



Legislation Text

File #: 2020-0422, **Version:** 1

To: Boards of Directors, Sonoma County Water Agency and County Counsel

Department or Agency Name(s): Sonoma County Water Agency

Staff Name and Phone Number: Adam Brand / 565-2421; Lynne Rosselli 524-3771; Mike West 524-1178

Vote Requirement: Majority

Supervisory District(s): Countywide

Title:

Legal Services Agreements for Bond Counsel and Construction Counsel

Recommended Action:

- A) Authorize County Counsel to execute a legal services agreement with Jones Hall, a Professional Law Corporation, for bond and disclosure counsel services from May 1, 2020 through December 31, 2025 in the not-to-exceed amount of \$600,000.
- B) Authorize County Counsel to execute a legal services agreement with Lozano Smith for construction counsel services through December 31, 2023 in the not-to-exceed amount of \$200,000.

Executive Summary:

Sonoma County Water Agency, Occidental County Sanitation District, Russian River County Sanitation District; Sonoma Valley County Sanitation District; South Park County Sanitation District (Sonoma Water) and its retail customers benefit from financing capital projects because it spreads expenditures over a number of years, reduces rate increases, and enables timely construction of critical infrastructure projects. County Counsel has determined that assistance of outside counsel is needed in connection with potential issuance of bonds and other financial instruments to finance Sonoma Water activities. A start date of May 1, 2020 is necessary for this agreement. Engaging Bond Counsel as soon as possible is needed to amend Sonoma County Water and Wastewater Authority's (Authority's) 2001 financing documents to benefit the Authority and the County Treasurer, and to meet the State Water Resources Control Board's requirements for approving Forestville Water's 2020 application under the Clean Water Act State Revolving Fund.

County Counsel has determined that assistance of specialized construction counsel is required for as-needed support with advisory, pre-litigation, and litigation matters to avoid and manage risks in connection with a wide array of public works projects, issues including, but not limited to, procurement, grant compliance, change orders, and claims.

Discussion:

Sonoma Water needs assistance in connection with amending existing obligations, and potential issuance and refundings of bonds and/or other financial instruments to finance future water and wastewater capital projects. Projects expected to be financed with bond funds are identified in the Sonoma Water Capital Improvement Plan.

Sonoma Water and the Sonoma County Treasurer were made aware recently that Sonoma County Water and

Wastewater Financing Authority (Authority), a joint powers of exercise authority, Forestville County Sanitation District (Forestville District) now part of Forestville Water District (Forestville Water), and County Treasurer are parties to 2001 Financing Agreements that were not amended when Forestville Water entered into an agreement to transfer assets and liabilities from Sonoma Water to Forestville Water in 2004. Engaging Bond Counsel as soon as possible to amend the 2001 Financing Agreements is needed to accurately reflect the relationship of the parties, and to meet the State Water Resources Control Board's requirements for approving Forestville Water's 2020 application under the Clean Water Act State Revolving Fund. Sonoma Water on behalf of the Authority, and the County Treasurer will return to the Board at a later date with a recommended action to amend the 2001 Financing Agreements.

Construction counsel is needed from time to time with assistance related to the construction of these and other projects.

Sonoma Water requested input on both bond counsel and construction counsel qualifications from County Counsel.

SELECTION PROCESS- BOND COUNSEL

On November 19, 2019, Sonoma Water issued a Request for Statements of Qualifications for bond counsel to the following five firms:

1. Jones Hall, San Francisco, CA
2. Kutak Rock, Irvine, CA
3. Nossaman; Los Angeles, CA
4. Orrick, Herrington & Sutcliffe, San Francisco, CA
5. Stradling, Yocca, Carlson & Rauth, Newport Beach, CA

The Request for Statements of Qualifications was also posted on the Sonoma County Water Agency and County of Sonoma Purchasing Department websites.

The seven firms listed below submitted Statements of Qualifications:

1. Hawkins Delafield & Wood, San Francisco, CA
2. Jones Hall, San Francisco, CA
3. Kutak Rock, Irvine, CA
4. Norton Rose Fulbright; Los Angeles, CA
5. Orrick, Herrington & Sutcliffe, San Francisco, CA
6. Richards Watson Gershon, Los Angeles, CA
7. Stradling, Yocca, Carlson & Rauth, Newport Beach, CA

The following criteria were used to evaluate each firm:

- 1) Thoroughness of Statement of Qualifications
- 2) Professional qualifications and demonstrated ability to perform the work
- 3) Exceptions to standard terms in the sample agreement

Based on the evaluations, the seven firms above were added to a list of qualified consultants. Jones Hall was

selected to perform work for the current financings because of its responsiveness, demonstrated understanding of all aspects of the work, professional qualifications, depth of knowledge, experience with Sonoma Water's financials, and caliber of work that Jones Hall has previously provided for Sonoma Water on bond issuances.

