

RESOLUTION NUMBER R- 309799

DATE OF FINAL PASSAGE JUL 10 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AN AMENDMENT TO THE AGREEMENT FOR LEGAL SERVICES WITH PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, FOR AN AMOUNT NOT TO EXCEED \$400,000; AUTHORIZING AND DIRECTING THE MAYOR TO SIGN THE AGREEMENT; AND AUTHORIZING THE CHIEF FINANCIAL OFFICER TO EXPEND SPECIFIED AMOUNTS UNDER THE AGREEMENT

WHEREAS, the City of San Diego ("City") is a named defendant in cases related to a mobilehome park in Mission Bay entitled: *De Anza Cove Homeowners Association, et al. v. City of San Diego*, San Diego Superior Court Case No. GIC 821191 ("De Anza"); *Aglio, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00081994-CU-EI-CTL ("Aglio"); *Scottsdale Insurance Co. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00093941-CU-IC-CTL ("Scottsdale"); *Certain Interested Underwriters at Lloyd's v. Terra Vista Management, Inc., et al.*, San Diego Superior Court Case No. 37-2008-00092709-CU-MC-CTL and

WHEREAS, the City retained the law firm of Procopio, Cory, Hargreaves & Savitch LLP ("Procopio") to represent and counsel the City in *De Anza Cove Homeowners Association, et al. v. City of San Diego*, San Diego Superior Court Case No. GIC 821191 ("De Anza"); *Aglio, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00081994-CU-EI-CTL ("Aglio"); and *Scottsdale Insurance Co. v. City of San Diego*, San Diego Superior Court Case No. 37-2008-00093941-CU-IC-CTL ("Scottsdale"); and

WHEREAS, the City also retained Procopio to pursue an excess insurance coverage claim with the California State Association of Counties (“CSAC”); and

WHEREAS, the City proposes to retain Procopio to represent and provide counsel with respect to the lawsuit known as *Certain Interested Underwriters at Lloyd’s v. Terra Vista Management, Inc., et al.*, San Diego Superior Court Case No. 37-2008-00092709-CU-MC-CTL

WHEREAS, the City desires to continue to utilize the services of Procopio for insurance coverage analysis and representation related to the *De Anza, Aglio, Scottsdale* cases, the CSAC claim and the new matter, Lloyds of London; and

WHEREAS, Procopio possess the specialized knowledge and experience, beyond that available in the Office of the City Attorney, that is necessary in order to provide insurance coverage services to the City related to the *De Anza, Aglio, Scottsdale* cases, the CSAC claim and the new matter, Lloyds of London; and

WHEREAS, the amendment to the agreement for legal services (“Amended Agreement”), attached hereto as Attachment A, between the City and Procopio is for an amount not to exceed \$400,000, and shall run from the date the last party signs the Amended Agreement, and it is approved by the City Attorney in accordance with San Diego Charter section 40, until the scope of services defined in the Amended Agreement is complete, but not for a term exceeding five years from the date of the initial agreement, unless an extension is approved by ordinance of the Council of the City of San Diego pursuant to San Diego Charter section 99; and;

WHEREAS, the funding for the Amended Agreement shall be borne by Public Liability Fund 720045; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council approves the Amended Agreement and authorizes and directs the Mayor or his designee to sign the Amended Agreement for legal services with Procopio, Cory, Hargreaves & Savitch LLP, attached hereto as Attachment A and which is on file with the Office of the City Clerk as Document No. RR- 309799.

BE IT FURTHER RESOLVED, that Chief Financial Officer is authorized to appropriate and expend an amount up to \$400,000 from the Public Liability Fund, Fund 720045, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

BE IT FURTHER RESOLVED, that the actions authorized here are contingent upon the Chief Financial Officer first furnishing one or more certificates stating that funds necessary for the authorized expenditures are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



John E. Riley
Deputy City Attorney

JER:aml
June 9, 2015
Or. Dept: City Atty
CC: 3000007940
Doc. No. 985179
(June 19, 2015 Cor. Copy)

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 23 2015.

ELIZABETH S. MALAND
City Clerk

By
Deputy City Clerk

Approved: 7/8/15
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

**AMENDMENT NO. 1 TO THE AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP FOR LEGAL SERVICES IN
CONNECTION WITH INSURANCE
COVERAGE REPRESENTATION AND
COUNSELING IN THE *DE ANZA COVE*
MOBILE HOME PARK LITIGATION
MATTERS**

This Amendment No. 1 to the March 2013 Agreement for Legal Services between the City of San Diego (“City”) and Procopio, Cory, Hargreaves & Savitch LLP in Connection with Insurance Coverage Representation and Counseling in the De Anza Cove Mobile Home Park Litigation Matters (the “Consultant Agreement”) is entered into between the City and Procopio, Cory, Hargreaves & Savitch LLP (Law Firm or PCHS) for Law Firm to provide further representation and counseling to City related to the *De Anza Cove* Mobile Home Park Litigation (*De Anza* Litigation) and the insurance coverage issues arising therefrom.

