



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

A-25

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Board of Supervisors
Department No.:
For Agenda Of: May 27, 2008
Placement: Administrative Agenda
Estimated Time:
Continued Item: Select_Continued
If Yes, date from:
Vote Required: Select_Vote

TO: Board of Supervisors
FROM: Select_From Supervisor Janet Wolf, 2nd District *JW*
Supervisor Joni Gray, 4th District
Contact Info: Susan Paul, Assistant CEO/HR Director 568-2817

SUBJECT: Extend Interim Appointment of Daniel J. Wallace, Esq. County Counsel, through
June 30, 2008

County Counsel Concurrence

As to form: Select_Concurrence

Other Concurrence: Select_Other

As to form: Select_Concurrence

Recommended Actions:

Approve contract extending the interim County Counsel appointment of Daniel J. Wallace, Esq. through June 30, 2008.

Summary Text:

The former County Counsel retired on approximately January 25, 2008. Based on this retirement, the Board of Supervisors through a subcommittee of Supervisors Joni Gray, 4th District and Janet Wolf, 2nd District searched and selected a suitable candidate to head the department on an interim basis.

The County has been fortunate to attract Mr. Daniel J. Wallace, Esq., a seasoned local government attorney to run the Office of County Counsel. Mr. Wallace possesses over twenty-five years of public sector legal experience. He has worked for cities and counties, and was a former prosecutor. Mr. Wallace has served as the interim County Counsel since approximately January 28, 2008.

An extension of Mr. Wallace's appointment for approximately six weeks, through June 30, 2008 is needed to finalize the search for a permanent County Counsel.

In as much as Mr. Wallace is a previous retiree, he will continue his appointment to the position on a contractual basis, as he does not require retirement, health, or other benefits that would normally be part of the salary and benefits package for an executive employee.

Therefore, it is recommended that Mr. Wallace continue to serve in the capacity of County Counsel on a contractual basis through June 30, 2008.

Background:

Performance Measure:

Fiscal and Facilities Impacts:

Budgeted: Select_Budgeted

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund		\$ 192,000.00	
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ 192,000.00	\$ -

Narrative:

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Attachments:

Authored by:

cc:

**AGREEMENT FOR SERVICES AS INTERIM COUNTY COUNSEL
COUNTY OF SANTA BARBARA AND DANIEL J. WALLACE, ESQ.**

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter "COUNTY") and Daniel J. Wallace, Esq. (hereafter "CONTRACTOR") wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1 **DESIGNATED REPRESENTATIVE.** Michael F. Brown is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Daniel J. Wallace, Esq. is the authorized representative for CONTRACTOR. Changes in Designated Representatives shall be made only after advance written notice to the other party.

2 **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Mr. Michael F. Brown
County Executive Office, Room 406
County of Santa Barbara
Santa Barbara, CA 93101

To CONTRACTOR: Daniel J. Wallace, Esq.
55 Alston Place
Santa Barbara, CA 93108

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. Mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with Exhibit A attached hereto and incorporated by reference herein.

4. **TERM.** CONTRACTOR commenced performance on January 28, 2008. Contractor has provided continued contractor services for the past four months. Continued contractor services are required through June 30, 2008. This agreement may be renewed for succeeding terms of one month by the Board of Supervisors or unless either party gives 30 days notice of termination in writing to the other or as set forth in Section 17 below.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for professional services under this Agreement in accordance with the terms of Exhibit B attached hereto and incorporated herein by reference. Payment shall be made upon biweekly submission of a timesheet, which shall be subject to deductions and include withholding of State, and Federal taxes as required by law. The maximum reimbursement under this Agreement shall not be exceeded during the term of this Agreement without a written notice from COUNTY.

Evaluation of CONTRACTOR'S services will be conducted by COUNTY on a regular on-going basis and CONTRACTOR agrees to participate fully in the evaluation procedure.

6. **CONTRACTOR ON PAYROLL.** Unless specifically stipulated by COUNTY in attached Exhibit B, CONTRACTOR understands and agrees that CONTRACTOR is not, and will not, be eligible for membership in or any benefits from any COUNTY group health plan or hospital, surgical or medical insurance or membership in any COUNTY retirement program; except as set forth in Exhibit B; or any other job benefits accruable to an employee in the classified services of the COUNTY except for worker's compensation and unemployment insurance. CONTRACTOR is responsible for maintaining an active membership in the State Bar of California, subscriptions to journals and other professional expenses not specifically detailed in this Agreement.

CONTRACTOR may be permitted to use COUNTY vehicles as part of CONTRACTOR'S assignment and shall maintain a valid California Driver's License.

CONTRACTOR understands and agrees that CONTRACTOR'S term is governed solely by this Agreement; that no right of tenure is created hereby; and that CONTRACTOR'S services to the COUNTY under this Agreement is authorized pursuant to Government Code Section 31000.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that CONTRACTOR has the skills, expertise and licenses/permits necessary to perform the services required under this Agreement and agrees to immediately notify Designated Representative of any action against licenses/permits. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged.

8. **TAXES.** The COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, which shall be subject to deductions and include withholding of State and Federal taxes as required by law.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part,

any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** There is no Section 12.

13. **INDEMNIFICATION AND INSURANCE.** As a Contractor on Payroll, COUNTY will defend and indemnify CONTRACTOR against any claim, lawsuit, or judgment arising out of CONTRACTOR'S duties under this Agreement with COUNTY pursuant to Government Code Section 825 and Government Code Section 995 et. seq.

