



# County of Fresno

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## Legislation Text

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**File #:** 17-0063, **Version:** 1

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**DATE:** February 28, 2017

**TO:** Board of Supervisors

**SUBMITTED BY:** County Counsel, Daniel C. Cederborg

**SUBJECT:** Specialized Legal Services Agreements for Bond Counsel and Disclosure Counsel

### RECOMMENDED ACTION(S):

- 1. Approve and authorize chairman to execute an agreement with Hawkins Delafield & Wood, LLP (Hawkins) to act as bond counsel for special projects that may arise during FY 2017-18, effective July 1, 2017 (maximum compensation for services to be limited by amount appropriated by the Board in the FY 2017-18 budget)**
- 2. Approve and authorize chairman to execute an agreement with Hawkins to act as bond counsel and disclosure counsel if the County issues FY 2017-18 tax and revenue anticipation notes (TRANs) (maximum amounts payable for legal fees of \$35,000 and out-of-pocket expenses of \$4,000), effective upon execution by the parties**

Approving the first recommended action will engage Hawkins as the County's bond counsel as needed for special projects that arise during FY 2017-18. County Counsel would be able to authorize Hawkins to work on special projects between July 1, 2017, and June 30, 2018. Because some projects might arise toward the end of that period, bond counsel services may continue past June 30, 2018, for any work authorized during that period. The cost of all services under the proposed special projects agreement would be limited to net County cost appropriations as may be approved by the Board in the FY 2017-18 budget, plus reimbursements from outside funding sources, if any.

Approving the second recommended action will obtain essential specialized legal services of bond counsel and disclosure counsel, but only if the Board decides that the County should issue FY 2017-18 TRANs. The \$39,000 maximum amount payable includes (a) \$35,000 in maximum compensation for specialized legal services, and (b) \$4,000 in maximum reasonable and necessary out-of-pocket expenses. All payment obligations are contingent on the sale and issuance of the TRANs, and all amounts would be paid from the proceeds of the TRANs. For that reason, no amounts payable under the second recommended agreement would increase net County cost.

### ALTERNATIVE ACTION(S):

There is no viable alternative to retaining bond counsel and disclosure counsel because those services must be provided by attorneys who have expertise in federal income tax and federal securities laws. The County Counsel's Office does not provide those specialized legal services.

### SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:

Under the County's policies for obtaining services, competitive bidding is not required to select specialized legal counsel. Instead, those policies require County Counsel to conduct a salary survey every two years.

Three years ago, County Counsel conducted a competitive selection process involving eight major law firms that routinely provide bond counsel and disclosure counsel services to local governments in California. Five of those firms responded with proposals. Hawkins was the successful proposer, and the Board engaged it to provide specialized legal services for the County's FY 2014-15 TRANs and special projects.

Last year, County Counsel conducted an informal survey of counties likely to provide relevant information about bond counsel and disclosure counsel pricing for TRANs. For that survey, County Counsel attempted to contact County Counsels from seven counties. County Counsels from six of those counties responded: Kern; Napa; San Bernardino; San Diego; Tulare; and Ventura.

Five of the responding counties (Kern, San Bernardino, San Diego, Tulare, and Ventura) recently issued TRANs, with the price for bond counsel and disclosure counsel services ranging from \$39,000 to \$75,000, including costs. Hawkins' price for bond counsel and disclosure counsel services on TRANs, at no more than \$39,000, including costs, is at the lower bound of that range.

Four of the responding counties (Kern, Napa, Tulare, and San Diego) also reported hourly fee rates for bond counsel and disclosure counsel ranging from \$300 for associates to \$700 for partners. Hawkins hourly fee rates, ranging from \$362 to \$550 for partners, are toward the low end of that range.

This year, Hawkins has agreed to provide services at the same rates that it agreed to last year.

For those reasons, it appears to County Counsel that a more formal salary survey for these services this year would not likely result in further cost savings to the County.

#### FISCAL IMPACT:

There is no additional net County cost associated with the recommended actions. Costs for bond counsel and disclosure counsel services are budgeted annually in the Interest & Miscellaneous Expenditures Org 2540 budget. Payments for each of these recommended agreements initially would be processed for the appropriate fiscal year in County Counsel Org 0710, and would later be reimbursed from Org 2540.

- Legal services performed under the special projects agreement would be paid from FY 2017-18 net County cost appropriations as may be approved by the Board in the County's 2017-18 budget, plus reimbursements from outside funding sources, if any.
- Legal services performed under the TRANs agreement, if the County issues TRANs, could be paid from current fiscal year (FY 2016-17) appropriations, or from the next fiscal year's (FY 2017-18) appropriations, depending on when the services are provided. There are sufficient current year appropriations to fund all costs associated with the TRANs agreement (maximum of \$39,000).

