

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

763A



FROM: Office of County Counsel

SUBMITTAL DATE:
April 14, 2015

SUBJECT: First Amendment to the Legal Services Agreement between the County of Riverside and Perkins Coie for special counsel services to assist in representing the County of Riverside in *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007, Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*, and *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*. All Districts [\$1,250,000 total cost] 100% General Fund

RECOMMENDED MOTION: That the Board of Supervisors: **Approve** and authorize the chairman to execute the attached first amendment legal services agreement between the County of Riverside and Perkins Coie for special counsel services in the matters of *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007, Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*, and *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*.

BACKGROUND:

Summary

(Continued next page)

Departmental Concurrence

GREGORY P. PRIAMOS
County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 750,000	\$ 1,250,000	\$	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 750,000	\$ 1,250,000	\$	

SOURCE OF FUNDS: Legislative Admin Budget 10000-1102900000	Budget Adjustment: No
	For Fiscal Year: 14/15-15/16

C.E.O. RECOMMENDATION: APPROVE

BY: Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: April 28, 2015
 xc: Co.Co.

Kecia Harper-Ihem
 Clerk of the Board
 By: Deputy

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 3-4, 11/14/2014 | District: All | Agenda Number:

3-41

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: First Amendment to the Legal Services Agreement between the County of Riverside and Perkins Coie for special counsel services to assist in representing the County of Riverside in *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007, Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*, and *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*. All Districts [\$1,250,000 total cost] 100% General Fund

DATE: April 14, 2015

PAGE: 2 of 3

BACKGROUND:

Summary

A tax refund lawsuit has been collectively filed in state court by 189 taxpayers in the Palm Springs area challenging the County of Riverside's imposition, collection and distribution of the possessory interest tax.

This lawsuit follows two previous lawsuits filed by the Agua Caliente Band of Cahuilla Indians (*Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007*) and Plaintiff Heidi Herpel (*Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*) arising out of the County's collection of the possessory interest tax. The County assesses a possessory interest tax against non-tribal lessees of tribal property. The tax assessments are lawful as previously determined by the Ninth Circuit Court of Appeals, which ruled that non-tribal possessory interests are subject to California's taxation laws.

Tax revenues generated from the possessory interest tax supports a wide variety of important public services, including, but not limited to, law enforcement and fire protection, library services, park and recreation services, judicial and legal services, administrative and legislative services, flood control, roadway maintenance, and many other public services.

Due to the significant financial exposure to the County and the other public entities sharing in the tax proceeds, the complex nature of tax laws involving Native American tribes, the Board of Supervisors unanimously approved a legal services agreement with Perkins Coie for special counsel services in the two previous lawsuits on November 4, 2014. The potential impact of this litigation affects not only the County of Riverside, but the twenty-eight cities within the County of Riverside, twenty-one counties throughout the State of California and numerous taxing agencies throughout the United States. The legal services agreement between the County of Riverside and Perkins Coie will provide legal counsel services necessary and appropriate to the defense of this case in coordination with the two other pending matters. Led by Jena Maclean, Perkins Coie has successfully defended public entities in tax litigation brought by Native American tribes and is experienced in the policy-making decisions undertaken by the Bureau of Indian Affairs. The legal services agreement has been approved by County Counsel

Impact on Residents and Businesses

There is no immediate impact to residents and business.

SUPPLEMENTAL:

Additional Fiscal Information

The current contract amount is \$500,000. The amendment amount is for an additional \$750,000 for a total of \$1,250,000. The additional amount will be expended in FY 15/16. Funding will continue from the Legislative Admin Support, a general funded budget managed by the Executive Office. The contract amount will be included in the FY 15/16 Budget.

Contract History and Price Reasonableness

On November 4, 2014, the Board of Supervisors approved and authorized the chairman to execute a legal services agreement between the County of Riverside and Perkins Coie for special counsel services in the matters of *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007* and *Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*. The total amount of compensation paid to Perkins Coie under the terms of the legal services agreement shall not exceed five hundred thousand dollars (\$500,000) for fiscal year 2014/2015.

