

**Council Meeting: June 29, 2010****SUBJECT: Amendment of Outside Counsel Agreement for Mary Avenue
Extension Appeal****REPORT IN BRIEF**

Approval is requested for a First Amendment to a contract with the law firm of Barg, Coffin, Lewis & Trapp to assist the City Attorney with legal matters pertaining to the Mary Avenue Extension litigation. The current contract began in 2008 and provides for fees not to exceed \$200,000. This second amendment is required to reflect the fact that the City went to trial in this matter, is currently involved in litigation and is pursuing an appeal, which will involve substantial additional work and appellate argument preparation. This Second Amendment would provide for a total amount not to exceed \$300,000.

BACKGROUND

Environmental law specialists Don Sobelman and Kathryn Oehlschlager of the law firm of Barg, Coffin, Lewis & Trapp have been providing legal services to the City pursuant to Section 908 of the City Charter to represent the City and the Redevelopment Agency for the purpose of providing legal and consulting services regarding advice on environmental issues and related matters. This assistance has been particularly valuable in conjunction with the complexities surrounding the California Environmental Quality Act (CEQA) as it relates to the Mary Avenue Extension.

On November 17, 2008, the City entered into an agreement for outside counsel services with Barg, Coffin, Lewis & Trapp for representation in *Sunnyvale West Neighborhood Association, et al. vs. City of Sunnyvale City Council, et al.* This contract was amended on December 4, 2009 to increase the appropriated amount to \$200,000 to allow for work to be completed in the City's appeal.

DISCUSSION

Due to the outcome from the court hearing, it is necessary to increase the amount of the contract for legal services with Barg, Coffin, Lewis & Trapp to pursue an appeal of the Court's decision approved by Council on December 15, 2009.

The specialized legal services of Don Sobelman and Kathryn Oehlschlager in the area of environmental law continue to be required in the area of CEQA.

It is estimated that these services will require an amendment to the professional services agreement in a total contract amount not to exceed \$300,000 to cover legal services. The cost estimate is based on the hourly rate for partners at \$365.00 per hour. City Attorney finds this rate to be competitive with other legal firms providing similar services.

FISCAL IMPACT

Funds are available in the budgeted 09-10 and 10-11 City Attorney operating budget, and are anticipated to be budgeted in future operating budgets.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve a first amendment to the contract with the law firm of Barg, Coffin, Lewis & Trapp in an amount not to exceed a total contract amount of \$300,000.
2. Do not approve a first amendment to the contract with Barg, Coffin, Lewis & Trapp.

RECOMMENDATION

It is recommended that Council approve a First Amendment to the Outside Counsel Services Agreement with Barg, Coffin, Lewis & Trapp for legal services in a total contract amount not to exceed \$300,000.

Prepared and reviewed by:

David E. Kahn, City Attorney
City Attorney's Office

Attachments:

Attachment A - Draft Second Amendment to Outside Counsel Agreement

**SECOND AMENDMENT TO
OUTSIDE COUNSEL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND
BARG COFFIN LEWIS & TRAPP, LLP**

THE OUTSIDE COUNSEL SERVICES AGREEMENT commencing November 17, 2008, by and between the CITY OF SUNNYVALE, a municipal corporation (“City”) and BARG COFFIN LEWIS & TRAPP, LLP (“Outside Counsel) for the purpose of providing representation (advice, litigation and related matters as requested) of City of Sunnyvale in *Sunnyvale West, et al. vs. City of Sunnyvale City Council, et al.*, Santa Clara County Superior Court No. 108-CV-127528 and its appeal *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council*, Court of Appeal of the State of California, Sixth Appellate District Case No. H035135;

1. Section 4.1 is hereby amended to read as follows:

4.1 Compensation. Fees for all legal services provided hereunder shall be charged in accordance with the following schedule through December 31, 2010:

Partners	\$365.00 per hour
Associates	\$280.00 per hour
Legal Assistants	\$170.00 per hour

This schedule may be amended after December 31, 2010, and thereafter on an annual basis to alter fees and charges applicable hereto provided that a letter agreement is duly signed and approved by the City Attorney. The total amount of the fees and expenses is not to exceed Three Hundred Thousand Dollars (\$300,000.00).

2. Except as amended above, all other terms and conditions of the Agreement commencing November 17, 2008, shall remain in effect.

IN WITNESS WHEREOF, City and Outside Counsel have executed this Amendment to Outside Counsel Agreement.

CITY OF SUNNYVALE

Dated: June ____, 2010

By _____
David E. Kahn, City Attorney

BARG COFFIN LEWIS & TRAPP, LLP

Dated: June ____, 2010

By _____
Donald E. Sobelman, Partner