



SUMMARY REPORT

Agenda Date: 8/17/2021

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Jennifer Klein, 707-565-2421

Vote Requirement: 4/5th

Supervisory District(s): All

Title:

Legal Services Agreement for On Call Land Use Counsel

Recommended Action:

Authorize County Counsel to execute three on-call legal services agreements for representation of the County in land use matters, each for a term of three years and with a not to exceed per firm aggregate amount of \$150,000, with the following law firms: (1) Best Best & Krieger LLP; (2) Burke Williams & Sorensen LLP; and (3) Richards Watson & Gershon.

Executive Summary:

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. 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, to comprise its panel of on-call land use counsel. It is therefore recommended that the Board authorize on-call legal services agreements with the three selected firms: Best Best & Krieger LLP; Burke Williams & Sorensen LLP; and Richards Watson & Gershon.

Discussion:

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 will entail providing 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, and including 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. Services will also entail providing legal support for comprehensive planning initiatives, as needed. In addition to initiation of litigation in code enforcement cases, services will also entail defending the County in litigation, including CEQA and challenges related to decisions on specific projects, programs, ordinances, or initiatives.

Depending on the firm, the experience of the attorney, and the nature of the work, the contract rates range from \$282 to \$395 per hour. County Counsel's rate is \$282 per hour. Each firm offered the county a public sector discount; one provided a further discount for public records related work at \$220 per hour; and two decreased public sector rates to match County Counsel's rate for project review work. In general, litigation work performed by a partner is on the high end of the range, with project review work on the low end. For comparison, the County's on-call tort counsel contract rates range from \$210 (associates) to \$265 (partners) depending on level of experience. The differential between land use and tort rates is mirrored in the private sector, where firm rates for tort work trend lower than for specialized land use counsel work.

Staff recommend that the Board authorize County Counsel to execute on-call legal services agreements with three firms: Best Best & Krieger LLP; Burke Williams & Sorensen LLP; and Richards Watson & Gershon, included as Attachments A through C. Each contract has a not to exceed amount of \$150,000 for the 3-year contract term. The cost for these legal services agreements would come from 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, depending on the matter requiring legal services. Execution of these agreements does not require additional appropriations.

Prior Board Actions:

N/A

FISCAL SUMMARY

| Expenditures | FY 21-22 Adopted | FY 22-23 Projected | FY 23-24 Projected |
|------------------------------------|-----------------------------|-------------------------------|-------------------------------|
| Budgeted Expenses | | | |
| Additional Appropriation Requested | | | |
| Total Expenditures | | | |
| Funding Sources | | | |
| General Fund/WA GF | | | |
| State/Federal | | | |
| Fees/Other | | | |

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|----------------------|--|--|--|
| 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

Attachments:

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

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

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

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

N/A