



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 10/30/2018

Agenda Placement: 6K

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Jeffrey Richard for Jeffrey Brax - County Counsel
County Counsel

REPORT BY: Jeffrey Richard, Chief Deputy County Counsel - 253-4234

SUBJECT: Professional Services Agreement with Renne Public Law Group

RECOMMENDATION

County Counsel requests approval of and authorization for the Chair to sign an agreement with the Renne Public Law Group ("Attorneys") for the term of October 18, 2018 through June 30, 2019, subject to two additional years of automatic renewals if required for further services until resolution of the litigation, for a maximum of \$150,000 to provide specialized litigation services in two related lawsuits brought in state and federal court to challenge the constitutionality of Measure D.

EXECUTIVE SUMMARY

On June 5, 2018, approximately 61 percent of Napa County voters approved the adoption of Measure D as Napa County Ordinance No. 2018-02. Measure D amended Napa County Code section 18.120.010 to prohibit personal use airports and heliports and to place restrictions on helicopter takeoff and landing times when supporting aerial agricultural activities.

On October 5, 2018, an unincorporated non-profit association known as Helicopters for Agriculture and Barrett Vineyards LP and its owners ("Plaintiffs") filed an action in Napa County Superior Court challenging the constitutionality of the portions of Measure D that restrict helicopter use in the context of agricultural activities. On October 9, 2018, the same Plaintiffs filed a similar action in the United States District Court in San Francisco.

Although County Counsel will assign a Deputy to oversee and monitor the litigation and to handle certain tasks in the litigation when feasible for purposes of economy, the primary role in defense of such constitutional challenges and the handling of complex issues that will arise (including questions of federal preemption) require the engagement of outside counsel with resources and specialized expertise that County Counsel cannot provide without detrimentally impacting the office's provision of other services and allocation of workloads.

As described below, County Counsel has examined the qualifications of several well-known law firms with the experience and expertise needed for adequate defense of the actions and has conferred with other county counsel offices to seek recommendations. Based on that review as described below, County Counsel recommends entering into a Professional Services Agreement with Renne Public Law Group for a maximum fee of \$150,000.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	General fund
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Renne Public Law Group possesses resources and specialized expertise on constitutional and federal preemption issues, which are necessary for defense of the lawsuits. While County Counsel attorneys have such expertise to an extent, the workload of the office's Deputies who must provide daily legal services to many departmental clients covering a myriad of issues that vitally affect County operations makes it extremely difficult for any Deputy to devote the time to this case that would be required and still have time to cover day-to-day responsibilities.
Is the general fund affected?	Yes
Future fiscal impact:	It is likely that some portion of the maximum compensation amount of \$150,000 would be incurred and billed by counsel in FY 2019-2020. The specific amount is difficult if not impossible to estimate because it will depend entirely on the course and progress of the litigation. Funds will be appropriated in future years if needed.
Consequences if not approved:	Representation in the litigation would be provided by County Counsel staff. The County and the Board would not receive the benefit of specialized legal services and advice from outside counsel.
Additional Information:	

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The County received service of two lawsuits challenging the constitutionality of certain aspects of Measure D. The County expects Measure D's proponents to intervene in the actions and to share in the burden of defending against these challenges. But the time required of attorneys to defend these actions requires the engagement of outside counsel with expertise in the constitutional and federal issues raised in the complaints. The federal action requires the filing of responsive pleadings within 21 days, while the Napa Superior Court action requires a

response within 30 days of the service date. Thus, there was insufficient time to conduct a formal RFQ process to select outside counsel. Instead, we have conducted research into qualifications of several firms in the Bay Area that have strong reputations for representation of public entities and for expertise in constitutional law and litigation. County Counsel also reached out to counterparts in San Francisco and Sonoma to seek recommendations. Information was reviewed for a number of firms including Colantuono Highsmith & Whatley, Remcho, Johansen & Purcell, Olson Hagel & Fishburn and the Renne Public Law Group ("RPLG"), among others.

As a result of that process, County Counsel focused on two firms that seemed well-suited to handle the litigation: the Colantuono and RRPLG firms. However, Colantuono represents one or more public entities in Napa County that may want to take positions with regard to the validity and enforceability of Measure D. We are concerned that we do not have sufficient time to sort out such potential conflicts of interest and the need perhaps to obtain waivers.

On the other hand, RPLG has no actual or potential conflicts of interest. Its namesake and principal, Louise Renne, is well-known to Napa County, having provided excellent services previously in several contexts through her previous firm, Renne Sloan Holtzman Sakai. Although RPLG is not a local vendor, Ms. Renne has a residence in Napa and has longstanding ties to the community. Furthermore, RPLG is part of a group of five firms representing the County in the national Opioid Litigation. That engagement, since it is on a contingency fee basis and involves five firms, would not be subject to amendment to cover the present Measure D litigation. Thus, County Counsel proposes and recommends entering into a new Professional Services Agreement with RPLG.

Qualifications of Key Personnel

- ; Louise Renne would oversee the engagement. Louise was San Francisco City Attorney for 16 years and General Counsel to the San Francisco Unified School District before that. She is widely regarded as an expert on public entity issues and spearheaded the City's affirmative litigation program.
- ; Randy Riddle would take the day-to-day lead and be the principal attorney on substantive issues. In 2012, he was named one of California's Top 25 Municipal Attorneys by the Daily Journal. He was previously named a "California Super Lawyer" in the area of political law. The firm's website describes his extensive experience in drafting initiatives and ordinances and in advising legislative bodies on proposed legislation. He comes very highly recommended by the Sonoma County Counsel's office and by the head of the San Francisco City Attorney's Government Law Division.
- ; Art Hartinger would be the lead litigator in the matter. Art was a partner with the Meyers Nave firm for many years and is a founding partner of RPLG. One of our Chief Deputies supervised Art's services as outside counsel in several significant cases involving Orange County and highly recommends Art for his litigation skills and savvy.

Hourly Rates

Louise Renne, Randy Riddle, and Art Hartinger would bill their time at \$395 per hour. Ryan McGinley-Stempel, the primary associate assigned, will bill time at \$305 per hour. The firm also charges a five-percent administrative fee to cover any and all of their internal expenses and travel expenses.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Helene Franchi