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Executive Board Special Meeting Agenda

December 23, 2023 3:00 PM / Virtual Meeting via Zoom

Register for Zoom webinar [\[HERE\]](#) | Meeting also livestreamed on YouTube [\[LINK\]](#)

More info on public comment and accessibility given at the end of the agenda

Discussion & action may be taken on any of the items below. Times are approximate.

WELCOME AND ROLL CALL – 3:00 PM

AGENDA

1. Approve Agreement for Interim General Counsel Services

Attachments: [Staff Report](#), [Proposed Legal Services Agreement](#), [MHW Resume](#)

PUBLIC COMMENT

ADJOURNMENT

PUBLIC COMMENT

Members of the public wishing to comment on an item on the agenda may do so in the following ways:

1. Email comments to audin@citiesassociation.org
 - Emails will be forwarded to the Executive Board of Directors
 - **IMPORTANT:** identify the Agenda Item number in the subject line of your email. All emails received will be entered into the record for the meeting.
2. Provide oral public comments during the meeting:
 - When the Chair announces the item on which you wish to speak, click the “raise hand” feature in Zoom. Speakers will be notified shortly before they are called to speak.
 - When called to speak, please limit your comments to the time allotted (up to 3 minutes, at the discretion of the Chair).
 - Phone participants:
 - *6 - Toggle mute/unmute
 - *9 - Raise hand

ACCESSIBILITY

We strive for our meetings and materials to be accessible to all members of the public. Those requiring accommodations to participate in this meeting may contact our Clerk at

audin@citiesassociation.org. Notification at least three business days prior to the meeting will allow us to best meet your needs.



Agenda Item No: 1

Meeting Date: December 23, 2022

Cities Association of Santa Clara County Agenda Report

Executive Board

**Prepared by: Gary M. Baum
General Counsel**

SUBJECT: Approval of Agreement with the County of Santa Clara to provide General Counsel services to CASCC

RECOMMENDATION:

1. Approve an Agreement, subject to ratification by the Board of Directors, with the County of Santa Clara to have Mary Hanna-Weir serve as Interim General Counsel, at a rate of \$265 per hour, until a new permanent General Counsel can be retained.

BACKGROUND & ANALYSIS:

The current General Counsel, Gary Baum provided his notice of leaving the General Counsel position in October of 2022. In November of 2022, an RFP for General Counsel services was sent out with responses due on December 5, 2022. There has not been sufficient time to interview and retain a new General Counsel from the applicants and with the assistance of First Vice President Neysa Fligor, the County Counsel's Office agreed to fill the role on a temporary basis. The current General Counsel charges \$315 per hour and the County Counsel will be charging \$265 per hour. As there are no current issues with the County, having the County Counsel serve as Interim General Counsel for a brief of time does not create a conflict of interest. This Agreement approval will be subject to ratification by the Board of Directors and County approval.

County Counsel has provided Mary Hanna-Weir as the proposed Interim General Counsel. She is very experienced. Mary-Hanna Weir's resume is attached to this Staff Report.

FISCAL IMPACT:

There should be limited or no additional fiscal impact by entering into this Agreement as the current General Counsel will not be billing except to close out matters and the new Interim General Counsel's rate is less than the current General Counsel. The current budget can accommodate the costs of this Agreement.

THE BOARD HAS THE FOLLOWING OPTIONS TO CONSIDER:

1. Approve the staff recommendation to approve the Agreement with the County of Santa Clara for Interim General Counsel services at a rate of \$265/hour with Mary Hanna-Weir serving as Interim General Counsel subject to ratification by the Board of Directors and County approval.
2. Take no action which would result in no Interim General Counsel until a new permanent General Counsel can be retained.

ATTACHMENTS:

Cities Association of Santa Clara County

Approval of Agreement with the County of Santa Clara to provide Interim General Counsel Services

December 23, 2022

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1. Agreement with the County of Santa Clara to provide Interim General Counsel Services
2. Resume of Mary Hanna-Weir

**AGREEMENT BETWEEN
THE COUNTY OF SANTA CLARA AND
CITIES ASSOCIATION OF SANTA CLARA COUNTY
FOR LEGAL SERVICES**

This Agreement (“Agreement”) is made effective December 23, 2022, by and between the County of Santa Clara (“County”) and Cities Association of Santa Clara County (“Association”) so that County may provide legal services to Association.

1. Nature of Services.

County, through the Office of the County Counsel, will provide legal services for Association including but not limited to research and general advice as requested by Association.

2. Term of Agreement.

This Agreement shall be effective December 23, 2022, to and including March 31, 2023, unless terminated earlier in accordance with Section 4.

