



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: September 1, 2020
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 Michael C. Ghizzoni (805) 568-2950
Contact Info: Martin G. McKenzie, Chief of Litigation (805) 568-2950
SUBJECT: Approve Fourth Amendment to Agreement for Professional Legal Services with Outside Counsel Meyers Nave

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

- a) Approve and authorize the Chair to execute, on behalf of the County of Santa Barbara and the Santa Barbara County Flood Control & Water Conservation District, the attached Fourth Amendment to Agreement for Professional Legal Services with the law firm Meyers Nave, to extend the term of the Agreement to August 27, 2022 and the payment limit to \$3,250,000; 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 Board first approved the attached Agreement for Professional Services with Meyers Nave on August 28, 2018. The primary purpose was to secure legal advice and representation from Outside Counsel in defending the County of Santa Barbara and the Santa Barbara County Flood Control & Water Conservation District against tort and real property claims and litigation arising from the Thomas Fire and resulting debris flow.

A major part of the pending litigation is an attempt by Southern California Edison to shift billions of dollars of Edison's potential liability to the County, the District, and other public entities.

We expect that the excess insurer for the County and the District—PRISM, formerly CSAC-EIA—will reimburse most of the costs of defending against Edison's litigation, including the costs of Meyers Nave's

services under this contract. Risk Management and County Counsel have asked PRISM to begin reimbursements immediately; PRISM has not yet indicated whether it will begin reimbursements in the near future, or will delay consideration of reimbursement until after the litigation concludes.

For the past two years, Meyers Nave has coordinated closely and effectively with County Counsel in meeting the demands of this complex litigation. We anticipate that the litigation will continue for months, if not years, and that increased pre-trial discovery and motion activity will add to the already-high volume of necessary legal work. For those reasons, County Counsel recommends increasing to \$3,250,000 the Agreement's current payment limit of \$2,250,000, and extending to 8/27/22 the Agreement's current expiration date of 8/27/20. All other provisions of the agreement will remain as previously approved by the Board, including Meyers Nave's hourly rates of compensation.

Performance Measure: N/A

Contract Renewals and Performance Outcomes: N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

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 the litigation, including the exclusive right to make decisions regarding settlement.

A Request for Proposals was not required for this selection.

Staffing Impacts: None

Special Instructions: Please forward a signed copy to Martin McKenzie in County Counsel.

Attachments:

- a) Agreement for Professional Legal Services [8/28/18]
- b) Amendment to Agreement for Professional Legal Services [7/16/19]
- c) Second Amendment to Agreement for Professional Legal Services [10/15/19]
- d) Second [*sic*] Amendment to Agreement for Professional Legal Services [3/10/20]
- e) Fourth Amendment to Agreement for Professional Legal Services [9/01/20]

Authored by: Martin McKenzie, County Counsel Chief of Litigation

cc: Risk Management