



## Legislation Text

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**File #:** 2020-0007, **Version:** 1

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Counsel

**Staff Name and Phone Number:** Michelle Arellano, 565-3776; Debbie Latham, 707-565-3101

**Vote Requirement:** 4/5th

**Supervisorial District(s):** All

**Title:**

First Amendment to Legal Services Agreement with Colantuono, Highsmith & Whatley

**Recommended Action:**

Authorize County Counsel to execute a First Amendment to the Legal Services Agreement with Colantuono, Highsmith & Whatley, for appellate litigation and related legal services, extending the term for 2 years and increasing the contract amount by an additional \$200,000 (for a total of \$500,000) (4/5th Vote Required)

**Executive Summary:**

The Sonoma County Board of Supervisors (Sonoma County) is in active litigation due to lawsuits filed by George W. Luke entitled: (1) *Luke v. County of Sonoma and its Board of Supervisors, and its Auditor-Controller -Treasurer-Tax Collector, and its County Administrator and its Director of Human Resources* filed in Sonoma County Superior Court Case No. SCV-261187; and (2) *Luke v. County of Sonoma, et al.*, SCV-261999. In the first action, Mr. Luke filed an untimely challenge to the increases in public retirement plan benefits for County employees (SCV-261187). In the second action, Mr. Luke alleged that publicly noticed action to hire the law firm of Colantuono, Highsmith & Whatley for the defense of his lawsuits was a Brown Act violation and that the defense of his lawsuits gave rise to a conflict of interest (SCV-261999).

Sonoma County was represented by Colantuono, Highsmith & Whatley ("CH&W") in the trial court proceedings, and recently prevailed on all causes of action in the trial court in both cases. In addition, through CH&W's successful defense, Sonoma County and the individually named County defendants also prevailed in the First District Court of Appeal (A155286) as to Mr. Luke's appeal related to the pension formula challenge. Despite these losses, Mr. Luke has indicated he plans to move forward with additional appeals resulting in the need for an extension of the contract term and additional funds for the defense of these cases.

**Discussion:**

At your Board's direction, County Counsel previously executed a Legal Services Agreement ("LSA") with Colantuono, Highsmith & Whatley, LP, on September 1, 2017, for specialized litigation defense for a term of 3 years and for up to a maximum of \$300,000 to, among other things, defend litigation filed by George Luke against the County of Sonoma and individually named County employees. After extensive briefing, oral argument and successful representation at the trial court level, that contract maximum is nearly exhausted. Additional contract capacity is needed in order to defend the anticipated remaining appeals and to ensure representation availability in future matters. It is recommended that your Board extend the contract for an additional 2 years to September 1, 2022, with an increase in the contract amount by an additional \$200,000

through a First Amendment to Legal Services Agreement.

Due to the ongoing need for specialized litigation defense and anticipated appellate representation, a First Amendment to the Legal Services Agreement to increase the contract amount by an additional \$200,000 is requested to finish the anticipated appeal(s) and to retain the firm for other matters as needed in the future.

The contract increase to an overall total of \$500,000 and two year extension to September 1, 2022, will provide sufficient funding for appellate work on the two Luke v. County of Sonoma lawsuits as well as availability for future representation on an as needed basis.

**Prior Board Actions:**

October 3, 2017 - Approval of Legal Services Agreement with Colantuono, Highsmith & Whatley

**FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 19-20 Adopted</b>	<b>FY20-21 Projected</b>	<b>FY 21-22 Projected</b>
Budgeted Expenses	100,000	100,000	
Additional Appropriation Requested			
<b>Total Expenditures</b>	<b>100,000</b>	<b>100,000</b>	
<b>Funding Sources</b>			
General Fund/WA GF	100,000	100,000	
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>	<b>100,000</b>	<b>100,000</b>	

**Narrative Explanation of Fiscal Impacts:**

The Legal Services Agreement is a fee for service contract. There are sufficient appropriations in the Non-Departmental budget for FY 2019-20. Funding for future years will be requested as part of the annual budget hearing process.

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

**Narrative Explanation of Staffing Impacts (If Required):**

**Attachments:**

Legal Services Agreement

First Amendment to Legal Services Agreement with Colantuono, Highsmith & Whatley

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

None