



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: County Counsel
Department No.: 013
For Agenda Of: June 4, 2024
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5^{ths}

TO: Board of Supervisors
FROM: County Counsel Rachel Van Mullem, County Counsel (805) 568-2950
Contact Info: Amber Holderness, Chief Assistant County Counsel (805) 568-2950
SUBJECT: Approve Agreement for Professional Legal Services with Outside Counsel Ervin Cohen & Jessup LLP

County Council Concurrence

As to form: Yes

Other Concurrence: Public Works Department

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

County Counsel recommends that the Board of Supervisors:

- a) Approve, ratify, and authorize the Chair to execute the attached Agreement for Professional Legal Services between the County of Santa Barbara and Ervin Cohen & Jessup-LLP for a total not to exceed amount of \$500,000 and term ending June 30, 2026; and
- b) Determine that the above action is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5) because it consists of government administrative or fiscal activities that will not result in direct or indirect physical changes in the environment.

Summary Text:

The County is a party to patent infringement litigation involving the ReSource Center at the Tajiguas Landfill brought by Emerging Acquisitions, LLC. The matter is pending in the United States District Court for the Central District of California. County Counsel recommends retaining the firm Ervin Cohen & Jessup to represent the County in this litigation because this law firm: (1) has the expertise required by this highly-specialized area of patent law; and (2) has experience in handling patent infringement litigation in the Central District of California. The proposed contract will authorize Ervin Cohen & Jessup to represent the County in this litigation within the contract's term and \$500,000 limit.

Performance Measure: N/A

Contract Renewals and Performance Outcomes: N/A

Fiscal and Facilities Impacts:

Budgeted: Costs associated with the ReSource Center are paid through tipping fee revenues collected from the Tajiguas Landfill waste shed. Funding is through Budget Unit 054, Fund 1930, Account 7460. The prior agreement with MSB Investors, LLC for development and operation of the ReSource Center, however, provides that MSB Investors, LLC shall at its own expense defend, indemnify, and hold harmless the County against any infringement claim.

Key Contract Risks: The Office of County Counsel reviewed the Contract Risk Assessment Worksheet as part of our process. Exhibit A of the Agreement (“Statement of Work”) provides that the Board of Supervisors, acting through its County Counsel, expressly retains the authority to direct and control the course and conduct of litigation, including the exclusive right to make decisions regarding settlement. This agreement does not include the County’s standard indemnification clause; however, the firm is required to and does maintain professional liability insurance. This professional liability insurance is likely to cover any malpractice claims that may arise.

Staffing Impacts: None

Special Instructions: Please forward a signed copy to Amber Holderness at aholderness@countyofsb.org.

Attachments: a) Agreement for Professional Legal Services

Authored by: Amber Holderness, Chief Assistant County Counsel