



OFFICE OF THE
COUNTY COUNSEL

COUNTY OF SANTA CRUZ

GOVERNMENT CENTER
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SAMUEL TORRES, JR.
CHIEF ASSISTANTS

ASSISTANTS

AGENDA: June 2, 1998

May 12, 1998

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

RE: Legal Services Contract with Bennett & Rowland

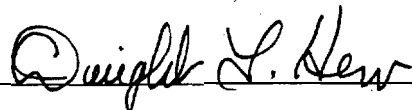
Dear Members of the Board:

This is to submit for consideration of the Board the attached proposed contract to engage the services of the law firm of Bennett & Rowland to represent the County in specified suits claiming damages from the County.

IT IS THEREFORE RECOMMENDED by reason of the high level of the specialized legal services provided by the Law Offices of Bennett & Rowland that the Board of Supervisors authorize County Counsel to execute the attached proposed contract to engage the Law Office of Bennett & Rowland for the remainder of fiscal year 1997-98 and subsequent years for an amount not to exceed \$30,000 per fiscal year.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL



RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

cc: Auditor-Controller, Risk Management

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
County Administrative Officer
County Counsel
Auditor-Controller

FROM: RISK MANAGEMENT

Janet McKinley (Signature)

5-13-98 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the COUNTY OF SANTA CRUZ (Agency)

and BENNETT & ROWLAND; Suite 750 One Embarcadero Center; San Francisco, CA 94111-3614 (Name & Address)

2. The agreement will provide legal representation in various cases.

3. The agreement is needed Because the County cannot provide these services

4. Period of the agreement is from March 1, 1998 to June 30, 1998

5. Anticipated cost is \$ 30,000 (Fixed amount, Monthly rate, Not to exceed)

6. Remarks:

7. Appropriations are budgeted in 515200 (Index#) 3630 (Subject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are are available and will be encumbered.

Contract No. 71634 Date 5/13/98

GARY A. KNUTSON, Auditor - Controller

By *Janet McKinley* Deputy

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the _____ to execute the same on behalf of the _____

(Agency).

Remarks: _____ (Analyst)

By *Ed Ech...* County Administrative Officer Date 5/19/98

Agreement approved as to form. Date _____

Distribution: *

- Bd. of Supv. - White
- Auditor-Controller - Blue
- County Counsel - Green
- Co. Admin. Officer - Canary
- Auditor-Controller - Pink
- Originating Dept. - Goldenrod

12 Dept. if rejected.

State of California)
County of Santa Cruz) ss

I _____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing request for approval of agreement was approved by said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered in the minutes of said Board on _____ County Administrative Officer

_____ 19 _____ By _____ Deputy Clerk

**AGREEMENT FOR
LITIGATION CONSULTANT SERVICES**

THIS AGREEMENT, by and between the office of the SANTA CRUZ COUNTY COUNSEL' ("County Counsel"), and the Law Firm of BENNETT AND ROWLAND LLP, through Herbert M. Rowland, Esq. ("Consultant"),

WITNESSETH:

WHEREAS

(A) The Board of Supervisors of Santa Cruz County in litigation session empowered the County Counsel to contract for needed litigation services; and

(B) Consultant is willing and able to provide said services for the consideration and upon the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Services. Consultant shall render services to defend the County of Santa Cruz in Massev v. County of Santa Cruz, Santa Cruz County Superior Court. Case No. 133049, and related cases.

2. Fees and Expenses. In consideration of Consultant's performance of this Agreement, County Counsel agrees to pay the Consultant attorneys' fees in accordance with Consultant's hourly rate (\$150.00/hour for Mr. Rowland and \$140.00/hour for all others) and to reimburse Consultant for such litigation-related expenses as Consultant may reasonably expend hereafter; it is County Counsel's preference that attorneys' fees and expenses not exceed \$50,000.00, being County Counsel's present best estimate of that which may accumulate during the course of the litigation.

