



DATE: June 28, 2017
TO: Waste Management Authority Board
FROM: Wendy Sommer, Executive Director
SUBJECT: Authority General Counsel Contract

SUMMARY

The contract with Shute Mihaly and Weinberger (SMW) for services as WMA General Counsel expires June 30, 2017. At the June 28 WMA meeting, staff will present a new contract for Board approval.

DISCUSSION

SMW has served as the WMA’s general counsel since the Agency’s inception in 1976. In 2008, a lengthy Request for Proposals (RFP) process was undertaken at the request of some Board members. The process included multiple interviews with multiple firms, with the Board deciding to continue with SMW. Since then, SMW has been contracted through a series of limited term agreements ranging between one to three years. The current and latest contract has a term of three years and is expiring at the end of June 2017.

A survey indicated that a majority of member agencies (60%) employ in-house staff attorney. The remaining jurisdictions have attorneys that are retained on an ongoing basis, with contracts dating back for many years and with no expiration dates.

We have been extremely pleased with SMW’s performance and continue to have a great working and collaborative relationship. They are in a unique position of understanding all of our issues, including current litigations. The proposed rates are comparable with others, with annual CPI increases only. Comparable to other member agencies’ legal services agreements, the term will be open, with a provision to allow the Board to terminate the agreement on 120 days’ notice. The contract would be based on WMA’s standard form contract with annual billings limited to the amount approved as part of the budget adoption (\$200,000 for FY 2017-18), subject to an additional \$50,000 if approved by the Executive Director, and additional funds paid by third parties (such as applicants for CoIWMP amendments).

RECOMMENDATION

Staff recommends that the Authority Board approve a new contract with Shute Mihaly and Weinberger for legal services.

Attachment A: Scope of Work and Terms of Payment

Attachment A

Exhibit A

Scope of Work and Terms of Payment

Scope of Work

Contractor (also referenced herein as Authority Counsel) will serve as General Counsel to the Authority (all references to Authority include the Energy Council which receives administrative support services from Authority) and provide legal services on all legal matters except where Authority determines that specialized legal services are required for a particular task and can be more effectively provided by special counsel. The General Counsel shall be Richard Taylor who shall attend meetings of the Board (and Board committees upon request of the Executive Director) and supervise all work by other attorneys and staff of Contractor pursuant to this agreement. The attorney serving as General Counsel may be changed upon approval by the Executive Director. Legal services shall include the following:

1. Providing advice and counsel to the Authority Board, committees, and the Executive Director and designees of the Executive Director. Whenever possible, Authority Counsel shall provide options to the Board (or Executive Director, as applicable) for actions to be taken but shall indicate the optimal course of action in Authority Counsel's professional judgment;
2. Providing advice concerning drafting, interpretation, implementation, and enforcement of ordinances, resolutions, and other legal documents such as the Alameda County Integrated Waste Management Plan or Recycling Plan;
3. Preparing findings, decisions or other documents pertaining to legislative or quasi-judicial actions or decisions made by the Authority;
4. Negotiating and/or rendering advice with respect to negotiations pertaining to Authority's contracts, leases and other real estate agreements, and interagency agreements;
5. Representing Authority in code enforcement, litigation and/or arbitration, or other judicial, administrative or quasi-judicial proceedings; and
6. Providing advice concerning general administration of the agency and compliance with applicable laws such as the Integrated Waste Management Act and California Environmental Quality Act.

Authority Counsel will avoid conflicts of interest as set forth in the Agreement and below.

1. Authority and Authority Counsel acknowledge and agree that Authority is an independent joint powers agency created pursuant to state law and is independent of each of those member agencies. Accordingly, the conflict of interest provisions of this Agreement and state law and rules of professional conduct apply only with respect to Authority and not with respect to Authority's member agencies. Authority understands that Authority Counsel may represent clients in matters adverse to Authority member agencies (including representing member agencies in disputes with other member agencies); nothing in this agreement shall preclude

Attachment A

Authority Counsel from undertaking such representation provided that there is no conflict of interest with respect to Authority itself.

2. Authority Counsel will decline and not represent any client in the solid waste industry due to the inherent conflict in representing the Authority as a regulatory agency and a regulated entity at the same time. Authority Counsel will not serve as General Counsel for any member agency of Authority. Authority Counsel will also decline and not represent any party which requests Authority Counsel to take a position on its behalf in dealing directly with the Authority.

Terms of Payment

1. Billings for services and expenses will be provided monthly by Authority Counsel, in a format acceptable to the Executive Director.
2. Billings will be paid by Authority within 30 days of receipt unless Authority notifies Authority Counsel in writing of a dispute concerning any particular bill.
3. Authority Counsel's billing rates fiscal year 2017-2018 shall be as set forth below. Costs incurred in the course of representation will be reimbursed at cost with no administrative surcharge. These billing rates will be increased effective July 1 of each year consistent with any annual increase in the Consumer Price Index (April over April time period) for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-San Jose area (1982-1984 = 100) as published by the Bureau of Labor Statistics, U.S. Department of Labor, rounded to the nearest whole \$1.

	2017-18
Partner	\$282
Jr. Partner	\$253
Associate III	\$231
Associate II	\$219
Associate I	\$208
Planner	\$197
Paralegal	\$118
Law Clerk	\$ 73