



# Board Agenda Item 26

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DATE: March 6, 2018

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Retroactive Amendment 2 to Legal Services Agreement with Epstein, Becker & Green, PC Extending Termination Date

RECOMMENDED ACTION(S):

**Approve and authorize the Chairman to execute a retroactive Amendment 2 to Agreement P-17-077-Q with Epstein, Becker & Green, PC, for outside legal services to represent the County of Fresno in appeals of federal and state disallowances of cost reimbursement claims, effective March 1, 2017 and amending the termination date of the Agreement to December 31, 2019 with the not to exceed amount remaining at \$250,000.**

Approval of the recommended action will amend the existing agreement with Epstein, Becker & Green, PC, to provide additional legal services in their representation of the County in the appeal before the Departmental Appeals Board of the United States Department of Health and Human Services and subsequent federal court litigation. This amendment amends the Agreement to extend the termination date from December 31, 2017 to December 31, 2019 to allow the continuing representation by Epstein, Becker & Green.

ALTERNATIVE ACTION(S):

There are no viable alternative actions.

SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

This is a contract for specialized legal services. The law firm selected has specific experience in matters appealed before the Department of Health & Human Services Departmental Appeals Board and in federal court.

RETROACTIVE AGREEMENT:

The Amendment supersedes and replaces an amended agreement to allow the law firm to continue its representation on behalf of the County beyond December 31, 2017. To the extent that any legal services have been performed by the law firm after December 31, 2017, this Amendment acts retroactively to authorize payment to the law firm for all services provided to the County.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action as it increases the term of the agreement by two years without an increase to the not to exceed amount of \$250,000. Sufficient appropriations are included in the Org 0710 FY 2017-18 Adopted Budget and will be included in subsequent

budget requests for the duration of the term.

DISCUSSION:

The County pursued an appeal before the Departmental Appeals Board (DAB) of the United States Department of Health and Human Services (DHHS) challenging the disallowance of \$6,271,287 in pension obligation bond costs by DHHS for Fiscal Years 2015 and 2016. In January of 2018, the Departmental Appeals Board filed its decision denying the County's appeal. Epstein, Becker & Green PC was retained to represent the County in the DHHS appeals board process and will continue to provide legal services in a federal court challenge to the DAB decision. Because the DAB took several months before rendering its decision, the existing contract with Epstein Becker & Green reached its termination date. Approval of the recommended action will allow Epstein, Becker & Green PC to continue represent the County in the federal court litigation challenging the DAB decision.

REFERENCE MATERIAL:

BAI #32, April 25, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

- On file with Clerk - Original Agreement
- On file with Clerk - Amendment 1
- On file with Clerk - Amendment 2

CAO ANALYST:

Ron Alexander