




REEDLEY CITY COUNCIL


- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 4

DATE: June 13, 2017

TITLE: APPROVE AND AUTHORIZE CITY MANAGER TO SIGN AMENDMENT THREE WITH ALESHIRE AND WYNDER FOR SPECIAL COUNSEL SERVICES, ALSO RATIFYING THE PREVIOUS AGREEMENTS AND AMENDMENTS

SUBMITTED: Rob Terry, AICP 
Community Development Director

APPROVED: Nicole R. Zieba
City Manager 

RECOMMENDATION

Approve and authorize the City Manager to sign Amendment Three to the Special Counsel Services Agreement with Aleshire and Wynder (A&W), LLP, and ratify the previous agreements and amendments.

EXECUTIVE SUMMARY

Since March of 2013, the City has been in contract with A&W to address the environmental aspects of the City's General Plan Update, and consequent legal challenges associated with this process. During this time, as additional litigation activities have been brought against the City by Consolidated Irrigation District (CID) concerning the General Plan Update, and other development projects, the City has sought to retain the services of A&W to address such litigation. This Third Amendment seeks to approve the continuation of services, clarify the bounds of such, and ratify the previous contract activities associated with this agreement.

BACKGROUND

On March 19, 2013, the City of Reedley entered into a Contract Services Agreement for Special Counsel Services with the law firm of Aleshire and Wynder (A&W) to provide representation to the City in the preparation and review of the City's Environmental Impact Report (EIR) associated with the General Plan Update. On December 16, 2013, the contract was amended to allow for A&W to provide additional assistance with General Plan Update tasks. On March 13, 2014, the City received correspondence from an attorney representing Consolidated Irrigation District (CID) stating the intent to commence litigation against the City challenging the Final EIR and approval of the General Plan Update. As such, the City

requested that A&W represent it in any litigation brought by this agency in relation to the aforementioned items, and a Second Amendment to the City/A&W Agreement was entered into on March 31, 2014, confirming this approach.

Since entering into the Second Amendment to the Agreement, additional litigation has been commenced by CID against the City arising from, and relating to, the Kings River Village (KRV) project, the Blossom Trail project, and potentially the City's approval of its Urban Water Management Plan (UWMP). At this time, the parties desire to enter into a Third Amendment in order to allow for and clarify the following:

1. Ratify the approval of the original Agreement and consequent Amendments (First and Second); and
2. Confirm authorization of A&W's representation of the City on the KRV and Blossom Trail litigation's commenced by CID at the same attorney rates agreed to for the General Plan litigation; and
3. To authorize the City Manager to retain A&W to represent the City in any appeals, administrative proceedings, or future litigation involving CID at the same attorney rates agreed to for the General Plan Litigation.

Attached for the Council's review is the Draft Third Amendment and attachments.

FISCAL IMPACT

There is no rate or monetary change within the third amendment, and the estimated fees/costs associated with the services are reflected within the agency's official budget documents.

PRIOR COUNCIL ACTIONS

No prior actions have been taken by Council in regards to this amendment. Previous actions taken in regards to the agreement are notated above.

ATTACHMENTS

1. Third Amendment to Contract Services Agreement

Motion: _____

Second: _____

**THIRD AMENDMENT TO CONTRACT SERVICES AGREEMENT
FOR SPECIAL COUNSEL SERVICES
CITY OF REEDLEY**

THIS THIRD AMENDMENT TO CONTRACT SERVICES AGREEMENT FOR SPECIAL COUNSEL SERVICES ("Third Amendment") by and between Aleshire & Wynder, LLP, a California limited liability partnership ("A&W") and the CITY OF REEDLEY ("City") is effective as of the 13th day of June, 2017, pursuant to the following recitals, which are a substantive part of this Third Amendment. City and A&W are sometimes individually referred to as a ("Party") and jointly as the ("Parties").

RECITALS

A. City and A&W entered into a Contract Services Agreement for Special Counsel Services on or about March 19, 2013, ("the Agreement") whereby A&W agreed to provide representation to City in the review and preparation of responses to comments received on the City's draft EIR, and preparation for hearings and proceedings related to the certification of the Final EIR for the update to the City's General Plan. The Agreement was amended on December 16, 2013, to allow for additional assistance with the update to the City's General Plan ("First Amendment"); and

B. On March 13, 2014, the City received correspondence from an attorney representing Consolidated Irrigation District ("CID") indicating that CID intended to commence litigation against the City challenging certification of the Final EIR and approval of the General Plan Update.

C. The City requested A&W represent it in any litigation brought by CID to challenge its certification of the Final EIR and approval of the General Plan Update in *Consolidated Irrigation District v. City of Reedley, City of Reedley City Council*; Fresno Superior Court Case No. 14CECG00877 ("General Plan" litigation), including any appeals, and related enforcement action in *City of Reedley v. Consolidated Irrigation District*; Fresno Superior Court Case No. 15CECG00753. On March 31, 2014, the City and A&W entered into the Second Amendment to the Agreement ("Second Amendment") confirming the same.

