



Meeting Date: 9-9-08

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 *[Signature]*

Agenda Item No. *I-12*

Reviewed By: City Manager *[Signature]*

City Attorney *[Signature]*

Finance *[Signature]*

Public Works *[Signature]*

DATE: August 29, 2008

TO: City Council

FROM: Mark S. Norris, Assistant Public Works Director
Public Works Department, Utilities Services Branch *[Signature]*

SUBJECT: Second 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 a Second Amendment to an Agreement with Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. (Agreement No. 4055-07-CA) increasing the contract amount by \$700,000 to an amount not to exceed \$1,050,000 for legal and expert 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 \$700,000 from the Wastewater Collection Operating Reserve to the Wastewater Redwood Trunk Sewer Project for legal and expert fees associated with the Affholder Case.

DISCUSSION

As indicated in an agenda report for the City Council meeting of May 13, 2008, the City is being sued for approximately \$12,000,000 by Affholder, Inc. for alleged damages arising out of the 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.

Second 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).

September 9, 2008

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Affholder has made a number of claims, most of which relate to difficulties encountered in micro-tunneling operations. City staff and the City's consultants on the project have determined that the claims are without merit and have denied them. Affholder brought an action in federal district court. The City Council has been briefed in closed session on this action, the issues involved, and the necessary preparation. The trial is presently set for November 25, 2008. Mediation is set for November 6, 2008. Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc. will provide legal support to include factual investigation and witness interviews, preparation of issue briefs 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, attending Court hearings, trial preparation, and a trial of approximately thirty (30) days.

Staff is seeking the contract amendment and the appropriations in anticipation of extensive trial preparation and response to plaintiffs' efforts. The amount of appropriation and maximum contract amount may not be reached if the case ends prior to trial.

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

FINANCIAL IMPACT

The estimated total cost of the amendment is not to exceed \$1,050,000. The Public Works Department requests that \$700,000 be appropriated from the Wastewater Collection Operating Reserve to the Wastewater Redwood Trunk Sewer Project No. 916102 Account No. 611-6613-822-8802. The amount of \$350,000 previously has been appropriated. There are sufficient funds available in the Wastewater Collection Operating Reserve to cover the cost of this agreement.

MSN:mdt

G:\AdminSvcs\RFP & RFQ Project\Wastewater\Hunt Ortmann -- 4055-07-CA\Hunt Ortmann -- 4055-07-CA (A2)\Hunt Ortmann -- 4055-07-CA (A2) -- Agenda.doc

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

000100

SECOND AMENDMENT TO AGREEMENT FOR ATTORNEY SERVICES

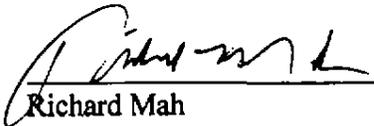
This Second Amendment to Agreement for Attorney Services, dated September 9, 2008, is entered into by and between the City of Oxnard, a municipal corporation ("City"), and Hunt Ortmann Palffy Nieves Lubka Darling & Mah, Inc., engaged in the practice of law in the County of Ventura, California ("Special Counsel"), and amends that certain Agreement for Attorney Services ("the Agreement") entered into on the 13th day of February 2007, and amended on May 13, 2008.

- A. 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 \$1,050,000 for legal services regarding the Affholder, Inc. claim against the City."
- B. City and Special Counsel further agree that as so amended by the First and Second Amendments, the Agreement remains in full force and effect.

CITY OF OXNARD

CONSULTANT

Dr. Thomas E. Holden, Mayor

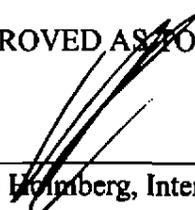


Richard Mah
Hunt Ortmann Palffy Nieves Lubka Darling
& Mah, Inc.

ATTEST:

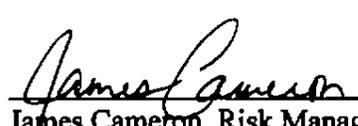
Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Hornberg, Interim City Attorney

APPROVED AS TO INSURANCE:

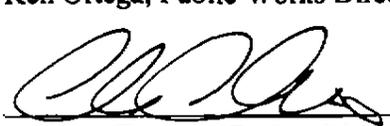


James Cameron, Risk Manager

APPROVED AS TO CONTENT:



Ken Ortega, Public Works Director



Anthony Emmert, Project Manager

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

September 9, 2008

Request is hereby made for an appropriation of total \$ 700,000

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

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
Wastewater Collection (611)	611-6613-822-8802 Wastewater Collection/CIP/Redwood Trunk Project No. 916102	700,000

Net Effect on Wastewater Collection
Fund Balance (700,000)



Program Leader

REQUIRES CITY COUNCIL APPROVAL

DIRECTOR OF FINANCE



Disposition	Approved _____
Transfer by Journal Voucher _____	Rejected _____
	_____ City Manager