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Title: RETAINER AGREEMENTS BETWEEN THE CITY OF COSTA MESA AND BUCHALTER, A PROFESSIONAL CORPORATION FOR LEGAL SERVICES

Sponsors:

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Date	Ver.	Action By	Action	Result
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TITLE:

RETAINER AGREEMENTS BETWEEN THE CITY OF COSTA MESA AND BUCHALTER, A PROFESSIONAL CORPORATION 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 that the City Council:

1. Approve the Agreements between the City of Costa Mesa and the law firm of Buchalter, a Professional Corporation 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) and *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.
2. Authorize the City Manager and City Clerk to execute the Retainer Agreement and future authorized amendments to the Agreements and the City Attorney to take necessary steps to associate Buchalter as co-counsel in the legal matter.
3. Authorize the City Manager to appropriate additional funding amounts, as necessary, to pay legal costs above the amount budgeted for litigation costs in Non-Departmental in the Adopted FY 2022-23 Budget from unassigned fund balance in the General Fund for attorneys' services, if

needed, to represent the City in these cases through completion.

BACKGROUND:

The City has been sued multiple times relating to sober living home ordinances for the R1 and multi-family zones. M.C. Sungaila of the Buchalter firm has handled appeals in all of the cases which have been appealed to date. The case *The Ohio House v. City of Costa Mesa* was tried to a jury in April 2022, with the jury finding in favor of the City. The court entered judgment for the City on September 6, 2022, and an appeal is anticipated. 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. The case is likely to go to trial and the City's position in litigation will benefit from involving appellate counsel prior to trial.

ANALYSIS:

The many legal challenges to the City's group home ordinances have been vigorously litigated with multiple cases being appealed. Ms. Sungaila successfully defended the appeal in *Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa*, and has represented the City in connection with all other cases appealed to the Ninth Circuit Court of Appeals. Ms. Sungaila provided consulting services to assist Everett and Dorey in the trial of *The Ohio House* case, which we anticipate will be appealed. Her involvement in the trial preparation and conduct gives her an in depth knowledge of the case and positions her well to handle the appeal. Thus, staff is recommending that the City Council approve retention of Ms. Sungaila and the Buchalter firm to handle any appeal in *The Ohio House* case.

As the *Insight Psychology and Addiction* case moves toward trial, we believe it would be beneficial to have Ms. Sungaila work closely with the Everett and Dorey team to put the case in the best position to win and to be prepared for any appeal. Thus, staff is recommending that the City Council approve retention of Ms. Sungaila and the Buchalter firm to work with defense counsel through trial in the *Insight Psychology* matter.

The fee for Ms. Sungaila is \$775 per hour, and for Alexander Carroll is \$315 per hour. The City receives a 10% fee reduction if billings are paid within 35 days of invoicing.

ALTERNATIVES:

The City Council could modify the Agreements or choose not to approve the Agreements, or either of them. 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 reflect competitive hourly rates for legal counsel with the experience and expertise to effectively handle the appeal in *The Ohio House* case 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's Office has reviewed this report and approved it as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goals:

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

CONCLUSION:

It is recommended that the City Council:

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