 
Scott C. Smith
City Attorney

SILVER & WRIGHT LLP

By: 
Matthew Silver
Partner

Dated: March 9, 2017



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: February 21, 2017

Agenda Item Co I

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

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

Subject: **CODE ENFORCEMENT LEGAL SERVICES**

Fiscal Impact: Yes. Adequate funds are provided in the FY2017 budget. It is anticipated that revenue generated from these services will cover a significant amount of the costs incurred.

Summary: Staff recommends that the City Council approve a contract with Silver & Wright LLP. The purpose of the Agreement is to provide code enforcement legal services.

**Background/
Discussion:** At the January 17, 2017 City Council meeting, staff presented to the City Council a report from Matrix Consulting on Code Enforcement. As a result of City Council approval, staff has begun the process of implementing the various recommendations provided by Matrix Consulting. The recommendation put forward to the City Council tonight, is to begin addressing the recommendation below:

A formalized policy and procedure manual should be developed for Code Compliance Division employees. The manual will identify the appropriate process for processing code enforcement cases, including the handling of violations by type of violations to promote compliance within 30 days. The manual should also discuss which code violations should be legally prosecuted and that if there is prosecution, it should be at 100% cost recovery for the City.

In accordance with this recommendation, staff began seeking prosecution services where 100% cost recovery could be obtained. After reviewing the matter with the City Attorney, the firm of Silver & Wright LLP was determined the most qualified provider for these needed services. It is important to note that Best, Best & Krieger (BBK) provide City Attorney services and that their contractual responsibility remains unchanged with this recommendation. BBK will maintain the lead role of protecting the legal interests of the City. BBK has had this type of relationship with Silver & Wright LLP, which is a critical aspect to the success of these proposed legal services.

Pursuant to Policy #201-2-3, Selection of Professional Services Contractors, staff is recommending an exemption based on meeting two of the three criteria set forth in the policy that make this determination. Of the three criteria for exemption, staff feels that two of the criteria are fulfilled:

7.1.1- The project is of a critical nature and, due to time constraints, compliance with the policy requirements would jeopardize timely completion;

7.1.2- The proposed professional services provider has unique familiarity with the project, subject area, or possesses other attributes that make the professional services provider uniquely qualified to provide the services.

Silver & Wright LLP is a law firm specializing in municipal law, code enforcement, police services, receiverships, land-use, zoning, and cost recovery. Silver & Wright LLP provide a streamlined and cost effective approach to the legal process to abating code enforcement violations while achieving full cost recovery for their services. Silver & Wright LLP provide Code Enforcement legal services to a number of cities, including: Santa Barbara, Ventura, Santa Ana, and Chino.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute a contract with the law firm of Silver & Wright LLP for code enforcement legal services, to become effective March 1, 2017.

Attachments: None.

Notifications: None.

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
SILVER & WRIGHT LLP**

This First Amendment to the Professional Services Agreement for legal services, (the "First Amendment") is made and entered into on this 20 day of June, 2017, by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City"), and Silver & Wright LLP, hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. City and Contractor entered into a Professional Services Agreement for Code Enforcement legal services (the "Agreement") on February 21, 2017.
- B. City and Consultant desire to amend the Agreement in the manner provided herein.

COVENANTS:

Section 1: 3.1 of the Agreement is hereby amended to read as follows:

"Consultant shall provide legal advice, litigation, representations and assistance to the City regarding code enforcement matters, including criminal, civil and administrative in nature, as assigned to Consultant by City."

Section 2: 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 \$105,000 per fiscal year on a net basis without approval of the City."

Section 3: Except as expressly amended by this First 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.