Sonoma Water may seek to amend or enter into subsequent agreement(s) with Board approval if required, relying upon this competitive selection process.

SERVICES TO BE PERFORMED- BOND COUNSEL

Under the proposed agreement, Bond Counsel will advise Sonoma Water staff, County Counsel, Sonoma Water's financial consultant, and bond underwriter with respect to the types of financing mechanisms available to Sonoma Water; will consult with Sonoma Water staff, County Counsel, Sonoma Water's financial consultant, and bond underwriter to establish a structure for a financing program; will establish the terms, conditions, and legal structure for the new obligations; and will draft and review all documents necessary to the authorization, issuance, sale, and delivery of the new obligation. Bond Counsel will also assist Sonoma Water with amending existing obligations as needed, and render necessary legal opinions on the validity and binding effect of new obligations, the source of payment and security for the new obligations, and assist Sonoma Water in presenting information relating to legal issues affecting the new obligations to bond rating organizations or credit enhancement providers.

The cost of services shall be at the rates set forth in Exhibit B of the Agreement provided, however, that total payments shall not exceed \$600,000. The term of the agreement is May 1, 2020, to December 31, 2025.

SELECTION PROCESS- CONSTRUCTION COUNSEL

On November 21, 2019, Sonoma Water issued a Request for Statements of Qualifications for construction counsel to the following four firms:

1. Best Best & Krieger, LLP, Walnut Creek, CA
2. Burke Williams & Sorensen LLP, Los Angeles, CA
3. Lozano Smith, LLP, Walnut Creek, CA
4. Meyers Nave Riback Silver & Wilson, Santa Rosa, CA

The Request for Statements of Qualifications was also posted on the Sonoma County Water Agency and County of Sonoma Purchasing Department websites.

The four firms listed below submitted Statements of Qualifications:

1. Atkinson, Andelson, Loya, Ruud & Romo; LaJolla, CA
2. Buchalter; Sacramento, CA
3. Hawkins Delafield & Wood, LLP; San Francisco, CA
4. Lozano Smith, LLP, Walnut Creek, CA

The following criteria were used to evaluate each firm: [

- 1) Thoroughness of Statement of Qualifications
- 2) Professional qualifications and demonstrated ability to perform the work
- 3) Exceptions to standard terms in the sample agreement

Based on the evaluations, the four firms above were added to a list of qualified consultants. Lozano Smith was selected for the subject agreement because Consultant has the required experience.

SERVICES TO BE PERFORMED- CONSTRUCTION COUNSEL

Under the proposed agreement, outside counsel will provide as-needed support with advisory, pre-litigation, and litigation matters to avoid and manage risks in connection with a wide array of public works projects, issues including, but not limited to, procurement, grant compliance, change orders, and claims.

CONSTRUCTION COUNSEL: The cost of services will not exceed \$200,000; the term end date is December 31, 2023.

Prior Board Actions:

02/05/2019: Approved agreement between Sonoma Water and Jones Hall for legal services. Cost not to exceed \$100,000; term end December 31, 2019

FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses			
Budgeted Expenses- Construction Counsel	50,000	100,000	50,000
Additional Appropriation Requested			
Total Expenditures	50,000	100,000	50,000
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	50,000	100,000	50,000
Use of Fund Balance			
Contingencies			
Total Sources	50,000	100,000	50,000

Narrative Explanation of Fiscal Impacts:

Funding for the legal services agreement for bond and disclosure counsel services will be provided under budget appropriations for costs associated with issuing revenue bonds and will be payable from bond proceeds.

Funding of this as-needed legal services agreement for construction counsel services will be provided under budget appropriations for the respective projects for which services are provided. FY 2020/2021 and 2021/2022 appropriations will be budgeted in those fiscal years.

Staffing Impacts:

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

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1: Draft Agreement with Jones Hall, A Professional Law Corporation

Attachment 2: Draft Agreement with Lozano Smith

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

None