**Rates:** Under both recommended agreements, legal services would be billed as services and rendered at hourly fee rates ranging from \$362 to \$550 for each attorney, all of which are partners, depending on the level of expertise of the attorney performing services. These rates are the same as the County's most recent agreement with Hawkins for specialized legal services of this kind.

**Special Projects Agreement:** The fiscal impact of the first recommended agreement, for FY 2017-18 special projects, will depend on the number and complexity of public finance matters that arise for the County during FY 2017-18. Some of those projects are certain to arise (for example, the County's annual continuing disclosure filing to satisfy Securities and Exchange Commission reporting requirements), but much of the specialized legal work covered by this proposed agreement is likely to be *unexpected* and will probably need to be *expedited*. The number and type of financings under taken by the County in recent years increases the likelihood that such legal work will be needed.

**TRANS Agreement:** Under the second recommended agreement, for a possible FY 2017-18 TRANS, the County's obligation to pay for legal fees for actual work performed will be capped at \$35,000, and the County's obligation to pay for reasonable and necessary out-of-pocket expenses will be capped at \$4,000, for a total maximum amount payable of \$39,000. All amounts that are payable are contingent upon the successful sale and issuance of TRANS. Compared to the County's last engagement of Hawkins for these services, the maximum amount payable is the same. If TRANS are sold and issued, the fees and expenses under the second recommended agreement will be paid from the proceeds of the TRANS. For that reason, no amounts that are payable under the second recommended agreement would increase net county cost.

## DISCUSSION:

County Counsel recommends that Hawkins serve as the County's bond counsel to the County for special projects that arise during the course of FY 2017-18, and bond counsel and disclosure counsel for any possible County FY 2017-18 TRANS. Arto Becker, Esq., of Hawkins, would be the lead attorney for such special projects and TRANS.

Hawkins has consistently provided responsive and effective bond counsel services to the County on various projects for the last several years, including the County TRANS, continuing administration of the use of tobacco securitization bond proceeds, the State's S.B. 1022 financing in connection with the West Annex Jail, and a 2016 lease revenue bond refunding for the Juvenile Justice Campus Court resulting in shared savings between the County and the Judicial Council. Hawkins currently serves as bond counsel to the County for special projects.

## Special Projects

From time to time, the County requires the specialized legal services of bond counsel in connection with public finance matters, such as the County's annual continuing disclosure filing.

Under the proposed special projects agreement, County Counsel may consult with Hawkins as needed for financing projects that arise in the next fiscal year (FY 2017-18). County Counsel would inform Hawkins of the need for each project as it arises. Then County Counsel would obtain a cost estimate for the required legal service. After determining that the estimate is reasonable, County Counsel would authorize the work and monitor Hawkins' services.

The proposed special projects agreement also covers bond counsel work due to requests from outside agencies (for example, if a school district and its bond counsel raise issues related to their bond financings that affect the County). But in those cases the County usually receives reimbursement from the agency for the work performed by the County's bond counsel.

If approved, the proposed special project agreement is effective on July 1, 2017. County Counsel may authorize special projects between July 1, 2017, and June 30, 2018. Because some projects might arise toward the end of that period, bond counsel services may continue past June 30, 2018, for any work authorized during that period.

The proposed special projects agreement does not cover any legal services that would be required if the County undertakes any new bond financings. Those legal services would be covered by separate agreements.

## TRANS

When the County undertakes municipal financings, such as TRANS, the County must comply with complex federal income tax and federal securities laws. For that reason, the County needs the specialized legal

services of bond counsel and disclosure counsel in connection with those financings.

The TRANS, but only if the Board decides to issue them, provide annual “cash flow” financing. This municipal financing allows the County to issue tax-exempt short-term notes to finance its operations in anticipation of receiving taxes and other revenues during the coming fiscal year.

Ordinarily, the County’s TRANS have closed during the first week of July. For the last two years, however, the County did not issue TRANS. A staff determination to recommend the issuance of TRANS for FY 2017-18 has not yet been made. But to avoid delay if TRANS are ultimately recommended by staff, an agreement for bond counsel and disclosure counsel services for the TRANS is included with this item. If no TRANS are issued, no services will be provided and no compensation will be paid under that agreement.

Under the proposed agreement for the TRANS, Hawkins, as bond counsel, would prepare and provide the appropriate resolutions, agreements, and legal opinions for issuing the TRANS so that the TRANS financing complies with the applicable tax laws. As disclosure counsel, Hawkins would prepare the bond offering documents (for example, the Official Statement) and continuing disclosure agreement, and provide appropriate securities disclosure opinions, so that the financing complies with applicable securities laws.

REFERENCE MATERIAL:

BAI #25, March 25, 2014  
BAI #25, March 24, 2015  
BAI #27, April 5, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

On File with Clerk - Agreement for Specialized Legal Services (Special Projects)  
On File with Clerk - Agreement for Specialized Legal Services (TRAN)

CAO ANALYST:

Ronald Alexander