



Board Agenda Item 31

DATE: March 28, 2023

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Specialized Legal Services Agreements for Bond Counsel and Disclosure Counsel

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a specialized legal services agreement with Hawkins Delafield & Wood LLP to act as bond counsel for special projects that may arise during FY 2023-24, effective July 1, 2023, through and including June 30, 2024, total compensation not to exceed the amount appropriated by Board in the FY 2023-24 budget, plus reimbursements from outside funding sources, if any.**
- 2. Approve and authorize the Chairman to execute a specialized legal services agreement with Hawkins Delafield & Wood LLP to act as bond counsel and disclosure counsel for the issuance if the County issues FY 2023-24 tax and revenue anticipation notes, effective upon execution by the parties until it is terminated by either or both parties, total compensation not to exceed the amounts payable for legal fees of \$40,000, and out-of-pocket expenses of \$1,500, plus actual and reasonable costs for certain publications, reports, and transcripts.**

There is no increase in Net County Cost associated with the recommended actions. Approving the first recommended action will engage Hawkins Delafield & Wood LLP (“Hawkins”) as the County’s bond counsel as needed for special projects that may arise during FY 2023-24. County Counsel would be able to authorize Hawkins to initiate work on special projects between July 1, 2023, and June 30, 2024. Because some special projects might arise toward the end of that period, bond counsel services may continue past June 30, 2024, for any work authorized through that date. Approving the second recommended action will obtain essential specialized legal services of bond counsel and disclosure counsel for one issuance of FY 2023-24 tax and revenue anticipation notes (“TRANS”), if needed. The County has not yet determined whether it will need to issue TRANS for FY 2023-24. All payment obligations are contingent on the sale and issuance of the TRANS. The recommended agreement is only for services in connection with one issuance of FY 2023-24 TRANS, if needed. This item is countywide.

ALTERNATIVE ACTION(S):

There is no viable alternative to retaining bond counsel and disclosure counsel for these services because they must be provided by attorneys who have expertise in federal income tax and federal securities laws. The County Counsel’s office does not provide those specialized services.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

Under the Board of Supervisors’ Administrative Policy No. 34 (Competitive Bids and Requests for Proposals) for obtaining services, competitive bidding is not required to select specialized legal counsel. Instead, that Board policy requires County Counsel to conduct a salary survey every two years for legal services.

In January and February of this year, County Counsel conducted a competitive selection process that included five major law firms that routinely provide bond counsel services to local governments in California. Four of those firms responded with proposals. County Counsel recommends Hawkins because it provided the most competitive proposal, based on a variety of factors including the following: its hourly fee rates are the lowest of the proposers; its TRANs costs are lowest of the proposers; and it is the only firm to accept all of the County's proposed provisions for the recommended agreements. Hawkins possesses a high level of relevant expertise and experience.

FISCAL IMPACT:

There is no additional Net County Cost associated with the recommend actions because costs for bond counsel and disclosure counsel services are budgeted each fiscal year. Under both recommended agreements, Hawkins would render specialized legal services at the hourly fee rate of \$350 for associate attorneys, and at a range of hourly fee rates from \$540 to \$575 for partner attorneys.

Under the special projects agreement (the first recommended action), the FY 2023-24 budget request for Interest and Miscellaneous Expenditures Org will include sufficient appropriations. On rare very rare occasions, other agencies' financing issues that impose burdens on the County might result in a need for County Counsel to seek specialized legal services under this agreement. On those occasions, before engaging Hawkins, County Counsel would seek written commitment from those other agencies to reimburse the cost of such services. The fiscal impact of this recommended agreement will depend on the number and complexity of public finance matters that may arise for the County during FY 2023-24. Some of those projects are certain to arise (for example, the County's annual continuing disclosure filing in the bond market to satisfy Securities and Exchange Commission reporting requirements), but much of the specialized legal work covered by this recommended agreement is likely to be unexpected and will probably need to be expedited. Given the number and type of financings undertaken by the County recent years, such legal work will be needed.

Under the TRANs agreement (the second recommended action), the cost of specialized legal services could be paid from the FY 2022-23 Adopted Budget for Interest and Miscellaneous Expenditures Org 2540, or from upcoming FY 2023-24 appropriations in Org 2540, depending on when the services are provided. Under this recommended agreement, the County's obligation to pay for legal fees for actual work performed would be capped at \$40,000, and the County's obligation to pay for reasonable and necessary out-of-pocket expenses would be capped at \$1,500. In addition, the County would be obligated to reimburse Hawkins for the actual and reasonable cost of publications and reports obtained for the financing and the preparation of printed and bound transcripts or digital transcripts provided on physical media. All payment obligations under this recommended agreement are contingent on the sale and issuance of the TRANs.

