



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: WRAA 17-019, **Version:** 1

Recommend that the Monterey County Water Resources Agency Board of Supervisors:

- a) Approve the Agreement for Specialized Litigation Attorney Services, relating to the Inter-Lake Tunnel and San Antonio Spillway Modification Project in the amount of \$250,000;
- b) Authorize expenditures of up to the initial budget of the Agreement in the amount of 250,000, to be reimbursed by the Department of Water Resources Project Grant; and
- b) Authorize the County Counsel to execute the Agreement.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Directors recommend that the Agency Board of Supervisors:

- a) Approve the Agreement for Specialized Litigation Attorney Services, relating to the Inter-Lake Tunnel and San Antonio Spillway Modification Project in the amount of \$250,000;
- b) Authorize expenditures of up to the initial budget of the Agreement in the amount of 250,000, to be reimbursed by the Department of Water Resources Project Grant; and
- b) Authorize the County Counsel to execute the Agreement.

SUMMARY/DISCUSSION:

In December of 2014 the Board of Supervisors (Supervisors) authorized staff to proceed with work on the proposed Interlake Tunnel Project ("Project") and authorized the County to reimburse the Agency \$3,000,000. The County and the Agency subsequently entered into a series of Reimbursement and Funding Agreements (Reimbursement Agreements) whereby the County would reimburse the Agency for certain preparatory expenses on condition that the Agency repay the County if the Project ultimately received Prop 218 funding to do so. The Project was later modified to include a modification to the San Antonio dam spillway.

The Governor signed into law Senate Bill No. 831 (Stats. 2016, ch. 338) to provide a \$10 million grant (State Grant Funds) for the Project on September 13, 2016. On February 16, 2017, the Agency and the State Department of Water Resources (DWR) entered into a multi-year agreement for the State Grant Funds, effective September 13, 2016, on a reimbursement basis.

In February 2017, the Supervisors created a new Project fund to track revenue and appropriations of up to \$2,000,000 based on the FY 2016-17 Project work plan approved by the DWR for reimbursement. That appropriation included an appropriation of \$1,161,635 in the funding balance at that time, in the fiscal year 2016-17 budget from the County Reimbursement Agreements. The remainder of the Project Fund is made up of expenses to be reimbursed by State Grant Funds in this fiscal year, including legal expenses.

While the County Counsel's Office has provided most of the legal support for the Project, specialized legal services have always been anticipated in Project development and, if approved, Project implementation. The proposed Project Agreement for Specialized Litigation Attorney Services (Attorney PSA) contains three components: the CEQA process, consultation with the State Water Resources Regional Control Board (SWRCB) and the actual hearing before the SWRCB. Exhibit 1. The Agency or County Counsel will be

primarily responsible for meeting with stakeholders and regulatory agencies, with Downey Brand playing a supporting role as special counsel.

An initial budget of \$250,000 in the Legal Services Agreement is proposed, consistent with the work plan approved by DWR. It is not anticipated that all of that initial budget will be expended in this fiscal year. The initial budget is intended to cover most of the work for first phase of the Project. The initial budget sets the contract value only, and is not an appropriation. The attached Attorney PSA is patterned after the most recent similar agreements with Downey-Brand. We anticipate an executed copy before Board of Supervisors consideration of the Attorney PSA. If Downey Brand proposes revisions that do not materially alter the essential terms of the Attorney PSA, then we will proceed to the Board of Supervisors.

OTHER AGENCY INVOLVEMENT:

CAO - Intergovernmental and Legislative Affairs and Budget Divisions were consulted in preparing this request. The County Counsel's Office negotiated the Legal Services Agreement, which closely follows previous legal services agreements between the Agency and Downey Brand. Since the DWR State Grant Agreement specifically anticipates reimbursement of Project work plan expenses retroactive to the date the Governor signed SB 831, the Legal Services Agreement is effective September 13, 2016.

FINANCING:

Two million dollars in existing and anticipated revenues are appropriated in the Inter Lake Tunnel Project Fund, Fund 426-9300-8267-WRA036, a portion of which will fund services under the Attorney PSA.

Prepared by: Jesse J. Avila, Deputy County Counsel, (831) 755-5045)

Approved by: _____
David E. Chardavoyne, General Manager, (831) 755-4860

Attachments:

1. Agreement
2. Board Order