3. Cost of Services of Experts and Other Consultants. To the extent that County Counsel and Consultant may hereafter mutually and orally agree in advance, Consultant is authorized to retain such experts and/or consultants as may be deemed necessary or helpful in defending the interests of Santa Cruz County in conjunction with the litigation; such experts and their consultants shall be regarded as having been hired and retained by County Counsel, which shall be solely and exclusively responsible for compensating such experts and/or other consultants' for services rendered; it is County Counsel's preference that experts' and other consultants' fees and expenses not exceed \$50,000.00, being County Counsel's present best estimate of that which may accumulate during the course of the litigation.

4. Monthly Accounting. Consultant agrees to account

regularly, within ten (10) days after the end of each calendar month, for time expended and for necessary expenses incurred in performance of his services during the preceding calendar month.

5. Insurance Coverage. Consultant shall maintain Errors and Omissions (so-called "malpractice") insurance from a reputable purveyor of insurance in an amount no less than \$1 million/#1 'million and shall annually forward to County Counsel verification of its acquisition of such insurance.

6. Indenendent Contractor. Nothing in this Agreement shall be construed or interpreted to make Consultant anything but an independent contractor; in all its activities and operations pursuant to this Agreement, neither Consultant nor any employee of Consultant shall be considered for any purpose an employee or agent of County, except to the extent that such agency is created as a matter of law as a consequence of Consultants' representation of its clients in the litigation.

7. Authority to Bind County. It is understood that Consultant, in its performance of any and all duties under this Agreement, has no authority to bind County to any agreements or undertakings with respect to any and all person or entities with whom Consultant deals in the course of its business in any manner and extent other than as an attorney customarily and normally may bind the clients whom it represents during the course of and in connection with litigation.

a . Non-disclosure of Information. Consultant shall not disclose, without the. express written consent of County, any information relating to County business which has been submitted by , 'County to Consultant pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, Consultant shall immediately return to County all papers, documents and the like belonging to County.

9. Termination. .

(a) County Counsel reserves the right to terminate this Agreement at any time or to discharge Consultant at any time. In the event of such discharge, County Counsel shall compensate Consultant for its services and necessary expenses actually rendered up to and including the date of discharge.

(b) Consultant may terminate this Agreement at any time by giving written notice of termination to the County Counsel and receiving court approval of a substitution of attorneys.

10. Notices. The service and delivery of all notices and/or papers shall be deemed duly and properly given or made five days after-being mailed via the U.S. Postal Service, postage prepaid and addressed as follows:

ROWLAND.WPD

To: County Counsel: Office of the County Counsel
SANTA CRUZ COUNTY
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Attn: Samuel Torres, Jr.

To: Consultant: Herbert Rowland, Esq.
BENNETT & ROWLAND
1 Embarcadero Center
Suite 750
San Francisco, CA 94111-364

11. Assisnments. Consultant shall not assign any right, title or interest it may acquire by reason of this Agreement except upon first obtaining written consent of County Counsel.

12. Subcontracting.

(a) Consultant shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of County Counsel.

(b) Any and all subcontracts shall be subject to the provisions contained in this Agreement.

13. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

14. Nonwaiver. No covenant or condition of this Agreement can be waived except by the written consent of County Counsel. Forbearance or indulgence by County Counsel- in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Consultant. County Counsel shall be entitled to invoke any remedy available under this Agreement or by law or in equity despite said forbearance or indulgence.

15. Venue. If any party herein initiates an action to enforce the terms hereof or-declare rights hereunder, the parties agree that venue thereof shall be the County of Santa Cruz, State of California.

16. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.'

17. Cautions. Paragraph headings in this Agreement are used solely for convenience and shall, be wholly disregarded in the construction of this Agreement.

ROWLAND.WPD

18. Time of Essence. Time is hereby expressly declared to be of the essence in this Agreement and of each and every provision thereof, and each such provision(s) is hereby made and declared to be a material, necessary and essential part of this Agreement.

19. Non-Discrimination. The contractor will not discriminate, against any employee or applicant of employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation, age (over 40), veteran status, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: employment, upgrading, advertising; layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

In the event of the contractor's non-compliance with the no-discrimination clauses of this contract, all other provisions of said contract shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

Dated: _____

SANTA CRUZ COUNTY COUNSEL

DWIGHT L. HERR
County Counsel

Dated: May 8, 1998

BENNETT & ROWLAND

Herbert M Rowland
HERBERT M. ROWLAND
Consultant ,