DISCUSSION:

The County ordinarily engages a law firm for bond counsel and disclosure counsel each year, for a limited annual term. The County entered such agreements for FY 2022-23 on March 8, 2022, when your board approved two agreements with Hawkins for specialized legal services, one for bond counsel services related to special projects, and a second for bond counsel and disclosure counsel services related to TRANs. Last year's special projects agreement only covers specialized legal services on matters authorized up through June 30, 2023, and a new agreement is required for such services on matters authorized after that date. The County did not issue TRANs for FY 2022-23, so services under last year's TRANs agreement were not needed.

County Counsel recommends that Hawkins serve as bond counsel to the County for special projects that arise during FY 2023-24. Generally, Diane Quan, Esq., of Hawkins' Los Angeles office, would be the lead attorney for such special projects. Russell Miller, Esq., of Hawkins' San Francisco office, would be the lead attorney for special projects primarily involving federal income tax issues.

Hawkins currently serves as bond counsel to the County for special projects. Hawkins has consistently provided responsive and effective bond counsel services to the County on various projects for the last several years, including the following:

- The County's FY 2021-22 TRANs issuance;
- The West Annex Jail financing by the State, including the County's use of tobacco securitization bond proceeds as part of the County's local match of funds;
- Continuing administration of the use of tobacco securitization bond proceeds for various other facilities;
- Arbitrage rebate compliance services; and
- The County's annual continuing disclosure filing in the bond market to satisfy Securities and Exchange Commission reporting requirements.

Special Projects

From time to time, the County requires the specialized legal services of bond counsel in connection with public finance matters, such as the County's required annual continuing disclosure filing in the bond market.

Under the recommended agreement for special projects, County Counsel may consult with Hawkins as needed for special projects that arise in FY 2023-24. County Counsel would inform Hawkins of the need for services on each project as it arises. The County Counsel would authorize the work and monitor Hawkins' services to ensure that Hawkins' time devoted to services is commensurate with County Counsel's expectations. County Counsel would also review line-item entries of invoices to confirm the details of the services provided and charges incurred.

The recommended agreement for special projects also covers bond counsel work resulting from other agencies' financing issues that impose burdens on the County. On those occasions, which are very rare, before engaging Hawkins, County Counsel would seek written commitment from those other agencies to reimburse the cost of such services.

If approved, the recommended agreement for special projects is effective on July 1, 2023. Under the recommended agreement, County Counsel may authorize special projects between July 1, 2023, and June 30, 2024. Because some special projects might arise toward the end of that period, bond counsel services may continue past June 30, 2024, for any work authorized through that date.

The recommended agreement for special projects does not cover any legal services that would be required if the County undertakes any new bond financings (such as TRANs) or refinancings. Those legal services would be covered by separate agreements, such as the following recommended agreement for a TRANs.

TRANs

When the County undertakes municipal financings, such as TRANs, the County must comply with complex federal income tax and federal securities laws. For that reason, the County needs the specialized legal services of bond counsel and disclosure counsel in connection with those financings.

TRANs provide annual "cash flow" financing. This municipal financing allows the County, upon your Board's authorization, to issue short-term notes in the first half of the County fiscal year to finance its operations in anticipation of receiving taxes and other revenues during the fiscal year.

In the past, the County's TRANs have closed the first week of July. The County last issued TRANs in 2021, for FY 2021-22. A staff recommendation that your Board authorize the issuance of TRANs for FY 2023-24 has not yet been made. But to avoid delay if TRANs are ultimately recommended by staff, an agreement for

bond counsel and disclosure counsel services for the TRANs is included with this item. If no TRANs are issued, no services will be provided and no compensation will be paid under that recommended agreement.

Under the recommended agreement for TRANs, Hawkins, as bond counsel, would prepare and provide the appropriate resolutions, agreements, and legal opinions for issuing the TRANs so that the TRANs financing complies with the applicable tax laws. As disclosure counsel, Hawkins would prepare the bond offering documents (for example, the Official Statement) and continuing disclosure agreement, and provide appropriate securities disclosure opinions, so that the financing complies with applicable securities laws. County Counsel would work closely in association with Hawkins, as Hawkins undertakes these specialized legal services.

REFERENCE MATERIAL:

BAI # 21, March 8, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement with Hawkins Delafield & Wood LLP (Special Projects)

On file with Clerk - Agreement with Hawkins Delafield & Wood LLP (TRANs)

CAO ANALYST:

Ahla Yang