CONTRACTOR agrees to notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

CONTRACTOR shall bear the cost of his own defense and liability for any act or omission arising from professional duties outside the scope of this Agreement. Nothing contained herein shall be deemed to increase COUNTY'S liability beyond limitations set forth by law.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY'S Anti-Harassment Policy and COUNTY'S Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and are incorporated herein by this reference with the same force and effect as if the anti-harassment policy and ordinance were specifically set out herein and CONTRACTOR agrees to comply with said policy and ordinance.

15. **NON-EXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.** Either of the parties hereto shall, without cause, prior to the expiration date of this Agreement, have the right to cancel and terminate this Agreement upon ten (10) days notice in writing to the other as set forth in Section 4 above. In the case of material breach (for example: gross negligent conduct, malpractice or criminal conduct, etc.) by CONTRACTOR, the Designated Representative or any of the Board of Supervisors may immediately terminate the Agreement. Upon a material breach of the terms and conditions of the Agreement by one of the parties, the non-breaching party (including the Board of Supervisors) may terminate this Agreement upon the mailing of a written notice of termination to the breaching party. Written notification as required under this paragraph shall be given by CONTRACTOR to the COUNTY Designated Representative. Written notification by COUNTY shall be given to the CONTRACTOR.

18. **SECTION HEADINGS.** The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or

unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY or CONTRACTOR is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

27. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

28. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity (ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement,

CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

29. PRECEDENCE. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

Agreement for services of Contractor on Payroll between the County of Santa Barbara and Daniel J. Wallace, Esq.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective January 28, 2008 and have extended it through June 30, 2008.

COUNTY OF SANTA BARBARA
MICHAEL F. BROWN
COUNTY EXECUTIVE OFFICER

Contractor

By: _____

Deputy

Date: _____

By: _____

Daniel J. Wallace, Esq.

Date: _____

APPROVED AS TO FORM:

BY: *Daniel C. Cassidy*

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, AUDITOR-CONTROLLER

BY: *R W Geis*

APPROVED AS TO INSURANCE FORM RAY
AROMATORIO, ARM, AIC

By: *Ray Aromatorio*
RISK PROGRAM ADMINISTRATOR

EXHIBIT A
STATEMENT OF WORK

CONTRACTOR shall perform the following services for County:

Employee shall perform the duties of the COUNTY COUNSEL; and such other duties incidental thereto and as prescribed by law, in a professional manner. He shall have and exercise all authority and powers necessary to manage the functions and operation of the COUNTY COUNSEL'S Department. He shall report to the Board of Supervisors.

In regard to the functions and operations of the COUNTY COUNSEL Department, Employee is responsible for the control and oversight of the department. He shall manage the budget of the department within the parameters established by the CEO. In addition to the above duties, Employee shall fulfill the following objectives and expectations during the term of his appointment:

- Assess current County Counsel operation, including caseload and workload, and make appropriate recommendations to the Board of Supervisors for enhanced service delivery.

EXHIBIT B

Contractors On Payroll not Subject to Retirement

COMPENSATION

COMPENSATION. The COUNTY shall pay CONTRACTOR for professional services pursuant to this Agreement, payable upon biweekly submission of a time card, which shall be subject to deductions and include withholding of State and Federal taxes as required by law.

I. HOURLY RATE (CON)

The COUNTY shall pay CONTRACTOR for professional services coded as "CON" at the rate of \$192,000 annually at an hourly rate of \$92.31 for Fiscal Year 2007-2008. Payment will be made in accordance with County payroll policies. The DESIGNATED REPRESENTATIVE may adjust this rate by an amount up to the same percentage change granted to subordinate managers in the County Council Office during the course of this Agreement.

II. BENEFITS

In accordance with this agreement, CONTRACTOR shall receive the following benefits limited to:

- A. Employer's share of FICA, also known as Social Security.
- B. Employer's share of Federal Medicare Health Insurance.
- C. County Worker's Compensation Insurance.
- D. State Unemployment Insurance.
- E. Travel expense reimbursement for mileage claims with prior written authorization.
- F. Commencing with employment, the CONTRACTOR will receive contractor paid leave balance of 80 hours. The CONTRACTOR will accrue additional leave time at the rate of 20 hours per month or 240 annual hours. (This leave is compensation for vacation, sick leave and holiday pay.) Leave balances will be advanced at the beginning of the annual contract and prorated on a monthly basis if terminated before contract expiration. Contractor paid leave is cumulative and any balances will be paid upon termination
- G. CONTRACTOR understands and agrees that he is not, and will not be, eligible for membership in or any benefits from any COUNTY group plan or hospital, surgical, or medical insurance, or membership in any COUNTY retirement program except as noted in Paragraph H below, or any job benefits accruable to an employee in the classified services of the COUNTY, except for worker's compensation and unemployment insurance. Commencing with employment, the CONTRACTOR will sign the appropriate forms, waiving health and retirement benefits, except as noted in Paragraph H below.
- H. CONTRACTOR is eligible to participate in the County's 457 deferred compensation plan.

- I. Contractor shall receive a bi-weekly vehicle allowance in the amount of \$203.00.

- J. CONTRACTOR is responsible for professional license fees, subscriptions to journals, and other professional expenses not specifically detailed in this Agreement.

- K. Contractor will receive benefits set forth in the County's current Human Capital Strategy as follows:
 - 1. Relocation expenses not to exceed \$10,000
 - 2. Signing bonus of \$10,000

- L. Due to interim nature and anticipated duration of this agreement and CONTRACTOR'S contribution to the COUNTY, the COUNTY'S DESIGNATED REPRESENTATIVE hereby waives the reimbursement of the Human Capital Strategy Section II,C.

III. NON APPROPRIATION

In the event that no funds or insufficient funds are appropriated and budgeted or otherwise not available for payments in the fiscal year covered by the term of the Agreement, then COUNTY will immediately contract CONTRACTOR of such occurrence and the Agreement may be terminated by COUNTY. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.