



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: March 4, 2014
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors
FROM: Department Director: Michael C. Ghizzoni, County Counsel (568-2950)
Contact Information: Martin G. McKenzie, Chief of Litigation (568-2950)
SUBJECT: Approve amendment to agreement with McCarthy & Kroes, Attorneys at Law, for professional legal services in pending litigation.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

Recommended Actions: County Counsel recommends that the Board of Supervisors:

1. Approve and authorize the Chair to execute the attached Amendment to Agreement for Professional Legal Services between the County of Santa Barbara and McCarthy & Kroes, Attorneys at Law, increasing the contract payment limit to \$275,000.
2. Find that the proposed amended contract is not a "project" under subdivision (b)(4) of CEQA Guideline 15378, in that it does not involve a commitment to any specific project which may result in a potentially significant impact to the environment.

Summary Text: On June 4, 2013, the Board executed the attached Agreement for Professional Legal Services between the County of Santa Barbara and McCarthy & Kroes, Attorneys at Law, for that firm to defend the County and individually-named County employees in General Fund litigation brought by former Lake Cachuma concessionaires who alleged that the County breached their concession agreement (*Del Rio, et al. v. County of Santa Barbara, et al.*, Santa Barbara Superior Court case number 1390468).

While a judgment has not yet been entered, trial concluded favorably for the County. Because the amount the Court awarded plaintiffs (\$17,238) is less than the pre-trial statutory offer the Board chose to make, the Court has the discretion to award the County its litigation costs (approximately \$43,000), which would result in a net judgment of approximately \$25,500 in favor of the County. Plaintiffs initially demanded more than two million dollars to settle the case, and shortly before trial demanded \$345,000, which the Board rejected.

In addition to litigation costs, the County has paid \$141,224.25 to McCarthy & Kroes for professional legal services through August 31, 2013. Outstanding billings for their services through the first (liability) phase of trial are \$55,572. They estimate that their billings for time spent from the first phase of trial through the second (damages) phase, plus the time they expect to spend on post-judgment proceedings will total approximately \$35,000.

Increasing the contract payment limit from \$175,000 (approved by the Board on October 15, 2013) to \$275,000 is expected to cover all remaining defense costs (\$43,000 previously paid in litigation costs + \$141,224.25 previously paid for professional legal services + \$55,572 in outstanding billings for professional legal services + \$35,000 for unbilled professional legal services = \$274,796.25). The Outside Counsel Designation fund has a sufficient balance to pay the increased limit.

Last year, County Counsel requested additional staffing to reduce the need to use more expensive outside counsel for cases such as this, where the costs of defense are borne by the General Fund rather than by Risk Management's General Liability or Medical Malpractice Fund. In its June 2013 Budget Hearings, the Board approved the addition of a County Counsel Deputy to handle General Fund litigation, and in October 2013, County Counsel filled the position with an experienced litigator, who will handle such cases in the future.

Fiscal and Facilities Impacts:

Budgeted – Outside Counsel Designation

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

Attachments: (1) Agreement for Professional Legal Services [current]
(2) Amendment to Agreement for Professional Legal Services dated October 15, 2013
(3) Amendment to Agreement for Professional Legal Services [proposed]

Authored by: Martin G. McKenzie, Chief of Litigation