

**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 Counsel/County Administrator

4/5 Vote Required

Contact:
Jeff L. Berk

Phone:
(707) 565-2443

Board Date:
08/25/09

Deadline for Board Action:

AGENDA SHORT TITLE: Budget Adjustment and Alternate Defense Addendum

REQUESTED BOARD ACTION:

Authorize the Chairman to execute Addendum #4 to the Contract with Harry A. Allen in the amount of \$82,000 to provide one additional contract attorney for a period of no more than eight months.

Authorize a budgetary adjustment from appropriations for contingencies to the Court Support budget unit in the amount of \$82,000 for Alternate Defense Services (requiring a 4/5 vote)

CURRENT FISCAL YEAR FINANCIAL IMPACT

EXPENDITURES

Estimated Cost \$ 2,400,020

Amount Budgeted \$ 2,318,020

Other Avail Approp. \$
(Explain below)

Additional Requested: \$ 82,000

Explanation (if required):

ADD'L FUNDS REQUIRING BOARD

Contingencies \$ 82,000
(Fund Name: General Fund)

Unanticipated Revenue \$
(Source:)

Other Transfer(s) \$
(Source:)

Add'l Funds Requested: \$ 82,000

Prior Board Action(s):

The Board approved a three-year contract with Harry Allen covering July 1, 2007 to June 30, 2010, Addendums to staff and extend a new Early Case Resolution (“ECR”) Courtroom, and to modify the terms of the third year of the contract.

Alternatives - Results of Non-Approval:

The Court would appoint an attorney to this case at an hourly rate at county expense.

Background:

The County is obligated to pay for the costs associated with the representation of indigent defendants. When the Public Defender cannot provide mandated representation of an indigent criminal defendant for reasons of a conflict of interest, or for any other reason, outside counsel must be appointed. One method of providing fair, adequate and efficient representation in these cases is to retain defense attorneys under contract to insure availability and cost containment. If there is no contract, the Court would appoint attorneys at an hourly rate (\$75-\$120/hour depending on the type of case), which would be more expensive.

Since 2004, County Counsel working with the County Administrator, has assisted in the oversight and management of alternate defense services and related costs. As part of its involvement, County Counsel explored options for controlling defense costs and particularly the exposure from costly multi-defendant cases. County Counsel reviewed various programs throughout the State, including having an alternate Public Defender's office, met with the local Bar to see if it could propose a viable alternative to the existing structure services, and ultimately determined that the best model was to enter into a master contract that provided for sufficient level of alternate defense representation.

The Current Three-Year Agreement

In 2007, County Counsel with assistance of County Administrator's staff, negotiated and reached an agreement with attorney Harry Allen on a three-year contract at a cost of \$2,053,943 for the first year with 3 ½ % increases for years two and three. Mr. Allen (and the attorneys he subcontracts with) voluntarily gave up their 3 ½% increase for this year). The Agreement includes a requirement that Mr. Allen contract with attorneys to provide "levels" of coverage. This means that he must contract with a sufficient number of attorneys to insure, as best as possible, that the Court need not appoint an attorney outside the contract at the hourly rate except in very rare situations. The contract also provides retentions for investigative service and expert witness costs which, if not utilized, will be returned to the County or conversely if more is required, the County will pay.

(continued)

Attachments: Budget Adjustment Resolution

On File With Clerk: Addendum, Contract with Harry Allen and previous addendums

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

Background: (Continued)

Need for Additional Funds for This Fiscal Year

Due to the unusual circumstances described below, additional funds of \$82,000 are needed for this fiscal year:

1. Following a lengthy trial in 1999, an appellate court recently overturned the murder conviction of indigent criminal defendant Nicole Bradley because the trial Judge appointed an attorney to represent her outside of her presence and over her objections, and ordered a retrial.
2. The court is requiring that the matter be retried promptly.
3. The Public Defender declared a conflict of interest.
4. Retrying the case will require extraordinary preparation time, which includes reading through 22 days of trial testimony and reviewing approximately 15,000 other documents.
5. No attorney who contracts with Mr. Allen has the capacity to take on this complex case in the time required by the Court due to other County contract commitments.

Mr. Allen was able to retain a local private attorney willing to take the case at the same rate as existing felony attorneys are paid by Mr. Allen (\$10,247 per month). In addition, the attorney will also assist in managing the workload of other attorneys Mr. Allen contracts with.

It is believed that the rate of \$10,247 a month for eight months will provide significant savings over an outside appointment that would be paid at an hourly rate.

Contract Addendum 4

The Contract Addendum will provide an additional \$10,247 per month for a term not to exceed eight months.

Summary of Requested Board Action

The Board is requested to authorize the Chairman to execute Addendum 4 to the Agreement for alternate defense services with Harry Allen and approve use of appropriations for contingencies in the amount of \$82,000 to provide additional defense services.