



CITY OF COSTA MESA

77 Fair Drive
Costa Mesa, CA 92626

Agenda Report

File #: 23-1063

Meeting Date: 2/7/2023

TITLE:

RETAINER AGREEMENTS BETWEEN THE CITY OF COSTA MESA AND COMPLEX APPELLATE LITIGATION GROUP, LLP FOR LEGAL SERVICES

DEPARTMENT: CITY ATTORNEY

PRESENTED BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

CONTACT INFORMATION: KIMBERLY HALL BARLOW, CITY ATTORNEY, (714) 446-1400

RECOMMENDATION:

It is recommended the City Council:

1. Approve the Agreements between the City of Costa Mesa and the law firm of Complex Appellate Litigation Group, LLP in connection with the pending lawsuits entitled The Ohio House LLC v. City of Costa Mesa, United States District Court for the Central District of California, Case No. 8:19-cv-01710-JVS (GJSx), Insight Psychology and Addiction, Inc. v. City of Costa Mesa, United States District Court for the Central District of California, Case No. 8:20-cv-00504-MEMF-JDE, SoCal Recovery, LLC v. City of Costa Mesa, 9th Circuit Court of Appeals No. 20-55820, RAW Recovery, LLC v. City of Costa Mesa, 9th Circuit Court of Appeals No. 20-55870.
2. Authorize the City Manager and the City Clerk to execute the Agreements.

BACKGROUND:

The City has been sued multiple times relating to sober living home ordinances for the R1 and multi-family zones. M.C. Sungaila has been handling the appeals in SoCal Recovery and RAW Recovery, LLC. through the Buchalter law firm. She has also consulted on The Ohio House v. City of Costa Mesa matter. The court entered judgment for the City in the Ohio House case on September 6, 2022, and an appeal has now been filed. Another case, Insight Psychology and Addiction v. City of Costa Mesa, is pending in the trial court, and is being handled by Everett and Dorey. Ms. Sungaila was previously retained to work with Everett and Dorey to assist in the litigation. Ms. Sungaila has now moved her practice to the Complex Litigation Appellate Group, LLC (CLAG).

ANALYSIS:

The fees proposed with CLAG are set out in the exhibits to the retainer agreements. Ms. Sungaila's hourly rate is proposed at \$900 per hour, which represents an increase over the \$775.00 per hour charged by the Buchalter firm. The proposed agreements provide for a 10% reduction to fees if payment is made within thirty-five days of invoicing.

Staff is recommending that the City Council approve retention of Ms. Sungaila and the CLAG firm to handle the appeals in SoCal Recovery, RAW Recovery, and The Ohio House cases, as well as consulting on the Insight Psychology case.

ALTERNATIVES:

The City Council could direct staff to seek modification of the Agreements or choose not approve the Agreements. Alternatively, the City Council could direct staff to solicit proposals from other law firms to join the appeal/defense team.

FISCAL REVIEW:

The proposed retainer agreements reflects competitive hourly rates for legal counsel with the experience and expertise to effectively handle the appeals in SoCal Recovery, RAW Recovery, and The Ohio House cases and trial consulting in Insight Psychology. A litigation budget will be prepared to provide the City with a better assessment of the fiscal impact of continuing to litigate these matters. The City Attorney and City staff will provide an update reflecting the proposed budget to the City Council and subsequently track actual billings and expenditures. In addition, the FY 2022-23 Budget includes funds adequate to cover the estimated litigation budgets.

LEGAL REVIEW:

The City Attorney has reviewed and approved the retainer agreements as to form and prepared this report.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goal:

- Strengthen the Public's Safety and Improve the Quality of Life

CONCLUSION:

Staff recommends that the City Council approve the Agreements between the City and Complex Litigation Appellate Group, LLC.