



Meeting Date: 5/13/08

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Anthony Emmert *AE* Agenda Item No. **I-12**
 Reviewed By: City Manager *gpb* City Attorney *ph* Finance *OC* Public Works *W*

DATE: May 5, 2008
TO: City Council
FROM: Gary L. Gillig, City Attorney

Mark S. Norris, Assistant Public Works Director *MSN*
 Public Works Department, Utilities Services Branch

SUBJECT: First Amendment to Attorney Services Agreement with Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. for legal fees associated with the Affholder United States District Court Case No. CV 07-06562 RGK (CWx)

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an Amendment to an Agreement with Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. (Agreement No. 4055-07-CA) in an amount not to exceed \$950,000 for legal fees associated with the Affholder United States District Court Case No. CV 07-06562 RGK (CWx) ("Affholder Case").
2. Approve a special budget appropriation of \$350,000 from the Wastewater Collection Operating Reserve to the Wastewater Redwood Trunk Sewer Project for legal fees associated with the Affholder Case.

DISCUSSION

A trial date of October 14, 2008 has been set in the Federal District Court for the Affholder Case on the \$11,800,000 claim by Affholder arising out of the City's Water Resources Division – Wastewater Section Redwood Trunk Sewer Project. The \$33,000,000 project consisted of replacing approximately 47,000 feet of sewer interceptor pipeline, ranging in size from 20 to 60 inches in diameter, to deliver wastewater flows to the new Headworks Project, repairing aging infrastructure and minimizing odors by enhancing operational characteristics. The project also included the refurbishment of the Hemlock/Patterson Street Pump Station and the elimination of several sewage lift stations.

The dispute also includes a counterclaim filed by the City against Affholder for liquidated damages.

First Amendment to Attorney Services Agreement with Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. for legal fees associated with the Affholder United States District Court Case No. CV 07-06562 R 6K (CWx).

May 5, 2008

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Production and exchange of project records by Affholder and the City is underway, and several third party subpoenas have been issued. Depositions are to begin in June and July of 2008, followed by mediation in August. If the case is not settled, pretrial activities will continue in preparation for the October trial.

The budget from legal fees and costs through the mediation is \$350,000, which is the amount sought by the present appropriations.

Special Counsel has provided the fee and cost estimate as a reasonable "worst case" scenario, assuming aggressive tactics by Affholder and a full court or jury trial. Actual fees will not necessarily reach the estimated amount. It is the recommendation of the City Attorney that the City enter into the amendment to the agreement with the law firm of Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. to settle the dispute.

Under the terms of the agreement, Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. will provide legal support to include factual investigation and witness interviews, preparation of issue and witness files, document organization and analysis of both the City and Affholder project records and records from third party sources, coordination of expert witness activities, preparation for and participation in depositions and other written discovery, law and motion practice, attending Court hearings, trial preparation, and a trial of approximately thirty (30) days.

FINANCIAL IMPACT

The estimated total cost of the amendment is not to exceed \$950,000. The Public Works Department requests that \$350,000 be appropriated from the Wastewater Collection Operating Reserve to the Wastewater Redwood Trunk Sewer Project No. 916102 Account No. 611-6613. Additional fees will be provided for in the fiscal year 2008/2009 budget process. At the present time there is a sufficient fund balance available in the Wastewater Collection Operating Reserve.

GLG:MSN:mdt

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Attachment #1 – First Amendment to Agreement No. 4055-07-CA
#2 – Special Budget Appropriation

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FIRST AMENDMENT TO AGREEMENT FOR ATTORNEY SERVICES

This First Amendment to Agreement for Attorney Services, dated May 13, 2008, is entered into by and between the City of Oxnard, a municipal corporation ("City"), and Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc., engaged in the practice of law in the County of Ventura, California ("Special Counsel"), and amends that certain Agreement for Attorney Services ("the Agreement") entered into on the 13th day of February 2007.

City and Special Counsel agree that the Agreement is amended as follows:

1. Section 10a of the Agreement is amended to add Subsection 5, to read "City agrees to pay Special Counsel an amount not to exceed \$950,000 for legal services regarding the Affholder, Inc. claim against the City."

City and Special Counsel further agree that as so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

CONSULTANT

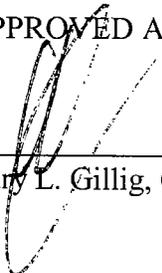
Dr. Thomas E. Holden, Mayor

Richard Mah
Hunt Ortmann Palffy Nieves Lubka Darling
& Mah, Inc.

ATTEST:

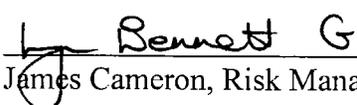
Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Gary L. Gillig, City Attorney

APPROVED AS TO INSURANCE:



James Cameron, Risk Manager

APPROVED AS TO CONTENT:



Ken Ortega, Public Works Director

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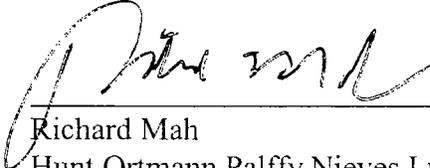
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CITY OF OXNARD

CONSULTANT

Dr. Thomas E. Holden, Mayor



Richard Mah
Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc.

ATTEST:

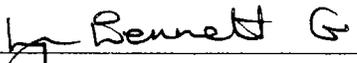
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:



Gary L. Gillig, City Attorney



James Cameron, Risk Manager

APPROVED AS TO CONTENT:



Ken Ortega, Public Works Director

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

May 13, 2008

Request is hereby made for an appropriation of total

\$ 350,000

Reason for appropriation: To provide for legal fees associated with the Affholder, Inc. v. City of Oxnard federal court compliant.

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
Wastewater Collection (611)	611-6613 Wastewater Collection/CIP/Redwood Trunk Project No. 916102	350,000

Net Effect on Wastewater Collection
Fund Balance

(350,000)



Program Leader

REQUIRES CITY COUNCIL APPROVAL

DIRECTOR OF FINANCE



Disposition

Transfer by Journal Voucher _____

Approved _____

Rejected _____

City Manager