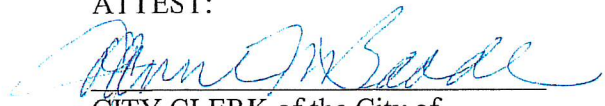
CITY OF SAN CLEMENTE

By: 

Its: Mayor

Dated: Jan. 23rd, 2016
2018

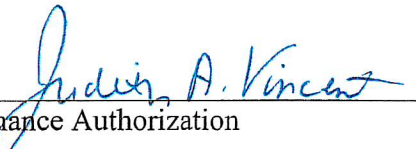
ATTEST:


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

("Contractor")

By: 

Its: Matthew Silver

Dated: 11/27/12, ~~2016~~



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 20, 2017

Agenda Item Com
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney _____
Finance _____

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

Subject: *FIRST AMENDMENT TO CODE ENFORCEMENT LEGAL SERVICES AGREEMENT*

Fiscal Impact: Yes. Adequate funds are provided in the FY2016-17 budget.

Summary: Staff recommends that the City Council approve an amendment to the contract with Silver & Wright LLP. The purpose of the amendment is to expand the services to include litigation services and add an additional \$75,000 for these services.

**Background/
Discussion:**

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.

Based on recent legal activity that has created a conflict for the City's current contracted legal services, it is in the best interests for the City of San Clemente to amend the Silver & Wright LLP agreement to allow for litigation services and add \$75,000 for these services.

As mentioned at the February 21, 2017 meeting, Silver & Wright LLP is a law firm specializing in municipal law, code enforcement, police services, receiverships, land-use, zoning, and cost recovery.

The City has monies budgeted in FY2016-17 and FY2017-18 under legal services that will fund these services. No additional appropriation or funding is needed at this time.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to sign the First Amendment by and between the City of San Clemente and Silver & Wright LLP for litigation services and adding \$75,000 for these services.

Attachments: None.

Notifications: None.

**SECOND AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
SILVER & WRIGHT LLP**

This Second Amendment to the Professional Services Agreement for legal services, (the "Second Amendment") is made and entered into on this 9 day of March, 2018, by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City"), and Silver & Wright LLP, hereinafter referred to as the "CONTRACTOR".

RECITALS:

- 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."
- C. City and Consultant desire to amend the Agreement in the manner provided herein.

COVENANTS:

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 \$200,000 per fiscal year on a net basis without approval of the City."

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

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


CITY OF SAN CLEMENTE

By: 

Its: Mayor

Dated: 12/4/18

ATTEST:


CITY CLERK of the City of
San Clemente, California

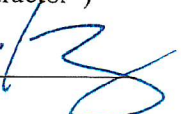
APPROVED AS TO FORM:
BEST, BEST & KRIEGER, LLP

BY: 
Scott C. Smith, City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING:

BY: 
Finance Authorization

Silver & Wright, LLP
("Contractor")

By: Matthew Silver / 

Its: Partner

Dated: 11/5/18



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: March 6, 2018

Agenda Item 6-I
Approvals: _____
City Manager [Signature]
Dept. Head [Signature]
Attorney _____
Finance [Signature]

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

Subject: *AMENDMENTS TO PROFESSIONAL SERVICE AGREEMENTS WITH SILVER & WRIGHT, LLP AND HARPER & BURNS, LLP FOR LEGAL SERVICES*

Fiscal Impact: Yes. Budgeted amounts for legal fees are included in various department budgets for FY 2017-18. There is sufficient Legal Fees budgeted in FY 2017-18 in the General Fund to fund legal costs.

Summary: The City Council approved additional funding for legal services at the November 7, 2017 City Council meeting. 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.

Discussion: At the November 7, 2017 City Council meeting three legal matters were presented to the City Council. Below is a summary of the three legal matters:

**Villa San Clemente, LLC Litigation
Silver & Wright, LLP
estimate \$150,000 - \$200,000**

Silver & Wright is representing City staff in the administrative appeals of decisions by the City Planner/Community Development Director related to temporary banner permitting at the Outlet Mall. One appeal was heard by the Planning Commission and City Council. Two more appeals were recently heard by the Planning Commission and Villa San Clemente has recently appealed those decisions to the City Council. In addition, Silver & Wright is working with Code Compliance on the administrative citations issued to the Outlet Mall and its tenants for temporary banners without permits. Silver & Wright is also representing the City in the administrative appeal hearings and subsequent Superior Court actions. One administrative appeal hearing covered 92 citations. The hearing officer ruled in favor of the City and against Villa San Clemente on the appeal of the administrative citations. Villa San Clemente has filed 92 lawsuits in Superior Court challenging the administrative hearing officer's decision against them. Another administrative appeal hearing covered 24 citations. The hearing officer recently held in favor of the City and against Villa San Clemente on the appeal of those citations. It is anticipated that any additional citations given will be appealed and administrative

hearings held, and may result in additional Superior Court filings by Villa San Clemente challenging the rulings.

