



**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: May 1, 2018
Placement: Administrative
Estimated Time:
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors

FROM: County Counsel Michael C. Ghizzoni, County Counsel, 568-2950
Contact Info: Same

SUBJECT: **Contingent Fee Contract With The Law Firm Of Baron & Budd, P.C., For
Litigation Services In An Action To Be Filed Against Southern California Edison**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

a) Approve and authorize the Chair to execute a contingent fee Professional Services Contract with the law firm of Baron & Budd, P.C., for the preparation and handling of a litigation action to be filed against Southern California Edison, by Santa Barbara County and its related public entities (including the Santa Barbara County Fire Protection District and the Santa Barbara Flood Control and Water Conservation District), to recover damages from the December 2017 Thomas Fire and the resulting debris flow; 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:

In Closed Session on April 18, 2018, the Board of Supervisors authorized the initiation of litigation against Southern California Edison, to recover Santa Barbara County's millions of dollars of damages from the December 2017 Thomas Fire and the resulting debris flow. The litigation is intended to prevent County taxpayers from otherwise bearing the burden of those damages over the next several years. If the County does not recover its out-of-pocket expenses and loss of tax revenues from the Thomas Fire and debris flow, Santa Barbara County residents would face multi-year cuts to County services.

Background:

The Thomas Fire and the resulting debris flow caused major damages to the County of Santa Barbara, the County Fire Protection District, and the County Flood Control and Water Conservation District. CEO's update Board Agenda Letter of March 13, 2018 estimated that the County's unreimbursed expenses alone, without including revenue losses, will likely be about \$12.3 million. We believe that the County's total damages, over the longer period of the next several years, likely will be greater than this, including from items such as: 1) increased costs of watershed management, after the pronounced loss of soil stability; and 2) in future years, unreimbursed costs from preparing for and responding to more potential debris flows that would not have occurred except for the Thomas Fire.

Baron & Budd already represents the City of Santa Barbara, the Montecito Water District and the Association of California Water Agencies Joint Powers Insurance Authority as plaintiffs in this matter. Therefore, entering a "Joint Prosecution Agreement" with those other public entities would be part of the County of Santa Barbara also using Baron & Budd as Outside Counsel.

Fiscal and Facilities Impacts:

We estimate that County staff support of this litigation will require up to 2.0 FTE per year of existing staff resources, throughout the litigation, with most of that involving document organization and document production during the first year of litigation. Of that 2.0 FTE, we expect to use 0.5 FTE of an existing Deputy County Counsel, as well as a total of up to 1.5 FTE of other existing employees from: Office of Emergency Management, Fire, and Public Works.

Other than that, there is no present financial impact from this contract, since the County would pay the Baron & Budd law firm an 18% contingent fee, only on any net recovery:

- The scope of representation for that contingent fee includes both trial and any appeal, if needed; and
- "Costs and expenses" -- including expert fees -- are advanced by the law firm, and repaid by the County only if the County recovers that amount or more from the defendant; and

Budgeted: N/A

Key Contract Risks:

Even though this is a contingent fee contract -- versus a standard service contract -- we reviewed the Contract Risk Assessment Worksheet as part of our process. Contract Paragraph 5 provides the essential control terms of this contract, including that the Board of Supervisors, acting through its County Counsel, expressly retains "complete control" over the case, including decisions regarding settlement.

Contract Paragraph 7.D provides that in no event will the County be required to pay attorney's fees or any costs and expenses out of any public funds other than the monies recovered through the litigation.

A Request for Proposals was not required for this selection. In preparing for this and other potential litigation, though, we met in person with representatives from this law firm and three other law firms.

Staffing Impacts: Discussed in more detail at Page 2, we do not expect to need any new: legal positions, contractors on payroll, or extra help positions.

Special Instructions: None.

Attachments:

1. Attorney-Client Fee Contract with Baron & Budd, P.C.
2. Contract Summary Form

Authored by:

Michael C. Ghizzoni, County Counsel

cc:

Office of Emergency Management

Fire

Public Works