3. Compensation.

A. For the fiscal year ending June 30, 2023, County shall be compensated for services provided under this Agreement at the hourly rate of \$278.00 for attorneys, \$124.00 for paralegals, and reimbursable expenses and costs incurred. County will provide Association with a new rate schedule no less than thirty days prior to when a new rate schedule will apply.

B. County will provide Association with monthly invoices which shall be accompanied by a detailed summary of activities undertaken over the course of the preceding month.

C. Association will cooperate with the Office of the County Counsel completely, including without limitation, promptly paying all invoices for services rendered and costs advanced. In no event will payments be made later than 45 days after receipt.

4. Termination.

A. Either party may terminate this Agreement without cause by giving the other party ten (10) days’ written notice. However, if County elects to terminate this Agreement, Association’s rights under any pending matter arising from County’s services hereunder will not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California.

B. In the event of termination, County will deliver to Association copies of all documents and other work performed by County under this Agreement and upon receipt thereof, County will be paid for services performed and reimbursable expenses incurred to the date of termination.

5. Conflicts of Interest.

Association acknowledges that the County Counsel's Office is charged with responsibility to represent the County of Santa Clara and its dependent special districts, including all its boards, commissions, departments and officers. Given the nature of the County Counsel's Office, it must preserve its ability to represent the County on matters that may arise in the future, including matters in which the County's interests are adverse to Association's interest.

The County Counsel's Office is not willing to undertake representation of Association in the absence of Association's consent as set forth in this section because the County Counsel's Office must preserve the ability to represent its primary client, the County. Association's engagement of the County Counsel's Office with respect to any particular matter includes Association's consent to the County Counsel's Office's ongoing representation of its primary client, the County, in all matters, including transactions and litigation, in which the interests of the County are potentially or actually adverse to the interests of Association and notwithstanding that the County Counsel's Office may have obtained confidential information from Association, subject to the conditions below.

At the time Association engages the services of the County Counsel's Office for a particular matter, the County Counsel's Office will inform Association based on the available facts of any specific matters in which the County's interests and Association's interests are then actually or potentially adverse. Neither the County, Association, nor the County Counsel's Office intends to provide for the County Counsel's Office continuing representation of both Association and the County in matters where the interests of Association and the County are actually adverse, but the parties anticipate that any such instances are likely to be very rare. In the event that an unanticipated actual conflict of interest arises during the course of representation, the County Counsel's Office will promptly inform Association that a conflict has arisen, and will discontinue representing Association and will continue to represent the County, and further provided that the County Counsel's Office shall not disclose the reasons for the conflict to Association if the County client has requested that those reasons remain confidential. Association acknowledges that in such a circumstance it is free to hire substitute counsel of its own choosing and at its own expense.

Association acknowledges that its consent to the County Counsel's ongoing representation of the County in matters where the interests of the County and Association are potentially or actually adverse has significant implications that Association has considered. For example, the County Counsel's Office may take positions antagonistic to Association, or seek to compel documents or testimony from Association, in litigation brought by third parties against

the County and Association where the County does not represent Association. The County Counsel's Office may learn confidential information in the course of representing Association that may be relevant to matters in which the interests of the County and Association become adverse. In that case, the County Counsel's Office will create an ethical wall between the attorney who formerly represented Association and the attorney representing the County.

By signing this Agreement, Association acknowledges that it has been advised of the potential conflicts associated with concurrent representation; that it has been advised of the County Counsel's Office's present and continuing relationship with the County; and that Association, upon requesting assistance from the County Counsel's Office on a particular matter, and having been presented with the information about potential and actual conflicts of interest as required by this section, provides its consent under Rule 1.7 of the Rules of Professional Conduct to the County Counsel's Office's ongoing representation of the County, notwithstanding any potential or actual conflict of interest between the County and Association that exists or may develop. Association waives any and all rights to disqualify the County Counsel's Office from representing the County based on a conflict of interest arising out of concurrent representation of the County and Association. And Association's consent and waiver extends to "subsequent representation," where by reason of the County's former representation of Association in a matter, the County has confidential information material to a matter in which the County's interests are adverse to Association's interests, and the County Counsel's Office no longer represents Association in any matter.

In addition, the County Counsel's Office represents other public entities in Santa Clara County. In the event that an unanticipated actual or potential conflict of interest arises between or among Association and any non-County public-entity client represented by the County Counsel's Office during the course of representation of Association, the County Counsel's Office will immediately notify Association of the actual or potential conflict and either (1) Association will acknowledge and waive the actual or potential conflict, in which case the County Counsel's Office will erect an ethical wall between the attorney representing Association and the attorney representing the non-County public entity client; or (2) if Association declines to waive the actual or potential conflict, the County Counsel's Office will withdraw from representing both Association and the non-County public-entity client in the relevant matter. If the County Counsel's Office must withdraw from representing Association in a matter due to such a conflict, Association acknowledges that it is free to hire substitute counsel of its own choosing and at its own expense.

6. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6, or any other statute, regulation or rule that may otherwise affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead County and Association agree to the following:

A. Claims Arising From Sole Acts or Omissions of County.

County agrees to defend and indemnify Association, its agents, officers, and employees (hereinafter collectively referred to as “Association”) from any claim, action or proceeding against Association, arising solely out of the acts or omissions of County in the performance of this Agreement. At its sole discretion, Association may participate at its own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve County of any obligation imposed by this Agreement. Association shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

B. Claims Arising from the Sole Acts or Omissions of Association.

Association agrees to defend and indemnify County, its agents, officers, and employees (hereinafter collectively referred to as “County”) from any claim, action or proceeding against County, arising solely out of the acts or omissions of Association in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any claim, action, or proceeding, but such participation shall not relieve Association of any obligation imposed by this Agreement. County shall notify Association promptly of any claim, action, or proceeding and cooperate fully in the defense.

C. Claims Arising From Concurrent Acts or Omissions.

County agrees to defend itself and the Association agrees to defend itself, from any claim, action or proceeding arising out of the concurrent action or omissions of County and Association. In such cases, County and Association agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in section E below.

D. Joint Defense.

Notwithstanding paragraph C above, in any case where County and Association agree in writing to a joint defense, County and Association may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of Association and County. Joint defense counsel shall be selected by mutual agreement of County and Association. County and Association agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in section E below. County and Association further agree that neither party may bind the other to a settlement agreement without the written consent of both County and Association.

E. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of

the parties, County and Association may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.

7. Notices.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To Association:
Cities Association of Santa Clara County
P.O. Box 3144
Los Altos, CA 94024
Attn: President, Board of Directors

To County:
Office of the County Counsel
County of Santa Clara
70 W. Hedding Street, 9th Floor
San Jose, CA 95110
Attn.: County Counsel

8. Governing Law, Venue.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement will be in the County of Santa Clara.

9. Relationship of Parties; Independent Contractor.

County will perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of Association. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be, in a relationship of joint venture, partnership, or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein.

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10. Entire Agreement, Amendments.

This Agreement, including any attached exhibits, which are made a part of this Agreement, represents the entire Agreement between the parties. All prior written or oral negotiations, understandings, and agreements are merged herein. The parties further intend this Agreement will constitute the complete and exclusive statement of its terms and no extrinsic evidence whatsoever, including prior drafts hereof and changes therefrom, may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

This Agreement may be amended only by an instrument signed by the parties.

11. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12. Contract Execution.

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

13. Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

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14. Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

IN WITNESS WHEREOF, County and Association have executed this Agreement as follows:

CITIES ASSOCIATION OF SANTA
CLARA COUNTY

COUNTY OF SANTA CLARA

President, Board of Directors

Date: _____

JAMES R. WILLIAMS

County Counsel

Date: _____

OFFICE OF THE COUNTY
EXECUTIVE:

JEFFREY V. SMITH

County Executive

APPROVED AS TO FORM AND
LEGALITY:

LAURA S. TRICE

Deputy County Counsel

Mary Elizabeth Hanna-Weir

2314 Park Ave, Santa Clara, CA 95050
408-299-5945 (w) | 608-347-9456 (c) | maryelizabethhw@gmail.com

Professional Experience

County of Santa Clara, Office of the County Counsel

August 2018 – Present

San Jose, CA

Deputy County Counsel

- Represent the County of Santa Clara in state and federal court and before administrative agencies on various matters involving a range of legal issues including election law, civil rights, and education
- Provide expert legal and policy advice to county agencies, departments, and commissions including the Registrar of Voters, Office of Women's Policy, Office of LGBTQ Affairs, Child Abuse Prevention Council, Human Rights Commission, 2021 Advisory Redistricting Commission, Clerk of the Board, and Planning and Development
- Respond to complex California Public Records Act requests and other investigative requests
- Provide training to members of board and commissions as well as advise county agencies and departments on conflicts of interest and the Political Reform Act as a member of the Conflicts & Political Reform Act Team

