



SUMMARY REPORT

Agenda Date: 7/9/2024

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Jennifer Klein, 565-2421

Vote Requirement: 4/5th

Supervisory District(s): All

Title:

Amendment to Existing Legal Services Agreements and New Agreement for On Call Land Use Counsel

Recommended Action:

1. Authorize County Counsel to execute amendments to three on-call legal services agreements for representation of the County in land use and public law matters to extend the term by three years and increase the not-to-exceed aggregate amount by \$150,000 per agreement, for a new total of \$450,000 per agreement, make minor rate adjustments, and to make another non-substantive administrative revision, with the following law firms: (1) Best Best & Krieger LLP; (2) Burke Williams & Sorensen LLP; and (3) Richards Watson & Gershon.
2. Authorize County Counsel to execute a fourth on-call agreement with Sequoia Public Law, LLP, for additional specialized legal services including land use and tribal affairs for a one-year term, with two one-year options to extend, with an annual not to exceed amount of \$350,000.

Executive Summary:

On July 27, 2021, the County entered agreements with three firms for land use legal services on an on-call basis, following an RFP process. Each firm specializes in representing public agencies and has expertise in land use and public law matters. The firms are: Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon. Each has provided the County services under the agreements ranging from litigation defense to advisory work when County Counsel lacked capacity. All agreements were amended on January 31, 2023, to increase the initial \$150,000 contract amount by \$150,000. Burke, Williams & Sorensen's agreement was amended by County Counsel on March 8, 2024, to add employment investigations to the scope of work, as an additional specialized need.

The current item proposes extending the term of each agreement by an additional three years, through July 26, 2027, for a full term of six years, and increasing the not to exceed contract amount by an additional \$150,000, for a total cap of \$450,000 over the full term of the contract and making other non-substantive changes. Contract amendments for Best Best & Krieger LLP and Richards Watson & Gershon also propose rate increases below an inflation factor, which continues to maintain the County's public sector discount. The rates for attorney services under the amendments range between \$230 and \$395 per hour depending on the experience of the attorney.

Since the three agreements were executed, County Counsel has identified a need to add a fourth firm, Sequoia

Public Law, with highly specialized tribal affairs expertise with Sonoma County tribes, as well as cannabis and land use knowledge unique to Sonoma County projects, to the pool of on-call attorneys. This contract is proposed with an hourly rate of \$210, and with a \$350,000 annual maximum and has a one-year term, through June 30, 2025, with two one-year options to extend.

Discussion:

The County has a continuing need to establish extra capacity to provide legal services to its clients primarily in land use project review, environmental review, comprehensive planning, and litigation, on an on-call, as needed basis. The County has additional legal needs in tribal affairs. These needs are not always consistent and staffing flexibility and use of on call agreements provides efficiencies in fulfilling client needs. The County may contract with and utilize more than one outside counsel for such on-call legal services, but is not obligated to utilize any outside counsel, and no work is guaranteed under any contract.

Some of the requested services under the agreements' scope of work have included defense or prosecution of complex land use litigation, advising on large, time sensitive comprehensive planning initiatives, and legal review and counsel to staff in the land use entitlement process for private projects, including review of environmental documents to ensure consistency with the California Environmental Policy Act (CEQA), when applicable, as well as administrative hearings and appeals. Three on-call law firms - Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon- continue to have specialized expertise in land use matters, government representation, as well as competitive rates which include public sector discounts. To maintain capacity to cover legal needs and avoid a gap in service including for pending litigation and projects, County Counsel recommends your Board authorize County Counsel execute amendments to extend the contracts by three years and increase their total compensation amounts commensurately by \$150,000, for a total not to exceed amount over each agreement's full six-year term of \$450,000, and make other non-substantive changes.

Additionally, County Counsel has identified additional legal services needs for specialized tribal Sonoma County affairs, separately and in conjunction with land use matters, that warrant use of specialized counsel. County Counsel has identified Sequoia Public Law for the fourth proposed on-call legal services agreement with a one-year term, with two one-year options to extend, and a contract cap of \$350,000 per year. The contract proposed for Sequoia Public Law is a sole source contract due to the attorney's unique and specialized knowledge of Sonoma County specific tribal affairs, cannabis, and currently pending land use projects and initiatives not possessed by other firms.

For the three amended contracts for general on call land use services, County Counsel originally issued a Request for Proposals (RFP) to law firms who specialize in representing public agencies in land use matters to increase capacity to provide both advisory and litigation related land use legal services. All firms have specialized expertise in complex land use matters. Nine law firms submitted a response that conformed to all material requirements. County Counsel carefully reviewed and analyzed the proposals. After selecting and interviewing six finalists, County Counsel issued a notice of intent to award contracts to three of the finalists in Spring 2021, to comprise its panel of on-call land use counsel. Thereafter, the Board in July 2021 authorize on-call legal services agreements with the three selected firms: Best Best & Krieger LLP; Burke Williams & Sorensen LLP; and Richards Watson & Gershon, which County Counsel presently seeks to extend.

The cost for these legal services agreements would come from a variety of funding sources depending on the

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matter requiring legal services, such as the litigation contingency fund, at -cost agreement reimbursements, grant funding for specific planning initiatives, and other client department funds programed for legal services, as needed. Execution of these agreements does not require additional appropriations.

Strategic Plan:

N/A

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

July 27, 2021: Board authorization for On-call Legal Services Agreement with Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon.

January 31, 2023: First Amendment to On-call Legal Services Agreements with Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon.

FISCAL SUMMARY

UNAVAILABLE AT THIS TIME, TO BE DETERMINED

Expenditures	FY24-25 Adopted	FY25-26 Projected	FY26-27 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
General Fund Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

Although County Counsel will continue to handle most land use litigation and advisory work, outside counsel is utilized in cases of conflict, lack of capacity or where there is a need for specialized legal services. Financing of legal expenses will be designated at the time of specific case retention or assignment and will vary depending on the nature of the litigation or assignment, including but not limited to, permit fees and long-range planning initiative grants. County Counsel is estimating that outside on-call land use counsel may spend 100 hours or more per year for services related to these contracts. However, engaging services are not guaranteed and thus usage will vary year-over-year, which prevents staff for defining a specific annual fiscal impact.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

None

Attachments:

Attachment A: Original, First, and Proposed Draft Second Amendment to On-call Legal Services Agreement with Best Best & Krieger LLP

Attachment B: Original, First, Second, and Proposed Draft Third Amendment to On-call Legal Services Agreement with Burke Williams & Sorensen LLP

Attachment C: Original, First, and Proposed Draft Second Amendment to On-call Legal Services Agreement with Richards Watson & Gershon.

Attachment D: Proposed Draft Agreement with Sequoia Public Law.

Related Items "On File" with the Clerk of the Board:

None