



Legislation Text

File #: 2021-0346, **Version:** 2

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Robert Pittman, County Counsel and Joshua Myers, Chief Deputy County Counsel -707 565 2421

Vote Requirement: 4/5th

Supervisory District(s): Countywide

Title:

Legal Services Agreement for Claim by Costeaux French Bakery and Related Fee Issues

Recommended Action:

Authorize County Counsel to execute a legal services agreement for representation of the County of Sonoma regarding a claim filed by Costeaux French Bakery and related fee issues for a term of three years and a not to exceed amount of \$100,000 for the three-year term of the contract and ratify a prior contract executed by County Counsel that was within its delegated authority. (4/5th Vote Required)

Executive Summary:

On December 18, 2020, Costeaux French Bakery submitted a claim to the County of Sonoma claiming that the County had charged restaurants unconstitutional or improper fees during the time those restaurants were prohibited from operating due to Public Health Orders related to the COVID-19 pandemic response. The claim seeks to establish a class-action lawsuit regarding this issue. County Counsel interviewed several law firms who specialize in the defense of public entities from claims related to public agency fees.

On March 31, 2020, County Counsel negotiated a legal services agreement with law firm Colantuono, Highsmith & Whatley, PC, with a not to exceed amount of \$25,000 (within County Counsel's delegated authority). County Counsel needed assistance in responding to the Costeaux French Bakery claim prior to being able to bring this Board item to Your Board. County Counsel request that Your Board ratify this contract.

County Counsel recommends Your Board authorize County Counsel to execute a Legal Services Agreement with the law firm Colantuono, Highsmith & Whatley, PC, with a not to exceed amount of \$100,000, to represent the County in relation to this claim and related fees issues. Colantuono, Highsmith & Whatley, PC, has expertise in both defending public agencies in fee disputes and class action litigation.

Discussion:

As Your Board is well aware, in response to the global pandemic caused by the novel coronavirus, or COVID-19, the Sonoma County Public Health Officer issued a series public health orders, beginning in March of 2020. Many of those orders required restaurants to either cease operations entirely, only offer take-out or delivery service, or limited outdoor seating.

On or about December 18, 2020, the Costeaux French Bakery submitted a claim to the County alleging that

the County had charged restaurants unconstitutional or improper fees during the time those restaurants were prohibited from operating due to Public Health Orders related to the COVID-19 pandemic response. The claim seeks to establish a class-action lawsuit regarding this issue. Costeaux French Bakery is represented by the Kabateck Law Firm from Southern California. The Kabateck Law Firm has filed similar claims on behalf of other restaurants in most California counties and has filed at least two lawsuits against counties in Southern California.

On March 31, 2020, County Counsel negotiated a legal services agreement with law firm Colantuono, Highsmith & Whatley, PC, with a not to exceed amount of \$25,000 (within County Counsel's delegated authority). County Counsel needed assistance in responding to the Costeaux French Bakery claim prior to being able to bring this Board item to Your Board. County Counsel request that your Board ratify this contract.

Staff recommend that the Board authorize County Counsel to execute a legal services agreement with Colantuono, Highsmith & Whatley, PC, included as Attachment A. The legal services agreement has a not to exceed amount of \$100,000 for the 3-year contract term. The cost for these legal services agreements would come from the Litigation Contingency Fund in the Non-Departmental Budget.

Prior Board Actions:

N/A

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses	\$66,666.67	\$66,666.67	\$66,666.66
Additional Appropriation Requested			
Total Expenditures	\$66,666.67	\$66,666.67	\$66,666.66
Funding Sources			
General Fund/WA GF	\$66,666.67	\$66,666.67	\$66,666.66
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	\$66,666.67	\$66,666.67	\$66,666.66

Narrative Explanation of Fiscal Impacts:

County Counsel is estimating that outside counsel may spend up to 100 hours per year for services related to this contract. The Agreement has a not to exceed limit of \$100,000 over the three-year contract term. The fiscal summary shows the total do not exceed amount spread over three years. Any unspent funds will be rolled over and available for use in subsequent fiscal years. The fees for these outside legal services will be drawn from the Litigation Contingency Fund in the Non-Departmental Budget.

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 A: Legal Services Agreement with Colantuono, Highsmith & Whatley, PC, executed by County Counsel, with a to not exceed amount of \$25,000.

Attachment B: Legal Services Agreement with Colantuono, Highsmith & Whatley, PC, to be approved by Your Board, with a to not exceed amount of \$100,000.

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

N/A