

**COUNTY OF SONOMA  
AGENDA ITEM  
SUMMARY REPORT**

**Clerk of the Board Use Only**  
**Meeting Date** / / **Held Until** / /  
**Agenda Item No:** \_\_\_\_\_ **Agenda Item No:** \_\_\_\_\_

**Department:** County Clerk-Recorder-Assessor

( ) **4/5 Vote Required**

**Contact:**  
Janice Atkinson

**Phone:**  
(707) 565-1877

**Board Date:**  
7/14/09

**Deadline for Board Action:**

**AGENDA SHORT TITLE:** Agreement for Special Counsel Services.

**REQUESTED BOARD ACTION:** Approve and authorize the Chair to execute the 2009-2010 fiscal year agreement for special counsel services related to assessment appeals and litigation provided by Brett L. Price, Attorney-at-Law, of Kronick, Moskowitz, Tiedemann & Girard, A Law Corporation.

**CURRENT FISCAL YEAR FINANCIAL IMPACT**

**EXPENDITURES**

**ADD'L FUNDS REQUIRING BOARD**

**Estimated Cost** \$ 150,000

**Contingencies** \$  
(Fund Name:)

**Amount Budgeted** \$ 150,000

**Unanticipated Revenue** \$  
(Source:)

**Other Avail Approp.** \$  
(Explain below)

**Other Transfer(s)** \$  
(Source:)

**Additional Requested:** \$ 0.00

**Add'l Funds Requested:** \$

**Explanation (if required):** Appropriations have been approved for FY 2009-10 in the non-departmental litigation fund.

**Prior Board Action(s):** Approve agreement for special counsel services: 6/24/08 for FY 2008/09; 6/26/07 for FY 2007/2008; 6/13/06 for FY 2006/2007; 1/31/06, approve amendment to agreement for FY 2005/06; 8/16/05, approve agreement for special counsel services for FY 2005/06. Resolutions for specialized legal services relating to geothermal and electrical generation property appeals: Resolution #04-0599, June 22, 2004; Resolution #03-0630, June 17, 2003; Resolution #02-0703, June 25, 2002.

**Alternatives - Results of Non-Approval:**

If this contract is not approved, the Assessor will rely solely on the services of County Counsel to defend all geothermal assessment appeals. County Counsel has limited resources to dedicate to general fund departments and does not have attorneys on staff with expertise in the area of geothermal energy and economics.

**Background:**

Since 1990, the Sonoma County Assessor has contracted with Brett L. Price to provide expert legal representation in the area of geothermal energy and economics. Since 1976, Mr. Price has maintained a solo practice with an emphasis on property tax litigation, business, commercial, construction, oil and gas law and complex bankruptcy matters. In 2006, Mr. Price joined the firm of Kronick, Moskovitz, Tiedemann & Girard.

Mr. Price has three decades of legal experience representing governmental entities in the areas of property tax law, mineral rights appeals, and civil litigation involving the valuation and taxation of energy resource and industrial/commercial properties. His knowledge and experience in the area of resource properties and resource property tax law is incomparable. The County of Sonoma has contracted with Mr. Price for almost 20 years. Because of his unique knowledge and experience in resource properties, Mr. Price continues to represent several California counties in the specialized area of gas and oil, geothermal steam, and alternative energy resources.

Current assessment activities related to geothermal appraisals include: a potential change in ownership for one geothermal company that may result in litigation next year; another company building a new power plant; and, a third geothermal company that has two active appeals pending. Mr. Price has recently authored a discovery letter for a potential change in ownership on a majority of the Geysers' area power plants. His services are required for data collection and analysis, and to determine if a change in ownership has occurred. The potential for future litigation on geothermal properties is high due to the discovery letter ramifications as well as new assessment activity in the Geysers area by Geysers Power LLC/Calpine, Western Geo and Mayacamas Energy Company.

Over the last eight years, 140 assessment appeals have been filed by GPC/Calpine. These appeals have put over \$2.4 billion in assessed value at risk, an average of \$300 million of assessed value per year. This is the equivalent of \$24 million in total tax dollars at risk during this time period. Mr. Price has been instrumental in resolving most of the 140 assessment appeals. Mr. Price also successfully navigated the County of Sonoma's property tax claim through the Calpine bankruptcy proceedings in the state of New York.

**Attachments:**

**On File With Clerk: CONTRACT**

**CLERK OF THE BOARD USE ONLY**

**Board Action** (If other than "Requested")

**Vote:**

**Background:** (Continued)

Due to the complexity of geothermal assessments and the large amount of property taxes at risk, (Geysers Power LLC is the county's largest taxpayer) the Assessor recommends that the County of Sonoma continue to contract with a specialist in this area of the law. Any change in legal counsel at this time would be counter productive and would potentially cost the county more in time and money to bring new counsel up to speed on resource property issues in addition to the nuances of the discovery letter. For these reasons, it is recommended that the County retain the services of Mr. Price for fiscal year 2009/10 to effectively address these items and to prepare defenses to appeals filed for the 2006/07 and 2007/08 tax years.

Predicting legal expenditures in this area with any degree of accuracy is not possible due to unknowns as to when an appeal will be filed, when settlement is possible, or when an appeal will actually go to hearing. Prior year legal expenditures reflecting the varying level of geothermal assessment appeal activity are shown below.

Prior Year Legal Expenditures

Fiscal Year

1999/00	\$124,540
2000/01	\$57,427
2001/02	\$51,025
2002/03	\$73,273
2003/04	\$125,114
2004/05	\$200,032
2005/06	\$139,081
2006/07	\$167,418
2007/08	\$77,673
2008/09	\$52,770*

\* as of May 31, 2009

Following is the current fee schedule for professional services from Kronick, Moskovitz, Tiedemann, and Girard. The fee schedule for 2009/10 remains the same as the previous year with no increases in hourly rates. The budgetary limit of the agreement is set at \$150,000, \$30,000 less than last year.

Fees for Professional Services

Shareholders	\$225/hr.
Brett Price	\$215/hr.
Principal Attorneys	\$195/hr.
Senior Associates (4+ years experience)	\$185/hr.
Associates (up to 4 years experience)	\$170/hr.
Legal Assistants/Law Clerks	\$100/hr.

**Recommendation:**

Due to new construction, assessment appeals and the potential for related litigation, there is a need for legal expertise and advice in the geothermal resource area that goes beyond in-house staff resources; therefore, it is recommended that the Board authorize the Chair to execute an agreement for special counsel services related to assessment appeals and litigation provided by Brett L. Price, of Kronick, Moskovitz, Tiedemann & Girard, A Law Corporation, for FY 2009-2010.