D. Since entering into the Second Amendment to the Agreement, additional litigation has been commenced by CID against the City arising from and relating to the Kings River Village project, the Blossom Trail project, and the City's approval of its Urban Water Management Plan. This has resulted in the following litigation: *Consolidated Irrigation District v. City of Reedley, City of Reedley City Council* (RPIs: *Kings River Community Partnership, LLC; Kenneth J. Enns & Janet Marilyn Enns, Trustees of the Enns Family Trust U/A/D Feb. 6, 1999; Reedley's Community Christian Fellowship*; Merced Superior Court Case No. 16CV-02121 (formerly Fresno SC No. 15CECG01695), and 5th District Court of Appeal Case No. F073679 ("KRV" litigation); and *Consolidated Irrigation District v. City of Reedley, City of Reedley City Council* (RPIs: *DW Land Development LLC, Barsoom Bros., a California Limited Partnership*); Fresno Superior Court Case No. 17CECG00482 ("Blossom Trail" litigation). Shannon Chaffin and June Ailin have been the lead attorneys on behalf of A&W for the City.

F. The Parties desire to enter into this Third Amendment in order to (1) ratify the approval of the Agreement, First Amendment, and Second Amendment; (2) confirm authorization of

A&W's representation of the City in the KRV and Blossom Trail litigation commenced by CID at the same attorney rates agreed to for the General Plan litigation; and (3) to authorize the City Manager to retain A&W to represent the City in any appeals, administrative proceedings or future litigation involving CID at the same attorney rates agreed to for the General Plan litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration (including the granting of entitlement(s)), the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Agreement Changes. Section 2(A) of the Agreement is amended to add Assignment Nos. 3 and 4 as follows:

Assignment No. 3: A&W has and will represent the City in the following litigation involving CID: *Consolidated Irrigation District v. City of Reedley, City of Reedley City Council* (RPIs: *Kings River Community Partnership, LLC; Kenneth J. Enns & Janet Marilyn Enns, Trustees of the Enns Family Trust U/A/D Feb. 6, 1999*); *Reedley's Community Christian Fellowship*; Merced Superior Court Case No. 16CV-02121 (formerly Fresno SC#15CECG01695) and 5th District Court of Appeal Case No. F073679; and *Consolidated Irrigation District v. City of Reedley, City of Reedley City Council*; RPIs: *DW Land Development LLC, Barsoom Bros., a California Limited Partnership*; Fresno Superior Court Case No. 17CECG00482. Representation under any assignments herein shall include any appeals. Attorney legal services for Assignment No. 3 shall be the same as those attorney rates for Assignment No. 2 set forth in revised Exhibit "A" attached to the Second Amendment. Paralegal and law clerk services shall be \$125.00 per hour.

Assignment No. 4: The City Manager is authorized, in the City Manager's discretion, to retain A&W to provide legal services on behalf of the City to represent the City in any appeals, administrative proceedings or litigation involving Consolidated Irrigation District. Said authorization shall be confirmed in writing by the City Manager and A&W. Legal services shall be provided at the same rates as those set for Assignment No. 3.

2. Continuing Effect of Agreement. Except as amended by this Third Amendment, all provisions of the Agreement, as amended, are hereby ratified and approved, and shall remain unchanged and in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended including by this Third Amendment.

3. Entire Agreement. This Third Amendment constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Third Amendment shall be in writing and signed by both parties.

4. Severability. If any provision of this Third Amendment or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to

any extent, the remaining provisions of this Third Amendment and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.

5. Jurisdiction. This Third Amendment shall be administered, governed and interpreted under the laws of the State of California, without regard to its choice of law rules. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Fresno, State of California.

6. Counterparts. This Third Amendment may be executed in counterparts, and copies of this Third Amendment shall be deemed originals.

7. Knowing and Voluntary Agreement. The Parties to this Third Amendment acknowledge and agree that each of them has had a full and fair opportunity to carefully read and review the terms and provisions of this Third Amendment and consult with their own attorney concerning the meaning and effect of this Third Amendment. By executing this Third Amendment, each of the Parties hereto represents, acknowledges, and agrees that such Party carefully read and fully understands all the provisions of this Third Amendment, and that they are knowingly and voluntarily entering into this Third Amendment and signing it of their own free will.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

CITY OF REEDLEY,

By: 

Nicole Zieba, City Manager

ALESHIRE & WYNDER, LLP

By: 

Joseph W. Pannone, Esq.
Equity Partner

ATTEST:

By: 

City Clerk

APPROVED AS TO FORM:

By: 

Scott G. Cross, City Attorney

Attachments:

1. Amendment to Contract Services Agreement for Special Counsel Services, City of Reedley, dated March 19, 2013.
2. (First) Amendment to Contract Services Agreement for Special Counsel Services, City of Reedley, dated December 16, 2013.
3. Second Amendment to Contract Services Agreement for Special Counsel Services, City of Reedley, dated March 31, 2014