



# Board Agenda Item 26

DATE: March 24, 2020

TO: Board of Supervisors

SUBMITTED BY: Jean M. Rousseau, County Administrative Officer

SUBJECT: Second Amendment to Agreement for Conflict Defense Services and Budget Resolution

## RECOMMENDED ACTION(S):

1. **Approve and authorize the Chairman to execute Second Amendment to Agreement No. 17-226-1 with Fitzgerald, Alvarez & Ciummo, a Professional Law Corporation, for conflict defense services, effective upon execution with no change to the term of July 1, 2017 through June 30, 2022 and increasing the maximum by \$140,000 to a total of \$23,276,307; and**
2. **Adopt Budget Resolution increasing the FY 2019-20 appropriations for the Alternate Indigent Defense Budget Org 2875 in the amount of \$650,000, using available Fund Balance in the General Fund 0001 (4/5 vote).**

There is a \$650,000 increase in Net County Cost associated with the recommended actions. The recommended actions will modify the agreement to reflect a change in the law firm's name that provides conflict defense services for the County from Richard A. Ciummo & Associates, a Professional Law Corporation, to Fitzgerald, Alvarez & Ciummo, a Professional Law Corporation, as Michael Fitzgerald is now the principal owner of the law firm. The recommended actions will also provide an additional \$140,000 in ancillary fees for the conflict defense agreement and \$510,000 in appropriations to the Alternate Indigent Defense Budget Org 2875. Both the agreement for conflict defense services and court appointed claims are paid out of this budget. Additional funds are needed due to an increase in costs associated with court-appointed claims and ancillary fees for the Alternate Indigent Defense agreement. This item is countywide.

## ALTERNATIVE ACTION(S):

There is no viable alternative action. If the recommended actions are not approved, there will not be enough funds to cover ancillary fees for the Alternate Indigent Defense agreement and court claims, and the name of the law firm on the agreement will not be accurate.

## FISCAL IMPACT:

There is a \$650,000 increase in Net County Cost associated with the recommended actions. Approval of the second recommended action will increase appropriations by \$650,000 in the Alternate Indigent Defense Org 2875 to cover the costs associated with the increase in ancillary fees in the conflict defense agreement and court appointed claims. The additional Net County Cost will be funded from Unassigned Fund Balance that the Board has reserved in Fiscal Year 2019-20 for budget mitigation in the amount of \$10,000,000. These funds are classified as Unassigned for financial reporting purposes, in compliance with Governmental Accounting Standards Board statement 54.

DISCUSSION:

The County's agreement for conflict defense services, dated June 6, 2017, provides for representation of cases conflicted out by the Public Defender. The agreement provides coverage of up to seven conflict indigent defendants in a single case before the Fresno County Superior Court.

The agreement was amended on May 8, 2018, to provide additional funding for cases declined by the Public Defender, and an increase in service needs due to additional work necessary to review previously undisclosed evidence that had been recently ordered to be turned over to defense counsel.

Due to changes in legislation and an increase the level and seriousness of crimes committed by the defendants represented, there is an associated increase in the amount of ancillary fees required under this agreement. In addition, there is also an increase in court- appointed claims over prior years, as follows:

Attorney fees are approximately \$229,000 higher, or 75% over prior year; and  
Ancillary fees are approximately \$204,000 higher, or 71% over prior year.

The budget resolution is necessary in order to provide funding for the increase in ancillary costs associated with the conflict defense agreement and court appointed claims.

It should be noted agreement number 17-226-1 was with Richard A. Ciummo and Associates, a Professional Law Corporation. Mr. Michael Fitzgerald has since become the principal owner of the law firm, which has changed its name to Fitzgerald, Alvarez & Ciummo, a Professional Law Corporation, which is reflected in the recommended second amendment.

REFERENCE MATERIAL:

BAI #29, May 8, 2018\_

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Second Amendment to Agreement No. 17-226-1  
On file with Clerk - Resolution (Org 2875)

CAO ANALYST:

Samantha Buck