



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: OCTOBER 3, 2023

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: REQUEST TO APPROVE EXPENDITURE OF \$327,250.00 TO RETAIN OUTSIDE COUNSEL IRMA RODRIGUEZ MOISA, ESQ. OF ATKINSON, ANDELSON, LOYA, RUUD & ROMO, APC TO REPRESENT AN INDIVIDUALLY NAMED DEFENDANT IN LITIGATION AND \$147,500 IN ANTICIPATED LITIGATION COSTS INCLUDING EXPERTS

ISSUE:

Requesting approval of a total budget of \$474,750.00 through trial for the City Attorney's Office to retain the law firm of Atkinson, Andelson, Loya, Ruud & Romo, APC to represent individually named defendant City employee Wes Wisniewski in the case of *Buckley et al. v. City of Riverside et al.*, Riverside County Superior Court, Case No. CVRI2303618 and to authorize the City Attorney to execute the Outside Counsel Engagement Letter.

RECOMMENDATION:

That the City Council:

1. Approve the budget in an amount not to exceed \$474,750.00 to retain Atkinson, Andelson, Loya, Ruud & Romo, APC to represent individually named City employee Wes Wisniewski through trial (which includes \$327,250 in projected attorneys' fees and \$147,500 in anticipated legal costs). This firm is already on the City's panel of approved outside counsel; and
2. Authorize the City Attorney to execute the Outside Counsel Engagement Letter.

DISCUSSION:

The City Attorney's Office has developed an in-house litigation team to handle third party litigation. However, there are times when it may be necessary to engage outside counsel to provide legal services, if for example, there is a potential conflict of interest. As you may recall, the *Buckley* case involves allegations of sexual harassment by Plaintiff Jonathan Buckley against individual Defendant Wesley Wisniewski. The City of Riverside is a Defendant because Plaintiffs claim the alleged sexual harassment took place in the course and scope of Mr. Wisniewski duties as a City employee. Employment cases are more complex due to the number of witnesses involved and they are typically document intensive. The City Attorney's Office will defend the City in this litigation, but has determined it is necessary to retain separate counsel to represent Mr. Wisniewski.

The City Attorney's Office is unable to effectively represent both Mr. Wisniewski and the City of Riverside as a potential conflict of interest exists. *Government Code* section 995 provides that upon request of an employee, a public entity shall provide for the defense of any civil action brought against its employee, in their official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity. However, the Rules of Professional Conduct, Rule 1.7 provides that generally an attorney shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client.

In cases involving alleged sexual harassment by an employee, the alleged sexual harassment is not per se beyond the scope of employment. However, courts have rarely held an employee's sexual assault or sexual harassment of a third party falls within the scope of employment. (See *Daza v. Los Angeles Community College Dist.* (2016) 247 Cal. App. 4th 260, 268.) As it is unclear at this time whether Mr. Wisniewski was acting within the course and scope of his duties, the City Attorney's Office will be providing a separate defense to Mr. Wisniewski under a reservation of rights, which allows the City to withdraw legal representation if it is later determined that Mr. Wisniewski was not acting in the course and scope of his employment. Because representation under a reservation of rights creates a per se conflict of interest to the City's representation of Mr. Wisniewski, the City Attorney's Office needs to retain outside counsel to represent Mr. Wisniewski in this matter.

The law firm of Atkinson, Andelson, Loya, Ruud & Romo, APC is already on the City's pre-approved panel of outside counsel. Further, Irma Rodriguez Moisa Esq. has extensive experience in providing labor and employment law services to public agencies. Over the past 20 years, she has earned a reputation of serving as a trusted legal advisor and has successfully defended employers in a variety of matters including discrimination/harassment claims, grievances, wage and hour disputes, and unfair labor practices.

FISCAL IMPACT: It will cost the City up to \$474,750.00 to retain Atkinson, Andelson, Loya, Ruud & Romo, APC to represent Mr. Wisniewski through trial. The funds to cover all costs are currently budgeted in the Liability Trust Fund account 1310000-421100 for attorney's fees in the amount of \$327,250 and Liability Trust Fund account 1310000-428200 for legal costs in the amount of \$147,500 (which includes the cost of deposition transcripts, trial graphics, a jury consultant, an economist expert and a psychologist expert). Notably, the City Attorney's Office will also need to retain the same type of experts to defend the City in this litigation, so we will jointly retain them with outside counsel and split the cost.

STRATEGIC PLAN ALIGNMENT:

This item aligns with the following *Strategic Priority and Goal* from the Envision Riverside 2025 Strategic Plan: high performing government. In addition, it aligns with the following *Cross-Cutting Threads*:

1. **Fiscal Responsibility** – The City Attorney's Office went through a formal RFP process for outside counsel. Competitive procurement was used to secure qualified law firms at competitive rates for legal services.

Prepared by: Edward J. Reid, Deputy City Attorney
Certified as to
availability of funds: Edward Enriquez, Assistant City Manager/Chief Financial Officer
Approved by: Charles M. Futrell, City Manager
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Atkinson, Andelson, Loya, Ruud & Romo, APC's proposed budget
2. Outside Counsel Engagement Letter