RECITALS

In response to the City’s agreement in October of 2014 to fund a settlement of the *De Anza* Litigation (“*De Anza* Settlement”), City and Law Firm wish to continue the Scope of Services outlined in Exhibit A to the Consultant Agreement, to add additional and new services to the Scope of Services of that Consultant Agreement, and to add additional compensation for these further and additional services by amending the Consultant Agreement as follows:

1. The Scope of Services to be performed by Law Firm, as set forth in Exhibit A of the Consultant Agreement, is revised to include additional tasks in furtherance of the original scope and reflective of the recent *De Anza* Settlement as set forth in Attachment 1 hereto.

2. The Scope of Services to be performed by Law Firm, as set forth in Exhibit A of the Consultant Agreement, is supplemented to include the new services set forth in Attachment 1 hereto.

3. The compensation to be paid to Law Firm for the further and additional services, as described in Attachment 1 hereto, is set forth in the Fee Schedule, which is attached hereto as Attachment 2, for a not-to-exceed amount of \$400,000.00 for all services performed under this Consultant Agreement.

4. All other terms and provisions of the Consultant Agreement shall remain in full force and effect

IN WITNESS WHEREOF, this Amendment No. 1 is executed by City and Law Firm acting by and through their authorized officers.

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP

By: _____

Name: _____

Title: _____

Date: _____

THE CITY OF SAN DIEGO

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form this ___ day of 2015

Jan I. Goldsmith, City Attorney

By: _____
Deputy City Attorney

ATTACHMENT 1 TO AMENDMENT 1 OF THE CONSULTANT AGREEMENT BETWEEN CITY AND PCHS

Scottsdale Declaratory Relief Litigation:

- Continue representation of the City in the pending declaratory relief litigation (as described in Para. A.1 of Exhibit A to the Consultant Agreement) commenced by Scottsdale Insurance Company against the City in 2008, which seeks reimbursement of defense fees and costs paid by Scottsdale in the *De Anza* Litigation and the related *Aglio, et al. v. City of San Diego* Litigation (“*Aglio* Litigation”).
- Such further representation to include representation and counseling of the City in mediation efforts to resolve the Scottsdale Declaratory Relief Litigation and thereby avoid the costs of defending such action, obtain resources to fund the *De Anza* Settlement, and obtain resources to mitigate exposure in the *Aglio* Litigation.

Scottsdale Contribution Action:

- Continue representation and counseling of the City as a named party in the Scottsdale Contribution Action pending since 2012 among Scottsdale Insurance Company, Columbia Casualty Company, and Everest Insurance Company, concerning the insurance coverage obligations of these three carriers to the City for the defense and indemnification of the City in the *De Anza* and *Aglio* Litigations.
- Such further representation to include formal intervention in the Contribution Action and prosecution of City’s claims in the same, representation and counseling of the City in any mediation efforts to resolve the Scottsdale Contribution Action and obtain resources by such settlement to fund the *De Anza* Settlement and mitigate the City’s exposure in the *Aglio* Litigation (as described in Para. A.3 of Exhibit A to the Consultant Agreement).
- Prosecute the City’s affirmative claims for coverage as against Columbia Casualty Company including a potential bad faith cause of action.

CSAC Appeal:

- Continue representation and counseling of the City arising from the City’s ongoing appeal of the indemnification obligations of CSAC Excess Insurance Authority (“CSAC”) under CSAC’s Memorandum of Coverage, including the preparation of cross-motions for summary judgment as to CSAC’s duty to indemnify the *De Anza* Settlement or presentation of an appeal to the CSAC Executive Committee (as described in Para. A.2 of Exhibit A to the Consultant Agreement).
- Continue insurance coverage counseling and representation in mediation proceedings that might arise as to CSAC’s indemnification obligations for the *De Anza* Settlement, including mediation opportunities as to other excess carriers of the City and CSAC’s reinsurer, Insurance Company of the State of Pennsylvania (as described in Paragraph A.3 of Exhibit A to the Consultant Agreement).

