County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Details (With Text)

File #:	18-0583	**Name:**	Fourth Amendment to Legal Services Agreement with the law firm of Best, Best & Krieger, LLP.
		In control:	County Counsel
On agenda:	6/5/2018	**Final action:**	6/5/2018
Enactment date:		**Enactment #:**	Agreement No. 14-394-4

Title: Approve and authorize the Chairman to execute Retroactive Amendment IV to Agreement No. 14-394 with Best, Best & Krieger, to extend the term of the existing Agreement to continue representing County in marijuana-related lawsuits now pending in the appellate court from December 31, 2017 to December 31, 2020 with no increase in the maximum of $550,000

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Agreement A-14-394-4 with Best, Best & Krieger

Date	Ver.	Action By	Action	Result
6/5/2018	1	Board of Supervisors	Conducted Hearings	Pass

DATE: June 5, 2018

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Retroactive Amendment IV to Agreement with Best, Best & Krieger, to continue representing County in marijuana-related lawsuits now pending in the appellate and superior court.

RECOMMENDED ACTION(S):

Approve and authorize the Chairman to execute Retroactive Amendment IV to Agreement No. 14-394 with Best, Best & Krieger, to extend the term of the existing Agreement to continue representing County in marijuana-related lawsuits now pending in the appellate court from December 31, 2017 to December 31, 2020 with no increase in the maximum of $550,000.

The recommended action will amend the legal services agreement with Best, Best & Krieger to extend the expiration date from December 31, 2017 to December 31, 2020, to allow for continued representation of the County in marijuana-related lawsuits now pending in the superior and appellate courts and to provide advice to the County concerning other marijuana litigation and general legal matters related to the County's marijuana ordinance. This amendment does not change the existing cap on payments under the agreement, currently $550,000. This item is countywide.

ALTERNATIVE ACTION(S):

Your Board could opt not to approve Amendment IV to the Agreement ("Amendment IV") retaining Best, Best & Krieger ("BB&K"), but that would leave the County without representation in the cases still pending before the superior and appellate courts, including one that is expected to be set for oral argument before the Fifth District Court of Appeal in June or July 2018. BB&K's assigned attorney, Jeffrey Dunn, has recognized

expertise in defending municipalities against marijuana-related lawsuits in which marijuana users challenge the municipalities' authority to regulate cultivation. Mr. Dunn would be forced to discontinue provision of services to the County if your Board disapproved Amendment IV to the Agreement with BB&K. In addition, Mr. Dunn would not be paid for legal services already rendered in responding to the appellate court's inquiries regarding oral argument.

RETROACTIVE AGREEMENT:

Amendment III provided for an expiration date of December 31, 2017. As of that date, there remained one case pending before the Fresno County Superior Court (after being remanded back by the Fifth District Court of Appeal) and one case pending before the Fifth District Court of Appeal. The latter case is expected to be set for oral argument in June or July and BB&K will likely need to prepare for oral argument prior to consideration of this Amendment IV by your Board. Mr. Dunn has already spent time reviewing the case in order to respond to a questionnaire from the Court. To pay BB&K for this work, Amendment IV must be, and is, retroactive to December 31, 2017.

FISCAL IMPACT:

Amendment IV does not increase the contract cap amount from that set in Amendment III, $550,000. As of the expiration date of the contract, the County has paid BB&K approximately $429,000 for work performed on the marijuana-related lawsuits and advice regarding the County's marijuana ordinance. We do not anticipate the total legal services rendered under this Agreement to exceed $550,000.

DISCUSSION:

In 2010, the County was served with the first of six lawsuits that relate to the County's regulation of marijuana (Earthsource, et al. v. County of Fresno, et al., FCSC Case No. 10CE#CG03566). Effective October 15, 2010, the County and BB&K entered into an Agreement, with a contract cap of $25,000, for defense of the Earthsource case. Mr. Dunn represented the County pursuant to the Agreement, and obtained a favorable result for slightly less than the cap amount.

In early 2014, the Board enacted an ordinance banning cultivation of marijuana in Fresno County. In February 2014, the County was served with a second lawsuit, Kirby v. County of Fresno, FCSC Case No. 14CECG00551, concerning the County's regulation of marijuana cultivation. In response, on April 15, 2014, the County and BB&K entered into Amendment I to the Agreement, which increased maximum total compensation to $50,000 and expanded the scope of Mr. Dunn's representation to include the Kirby case.

Unfortunately, by June 2014, four additional lawsuits were filed, rendering the contract cap insufficient for the projected costs of defending the County through the trial court level. As a result, on July 15, 2014, the County and BB&K entered into Amendment II to the Agreement, which increased maximum compensation to $210,000 (approximately $25,000 for the Earthsource case and approximately $185,000 for the remaining five lawsuits). At the time Amendment II was entered, the Department informed the Board that the contract cap did not include funds for any appellate review that may become necessary.

Two of the lawsuits had been resolved by October 2015 but three were pending in the Fifth District Court of Appeal. The funds available under the Agreement as amended were exhausted and on October 27, 2015, the County and BB&K entered into Amendment III that provided for a new contract cap of $550,000 and an expiration date of December 31, 2017.

Since then, one lawsuit was dismissed by the Court of Appeal, one (Kirby) was remanded back to the Superior Court, and the third (Thao v. County of Fresno, FCSC Case No. 14CECG02103) is still pending before the Court of Appeal. It is anticipated that any additional work to be performed on these two cases can be done

within the existing cap. However, the expiration date of the Agreement must be extended to December 31, 2020 to allow for the completion of these matters. If these remaining cases are resolved prior to December 31, 2020, the contract can be terminated at that time.

REFERENCE MATERIAL:

BAI #31, October 27, 2015
BAI #34, July 15, 2014

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk-Agreement with Best, Best & Krieger Amendment IV

CAO ANALYST:

Yussel Zalapa