U.S. Department of Education, Office for Civil Rights, Program Legal Group

September 2010 – August 2018

Washington, DC

Senior Attorney

- Lead attorney on critical components of the race and national origin discrimination policy agenda for the Assistant Secretary for Civil Rights including resource equity in K-12 schools, immigration and undocumented students, harassment of religious minorities, students of color in special education, and desegregation and integration
- As Magnet Schools Assistance Program Coordinator, led team of twelve attorneys annually reviewing school districts for civil rights compliance before the districts receive grants to support new and revised magnet schools
- Critique and revise proposed regulations and sub-regulatory guidance from other executive agencies and within U.S. Department of Education such as Equity in IDEA regulations and Every Student Succeeds Act guidance
- Draft and review congressional testimony and correspondence from executive officials on education and civil rights
- Provide expert legal and policy advice on high-profile investigations in regional offices as well as trial and appellate litigation implicating interests of OCR policy and enforcement
- Awards and recognition: 2016 Nominee for Secretary's Diversity and Inclusion Award; 2015 Nominee for Secretary's Innovation Award; 2014 spot award for managing two guidance releases

The Honorable Eric L. Clay, U.S. Court of Appeals for the Sixth Circuit

September 2009 – September 2010

Detroit, MI

Judicial Law Clerk

- Prepared bench memoranda and draft opinions in a variety of complex civil, criminal, and administrative proceedings
- Relevant issues presented included First Amendment retaliation, taxpayer and individual standing under the Establishment Clause, and sex discrimination in employment

Michigan Innocence Clinic; Ann Arbor, MI

May – August 2009

Law Clerk

- Briefed and argued successful state post-conviction motion for relief from judgment
- Evaluated and investigated potential claims of actual innocence during client intake for non-DNA innocence project

Senate Judiciary Committee; Washington, DC

July – August 2008

Senator Edward Kennedy's Staff Legal Intern

- Covered briefings and hearings on interstate compacts, civil rights, and criminal law; supported constituent services

Mary Elizabeth Hanna-Weir

2314 Park Ave, Santa Clara, CA 95050
408-299-5945 (w) | 608-347-9456 (c) | maryelizabethhw@gmail.com

Community and Professional Leadership

California Common Cause, Board of Directors (November 2017 to present)

- Advise on policy direction and internal operations for statewide nonpartisan good government advocacy organization

Lutheran Outdoor Ministries of Northern California (Mt. Cross Ministries), Board of Directors, President (January 2017 to present)

- Oversee fifteen member board, manage and evaluate co-executive directors, lead \$1-1.5 million fundraising campaign

American Constitution Society, Bay Area Lawyer Chapter, Board Member (June 2016 to present)

- Co-Chair: oversee board and all operations, recruit new board members, liaise with National staff and leadership
- Programming Chair: lead innovative social and substantive local programming for progressive lawyers and law students

close the gap California, Symposium Faculty Organizer and Volunteer (January 2017 to present)

- Organized faculty for biannual Sacramento Symposium for prospective women candidates from across the state to demystify the statewide nature of a legislative campaign and better understand actual work of serving in the legislature

Campaign Manager: Rod Diridon, Jr. for City of Santa Clara, City Clerk 2016

- Created, designed, and managed social media presence for campaign
- Managed the creation and design of direct mail pieces
- Directed campaign strategy and messaging including public forum appearances by candidate

City of Santa Clara Charter Review Committee (February – June 2016; May – July 2017)

- Citizen committee recommending changes to city charter for city council to place on ballot
- 2016 measures on city council salary, city council term limits, city council vacancies, and open space all passed
- 2017 committee recommended changes to city council election methods

Election Protection Volunteer, Obama for America 2012

- Precinct volunteer in Virginia assisting voters to ensure they could fully exercise their right to vote

National Campaign for Fair Elections (Nonpartisan Election Protection), Michigan Hotline Team Leader 2008

- Staffed statewide hotline to assist voters across this battleground state addressing issues such as broken voting machines, precincts running out of ballots, and voters being turned away at the polls for specious reasons

Member: American Bar Association; American Civil Liberties Union

Education

University of Michigan Law School — J.D. May 2009, *magna cum laude*

- Rank: 7 of 410; Order of the Coif; Certificate of Merit in Federal Courts; Clarence Darrow Scholar
- Dean's Public Service Fellowship; Fiske Fellowship
- Outlaws (LGBT Law Students) — Political Action Chair, Co-Chair; National Lawyers Guild — Co-leader

University of Wisconsin – Madison — M.S. in Sociology, August 2006

- Masters Thesis — *How Did We Get So White? Effectiveness of an Anti-Racist Student Organization*
- University Fellowship

Kenyon College — A.B. in Sociology & Chemistry, May 2003, *summa cum laude*

- *Phi Beta Kappa*
- Sociology Departmental Honors Thesis — *Education and Diversity: Applying Education Theories to a Case Study of Charlotte-Mecklenburg Schools*

Bar Admissions

California

North Carolina

U.S. District Court for the Northern District of California

U.S. District Court for the Central District of California

U.S. Court of Appeals for the Sixth Circuit

U.S. Court of Appeals for the Ninth Circuit