



Board Agenda Item 20

DATE: December 15, 2015

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Retroactive Amendment I to Agreement with McCormick Barstow to continue representing County in nineteen lawsuits filed against the County arising out of the decertification of the class in Espinoza v. County of Fresno

RECOMMENDED ACTION(S):

Approve and authorize Chairman to execute Retroactive Amendment I to Agreement No. 13-593 with McCormick Barstow, to continue representing County in nineteen lawsuits filed against the County arising out the decertification of the class in Espinoza v. County of Fresno.

The recommended action will amend the legal service agreement with McCormick Barstow, increasing the hourly rates paid for legal services rendered in representing the County in the pending lawsuits filed after the decertification of the class in Espinoza v. County of Fresno.

ALTERNATIVE ACTION(S):

Your Board could opt not to approve Amendment I to the Agreement retaining McCormick Barstow, but the hourly rates payable for legal services rendered would remain the same. The Agreement stated that the hourly rates listed in the Agreement would be effective until July 20, 2015, at which time the parties would renegotiate hourly rates. Should your Board not approve Amendment I and McCormick Barstow will not continue providing legal services pursuant to the hourly rates set forth in the Agreement, the County will need to transition representation of the County in these cases to another law firm.

RETROACTIVE AGREEMENT:

Amendment I is retroactive to October 1, 2015 as rate negotiations were complete by that time but the Amendment could not be processed until this time.

FISCAL IMPACT:

Amendment I increases the hourly rate payable for legal services rendered. County Counsel has sufficient funds budgeted in FY 2015-16 to cover these estimated legal costs. There is no cap set forth in the Agreement.

DISCUSSION:

Under a prior agreement, McCormick Barstow represented the County in a class action filed in federal court against the County by plaintiffs, alleging they represented a class of approximately 200 Sheriff deputies. On March 25, 2013, the federal district court decertified the class, finding that plaintiffs were not similarly situated and the claims arose out of disparate factual and employment settings. The claims generally related to duty weapon qualification, duty weapon cleaning, and uniform cleaning allegedly done during non-work hours. Following decertification of the class, the court allowed plaintiffs to file separate lawsuits. Nineteen individuals

filed separate actions.

Because McCormick Barstow had represented the County in the class action and was very familiar with both the facts and legal issues presented in the lawsuits, the County entered into a legal service agreement with McCormick Barstow to represent the County in the individual lawsuits. That Agreement, effective July 1, 2013, sets forth the hourly rates of the various attorneys and staff that might work on these cases. The Agreement provided that the listed hourly rates would be effective until July 20, 2015, at which time the parties shall renegotiate hourly rates in good faith.

Amendment I would increase hourly rates of McCormick Barstow attorneys and staff working on these cases. The hourly rate increases range from \$10 an hour to \$20 an hour. If these cases are still in progress, the hourly rates will automatically increase 5% on February 23, 2019 and increase another 5% on February 23, 2020.

REFERENCE MATERIAL:

Agreement No. 13-593, AI No. 24, September 24, 2013

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Agreement with McCormick Barstow Amendment I

CAO ANALYST:

Ronald Alexander