



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: November 7, 2023
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5^{ths}

TO: Board of Directors, Flood Control and Water Conservation District
FROM: County Counsel Rachel Van Mullem, County Counsel (805) 568-2950
Contact Info: Amber Holderness, Chief Assistant County Counsel (805) 568-2950
SUBJECT: Approve Third Amendment to the Agreement for Professional Legal Services with Outside Counsel Rutan & Tucker, LLP

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

County Counsel recommends that the Board of Directors:

- a) Approve, ratify, and authorize the Chair to execute the attached Third Amendment to Agreement for Professional Legal Services between the Santa Barbara County Flood Control and Water Conservation District and attorney Douglas Dennington, of the law firm Rutan & Tucker, LLP, to increase the maximum contract amount by \$125,000 for a new maximum contract amount not to exceed \$575,000 and extend the contract term to June 30, 2024; 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:

On October 6, 2020, the Board executed an Agreement for Professional Services between the Santa Barbara County Flood Control and Water Conservation District (District) and Douglas Dennington of the law firm Rutan & Tucker, LLP. The primary purpose of the Agreement was to retain a law firm with expertise in the specialized area of law on eminent domain proceedings and litigation due to the retirement of the District's prior Outside Counsel for these matters, Duff Murphy, of Oliver, Sandifer and Murphy.

Since that time, Mr. Dennington and his firm have assisted the District with legal services and expertise as needed from time to time, including on projects by the District and currently pending eminent domain

litigation involving the Lower Mission Creek Project and Randall Road Debris Basin Project. A separate approval of your Board is required before the initiation of any additional eminent domain proceedings.

Performance Measure: N/A

Contract Renewals and Performance Outcomes: N/A

Fiscal and Facilities Impacts:

Budgeted – Outside Counsel Designation: \$575,000 paid by Department 054, Fund 2610, Line Item 8400.

Fiscal Analysis:

The contract has a not-to-exceed amount of \$575,000. This cost will be paid from the District’s project budget for each of the individual projects on which Outside Counsel is consulted. No General Fund monies will be used to pay for work associated with this agreement.

Key Contract Risks:

This contract does not include the District’s 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. Even without this clause, County Counsel views this Agreement as low risk because the involved partners from Rutan & Tucker, LLP are highly experienced and have worked successfully with the District and with other government agencies for many years.

Staffing Impacts:

Contracting with Outside Counsel will allow the District to obtain the specialized legal services needed in these matters without hiring additional staff attorneys.

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

Attachments:

- a) Third Amendment to Agreement for Professional Legal Services
- b) Second Amendment to Agreement for Professional Legal Services
- c) First Amendment to Agreement for Professional Legal Services
- d) Agreement for Professional Legal Services

Authored by: Amber Holderness, Chief Assistant County Counsel