**Villa San Clemente, LLC Litigation
Harper & Burns, LLP
estimate \$45,000 - \$60,000**

Harper & Burns is representing the City in a state court action filed by Villa San Clemente. Villa San Clemente sued the City when temporary banner permits could not be issued because the proposed banners did not comply with the sign ordinance requirements related to location and length of time displayed. In addition, special counsel Alan Burns is representing the City in a recently filed writ regarding the timeliness of the preparation of the Draft Supplemental Environmental Impact Report for the Sign Exception Permit and Discretionary Sign Permit for a Master Sign Program for Freeway Oriented Signs at the Outlet Mall.

**Villa San Clemente, LLC Litigation
Jenkins & Hogin, LLP
estimate \$117,000**

Villa San Clemente has filed an action in federal court related to the City's non-issuance of temporary banner permits due to non-compliance with the requirements of the sign ordinance regulations related to proposed location and length of time displayed. Jenkins & Hogin will represent the City in the federal action.

At the November 7, 2017 meeting, funding for all three legal matters was approved. At this time staff is seeking authority to amend the appropriate contracts as necessary.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council:

1. Authorize the Mayor to execute an amendment to the Professional Services Agreement with Silver & Wright, LLP for City Attorney Services; and
2. Authorize the Mayor to execute an amendment to the Professional Services Agreement with Harper & Burns, LLP for City Attorney Services.

Attachments:

Notification: None

Staff
Copy

THIRD AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
SILVER & WRIGHT LLP

This Second Amendment to the Professional Services Agreement for legal services, (the "Second Amendment") is made and entered into on this 20th day of November, 2018, by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City"), and Silver & Wright LLP, hereinafter referred to as the "CONTRACTOR".

RECITALS:

- 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 Consultant desire to amend the Agreement in the manner provided herein.

COVENANTS:

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 increase by \$150,000, from \$30,000 to \$180,000, and shall not be exceeded 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 Third Amendment, the remaining portions of the Agreement shall remain in full force and effect.

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


CITY OF SAN CLEMENTE

By: SS/Dan Bane

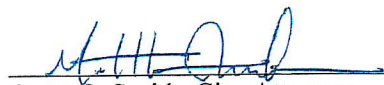
Its: Mayor Pro Tem

Dated: 6/4/19, 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: Partner

Dated: May 17, 2019



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 20, 2018

Agenda Item 600
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney _____
Finance [Signature]

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

Subject: *THIRD AMENDMENT TO CODE ENFORCEMENT AND LEGAL SERVICES AGREEMENT*

Fiscal Impact: Yes. Adequate funds are provided in the FY 2018-19 budget.

Summary: Staff recommends that the City Council approve an amendment to the contract with Silver & Wright LLP. The purpose of the amendment is to increase contractual authority for Code Enforcement and legal services.

**Background/
Discussion:**

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. 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.

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 \$150,000 for additional contract authority.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to sign the Third Amendment by and between the City of San Clemente and Silver & Wright LLP for Code Enforcement legal services and adding \$150,000 for these services.

Attachments: None.

Notifications: None.

**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".

RECITALS:

- 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.

COVENANTS:

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 increase by \$111,000, from \$180,000 to \$291,000, and shall not be exceeded 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: [Signature]

Its: Mayor Pro Tem

Dated: June 18, 2019

ATTEST:

[Signature]
CITY CLERK of the City of
San Clemente, California

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

BY: [Signature]
Scott C. Smith, City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING:

BY: [Signature]
Finance Authorization

SILVER & WRIGHT LLP

By: [Signature]

Its: Partner

Dated: May 23, 2019



AGENDA REPORT

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

Agenda Item 6-U
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.