



Board Agenda Item 32

DATE: April 25, 2017

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Retroactive Amendment I to Legal Services Agreement with Epstein, Becker & Green, PC and Budget Resolution to Establish Resources to Pay For Legal Services

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a retroactive Amendment I to Agreement P-17-077-Q with Epstein, Becker & Green, PC, for outside legal services in an amount not to exceed \$250,000, to represent the County of Fresno in appeals of federal and state disallowances of cost reimbursement claims, effective March 1, 2017 through December 31, 2017; and**
- 2. Adopt Budget Resolution increasing FY 2016-17 appropriations for County Counsel Org 0710 in the amount of \$250,000 (4/5th vote).**

Approval of the first 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 any subsequent federal court litigation. The amendment is retroactive to March 1, 2017, as it was necessary to begin the work on the appeal immediately. Approval of the second recommended action will ensure County Counsel has sufficient appropriations to cover the costs associated with this agreement.

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 agreement with a lower limit on fees entered into by the County Counsel and the Purchasing Agent to allow the law firm to commence efforts on behalf of the County. Therefore, this Amendment is made retroactive to March 1, 2017.

FISCAL IMPACT:

There is an increase in Net County Cost in the amount of \$250,000 associated with the second recommended action. Approval of the second recommended action will increase the FY 2016-17 appropriations in County Counsel Org 0710 in the amount of \$250,000 using Unassigned Fund Balance in the General Fund to fund legal service costs associated with the appeal before the Department of Health & Human Services Departmental

Appeals Board and in federal court.

DISCUSSION:

The County is pursuing an appeal before the Departmental Appeals Board 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. The appeal process and any subsequent federal court litigation requires specialized experience in the litigation of cost allocation plans and familiarity with DHHS policies and procedures. Epstein, Becker & Green PC practices regularly before federal regulatory bodies including the Departmental Appeals Board and possesses the requisite skill and specialized experience to handle this matter for the County. Approval of the recommended actions will allow Epstein, Becker & Green PC to represent the County in the appeal process and any subsequent federal court litigation and sets up the resources to pay for such specialized legal services.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment I to Agreement P-17-077-Q
On file with Clerk - Purchasing Agent Agreement P-17-077-Q
On file with Clerk - Budget Resolution Org 0710

CAO ANALYST:

Ronald Alexander