New Work—Representation of City in Lloyds Interpleader:

In September of 2008, Certain Interested Underwriters at Lloyds of London (“Lloyds”) filed an interpleader action in San Diego Superior Court against the City, De Anza Cove Homeowners Association, Inc. and Terra Vista Management Inc. (“Lloyds Interpleader”). The litigation is captioned *Certain Interested Underwriters of Lloyds vs. Terra Vista Management, Inc., et al.*, San Diego Superior Court Case No. 37-2008-

ATTACHMENT 1 TO AMENDMENT 1 OF THE CONSULTANT AGREEMENT BETWEEN CITY AND PCHS

00092709 CU–MC–CTL and is presently stayed before Judge Joel Wohlfeil. By virtue of the litigation, Lloyd’s deposited the \$1.8 million in policy limits remaining on a single “Tenant Discrimination Liability Policy” it issued for the August 18, 2003 to August 18, 2004 policy period to Terra Vista Management, with City as an additional insured. The monies were deposited with reference to only the *De Anza* Litigation liabilities. In April 2009, the parties to the Lloyds Interpleader reached a stipulation whereby Lloyds (as the stakeholder) was discharged and the Lloyds Interpleader was stayed pending “resolution” of the underlying *De Anza* Litigation. With the *De Anza* Litigation nearing resolution as a result of the *De Anza* Settlement negotiated in late 2014, the stay of the Lloyds Interpleader will soon be lifted and the parties to that action will adjudicate which party is entitled to the \$1.8 million in policy limits deposited with the Superior Court. The City seeks to access the full \$1.8 million in policy limits to be used to fund the *De Anza* Settlement and/or a resolution of the *Aglio* Litigation—and to coordinate these efforts with the existing Scope of Services (detailed above).

PCHS’s Scope of Work as to this New Service includes:

- Associating into the Lloyds Interpleader as co-counsel with the City Attorney’s Office.
- Advising the Superior Court presiding over the Lloyds Interpleader of the “resolution” of the *De Anza* Litigation at a strategically favorable time in consideration of the ongoing mediation efforts with the City’s other insurance carriers on notice of *De Anza* and *Aglio*—as well as the City’s pending litigation against DHRG, an entity affiliated with Terra Vista Management (the named insured on the Lloyds policy).
- Representation of the City at *ex parte* hearings and case management conferences associated with the lifting of the stay and prosecution of the litigation.
- Seeking a stipulated resolution among the De Anza HOA, Terra Vista and the City regarding the \$1.8 million in policy benefits deposited with the Court. Representation and counseling of the City related to any mediation efforts related to a stipulated resolution.
- If a stipulated resolution is not feasible, seeking to adjudicate the City’s exclusive right to the full \$1.8 million in policy benefits via motions for summary judgment.

ATTACHMENT 2 TO AMENDMENT 1 OF THE CONSULTANT AGREEMENT BETWEEN CITY AND PCHS

Insurance Coverage Representation and Counseling in the <i>De Anza Cove Mobile Home Park</i> Litigation Matters	
Continuation of Scope of Services Outlined in Exhibit A of Consulting Agreement, Not-to-Exceed	\$320,000
New Representation of City in Lloyds Interpleader, Not-to-Exceed	\$80,000
TOTAL	\$400,000*

*The proposed fees are based on avoiding trials and extensive motion practice in the Scottsdale Declaratory Relief Litigation, the Scottsdale Contribution Action, and the Lloyds Interpleader as well as avoiding an arbitration of the CSAC claim. The proposed fees reflect the goal of reaching a negotiated resolution as to the Scottsdale Declaratory Relief Litigation, the Scottsdale Contribution Action and the City's claim for indemnification as to CSAC through mediation proceedings. As to the Lloyds Interpleader, the goal is to either resolve the matter via settlement or resolve the matter via motions for summary judgment. If trial or arbitration is required as to any of these four matters, PCHS will submit a change order request for an increase to our proposed fees associated with this additional work.

The proposed fees above are not fixed fees and services will be provided as needed and billed on an hourly basis, not to exceed the project total of \$400,000.00 without prior authorization from the City. For activities associated with the Scope of Services above, PCHS will submit monthly invoices for the consulting services rendered based on the hourly rate schedule below.

PCHS 2015 Schedule of Hourly Rates	
Partner (Cecilia O. Miller)	\$500.00 per hour
Senior Associate (Ryan Caplan)	\$370.00 per hour
Associate (Jamie Quient)	\$345.00 per hour
Paralegal (Beverly Altman)	\$210.00 per hour

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

CC 3000007940
 DEPT. NO.: 2113

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$400,000.00

Vendor: Procopio, Cory, Hargreaves & Savitch LLP

Purpose: To amend agreement of legal services with Procopio, Cory, Hargreaves & Savitch LLP.

Date: June 05, 2015 By: Holly Hernandez
 COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
01	720045			OTHR-00000000-GG	512042	1515	1515000011		\$400,000.00
TOTAL AMOUNT									\$400,000.00

Passed by the Council of The City of San Diego on JUN 23 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 10 2015

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By *Mary Stenning*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309799