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: First Amendment to the Legal Services Agreement between the County of Riverside and Perkins Coie for special counsel services to assist in representing the County of Riverside in *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007, Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764, and Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*. All Districts [\$1,250,000 total cost] 100% General Fund

DATE: April 14, 2015

PAGE: 3 of 3

The above-entitled cases are continuing and an additional case, *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*, has been filed against the County seeking tax refunds in excess of \$6,000,000.

The increased budget is necessary and reasonable in light of the significant financial exposure to the County, the complex nature of tax laws involving Native American Tribes and the need to coordinate the defense of federal and state lawsuits being filed against the County. The compensation charged by Perkins Coie is reasonable in nature due to the complex nature of Tribal law and tax law. In all three cases, the County Counsel's Office is acting as co-counsel in order to share in the performance of the legal work necessary for the defense and to reduce the cost of outside counsel.

**FIRST AMENDMENT TO THE LEGAL SERVICES AGREEMENT
BETWEEN THE COUNTY OF RIVERSIDE AND PERKINS COIE, LLP**

This First Amendment to the Legal Services Agreement ("First Amendment") is entered into as of the date written below, and is made by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (hereinafter "COUNTY"), and PERKINS COIE, LLP (hereinafter "ATTORNEY").

RECITALS

WHEREAS, on November 4, 2014, COUNTY and ATTORNEY entered into a Legal Services Agreement whereby ATTORNEY would represent the COUNTY in *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007* and *Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*. Both cases arise out of the COUNTY's assessment and collection of the possessory interest tax litigation.

WHEREAS, on or about March 6, 2015, an additional possessory interest tax litigation was filed against the COUNTY in the matter of *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*.

WHEREAS, it is necessary and appropriate to coordinate the defense of *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100* with *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007* and *Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, COUNTY AND ATTORNEY agree as follows:

1. Section 2 of the Agreement entitled "Legal Services" is amended in its entirety to read as follows:

Section 2.1 LEGAL SERVICES. ATTORNEY shall lawfully represent COUNTY in *Agua Caliente Band of Cahuilla Indians v. County of Riverside, et al. ED CV 14-00007*, *Heidi L. Herpel, et al. v. County of Riverside, et al. PSC 1404764*, and *Leonard Albrecht, et al. v. County of Riverside, PSC 1501100*, which are in connection with the COUNTY's application and collection of the possessory interest tax (LITIGATION). The work for Riverside will be limited to Riverside County and will not extend to the State of California or any other municipality or affiliated entity.

2. Section 6 of the Agreement entitled "Compensation" is amended in part to read as follows:

Section 6 COMPENSATION. The total amount of compensation paid to ATTORNEY under the terms of this agreement shall not exceed one million two-hundred fifty thousand dollars (\$1,250,000).

3. All terms and conditions of the Agreement, not inconsistent with this First Amendment, shall remain in full force and effect and are incorporated herein by reference as set forth in full.

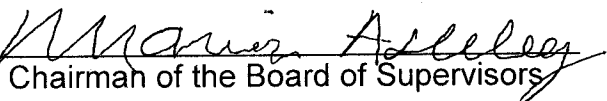
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement

COUNTY:

COUNTY OF RIVERSIDE,

A political subdivision of the State of California

Dated: APR 28 2015

By: 
Chairman of the Board of Supervisors

MARION ASHLEY

ATTEST:

KECIA HARPER-IHEM,
Clerk of the Board of Supervisors:

By: 
Deputy

Dated: APR 28 2015

ATTORNEY:

PERKINS COIE

Dated: April 20, 2015


By: 

Name:

Title: Partner

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By: 

RONAK N. PATEL,
Deputy County Counsel

Dated: 4/21/15