



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 1/31/2023

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Jennifer Klein, Chief Deputy County Counsel, 707-565-2421

Vote Requirement: 4/5th

Supervisorial District(s): All

Title:

Amendments to Legal Services Agreements for On Call Land Use Counsel

Recommended Action:

Authorize County Counsel to execute amendments to three on-call legal services agreements for representation of the County in land use matters to increase the not-to-exceed aggregate amount to \$300,000 per agreement with the following law firms: (1) Best Best & Krieger LLP; (2) Burke Williams & Sorensen LLP; and (3) Richards Watson & Gershon.

Executive Summary:

In December 2020, County Counsel 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. After a thorough selection and interview process, County Counsel issued a notice of intent to award contracts to three finalists for its panel of on-call land use counsel which include the law firms of Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon. County Counsel brought legal services agreements for these three selected firms to the Board of Supervisors for approval on July 27, 2021.

Due to continuously increasing demands in a variety of land use matters, all three law firms have provided significant legal services to the County in areas of land use litigation, planning and other land use issues, reaching or exceeding the initial not-to-exceed amount of \$150,000 per agreement prior to the expiration of the three-year term in July 2024. In order to ensure necessary and appropriate continued legal representation in these matters, County Counsel is now recommending to amend the legal services agreements with these three law firms to increase the not-to-exceed amount to \$300,000 per agreement for the remaining term. In addition, it is further recommended to add attorney key personnel to the legal services agreement with Burke Williams & Sorensen LLP, and to make another non-substantive administrative change. In addition, the scope of work for all contracts will be clarified to reflect that it covers general land use and code enforcement legal work, including any administrative proceedings and/or litigation arising in connection therewith, consistent with the parties' original intent.

Discussion:

In December 2020, the Office of Sonoma County Counsel, on behalf of the County of Sonoma (County), requested proposals for legal services to provide land use counsel legal services to the County on an as needed basis. The County has a need to establish extra capacity to provide legal services to its clients primarily

in the area of land use project review, environmental review, comprehensive planning, and litigation, on an on-call, as needed basis. 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. The requested services generally include legal review and counsel to staff in the land use entitlement process, including review of environmental documents to ensure consistency with the California Environmental Policy Act (CEQA), and the National Environmental Policy Act (NEPA), when applicable, as well as administrative hearings and appeals. The range of private project entitlements will vary, and could include cannabis, winery, subdivision, telecommunication, housing, commercial, or other types of projects. Services may also entail providing legal review and counsel for complex public and public-private development projects, including environmental review for such projects, as well as legal support for comprehensive planning initiatives, as needed. In addition to initiation of litigation in code enforcement cases, services may also entail defending the County in litigation, including CEQA and challenges related to decisions on specific projects, programs, ordinances, or initiatives.

Three law firms - Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon - emerged as the top candidates based on their specialized expertise in land use matters, government representation, as well as their competitive rates which include public sector discounts. County Counsel brought legal services agreements for these three selected firms to the Board of Supervisors for approval on July 27, 2021.

Since then, the demands in a variety of land use matters have continuously increased, necessitating the engagement of specialized outside legal counsel to assist the County with litigation, plans, projects and other land use issues. County Counsel has been pleased with the legal services provided by these firms and wishes to continue to engage them. However, due to the increased demands, the initially estimated not-to-exceed amounts of \$150,000 for the three-year legal services agreements will likely be reached or exceeded before the expiration of the current term which runs through July 2024. In order to keep priority land use projects moving forward on track, and to secure pivotal legal representation in general land use and code enforcement matters, including in related administrative and judicial proceedings, it is necessary to increase the current not-to-exceed amounts to \$300,000 per agreement and to clarify the scope of work, to ensure continued legal services for the County in important land use matters.

County Counsel is therefore recommending to amend the legal services agreements with the three law firms of Best Best & Krieger LLP, Burke Williams & Sorensen LLP, and Richards Watson & Gershon to increase the not-to-exceed amount to \$300,000 per agreement for the remaining term. County Counsel is also recommending to add attorney key personnel to the legal services agreement with Burke Williams & Sorensen LLP, and to make another non-substantive administrative change. Additionally, for all contracts the amendments will clarify that the scope of work includes general land use and code enforcement related legal work, including any administrative proceedings and /or litigation arising in connection therewith, consistent with the parties' original intent.

The cost for these legal services agreements would come from a variety of funding sources depending on the 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 programmed for legal services, as needed. Execution of these agreements does not require additional appropriations.

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Strategic Plan:

N/A

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.

FISCAL SUMMARY

| Expenditures | FY 22-23 Adopted | FY23-24 Projected | FY 24-25 Projected |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses | | | |
| Additional Appropriation Requested | | | |
| Total Expenditures | | | |
| Funding Sources | | | |
| General Fund/WA GF | | | |
| State/Federal | | | |
| Fees/Other | | | |
| Use of Fund Balance | | | |
| Contingencies | | | |
| Total Sources | | | |

Narrative Explanation of Fiscal Impacts:

Although County Counsel will continue to handle most land use litigation, 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 and will vary depending on the nature of the litigation, 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 up to 100 hours 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) |
|--|--|-------------------------------|-------------------------------|
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Narrative Explanation of Staffing Impacts (If Required):

N/A

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Attachments:

Attachment A: First Amendment to On-call Legal Services Agreement with Best Best & Krieger LLP

Attachment B: First Amendment to On-call Legal Services Agreement with Burke Williams & Sorensen LLP

Attachment C: First Amendment to On-call Legal Services Agreement with Richards Watson & Gershon.

Related Items “On File” with the Clerk of the Board:

N/A