



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: June 23, 2015

DATE: June 15, 2015
TO: Board of County Commissioners
FROM: Kevin Schiller, Assistant County Manager
(775) 328-2008, kschiller@washoecounty.us
THROUGH: John Slaughter, County Manager
SUBJECT: Recommendation to approve a three-year renewal agreement between the County of Washoe and Washoe Legal Services to provide for the legal representation of children in the Child Protective Services system effective July 1, 2015 through June 30, 2018 [fixed annual amount of \$226,014].

SUMMARY

Under an original four-year agreement which ended on June 31, 2010, Washoe Legal Services (WLS) provided legal representation to approximately 424 children per year in the County's Child Protective Services under the jurisdiction of the Family Court. At the June 22, 2010 meeting, the Board approved a three-year renewal agreement for a fixed annual amount of \$468,014.

Assembly Bill 192 of the 76th (2011) Session of the Nevada Legislature granted the Board of County Commissioners the authority to impose an additional fee on the recording of certain documents by the County Recorder. The purpose of the additional fee was to provide legal services for abused and neglected children. As approved by the Board, the FY12/13 Budget included plans for both the creation/implementation of the new fee which was estimated to generate \$300,000 in new revenue, together with a reduction of \$213,000 in the amount to be paid to WLS in FY12/13 under the current agreement with the County. The net impact on WLS was projected to be an annual increase of approximately \$90,000 (20%) over the previous contract which would provide for an expansion in the program whereby an estimated 80% (double from the start of the program in 2006) of the children in foster care would receive legal counsel. This ordinance was adopted by the Board on July 10, 2012, and the new recording fee became effective August 1, 2012. The revenue from this fee in FY2014 was \$310,129. Revenue in FY2015 is anticipated to be approximately \$320,000.

WLS has continued to provide legal representation of children in the Child Protective Services system through a contract approved by the Board in 2012 that expires on June 30, 2015. Approval of the attached agreement will renew the program for a three-year period for a fixed annual amount of \$226,014 for FY2016, FY2017, and FY2018. This agreement includes the funding provision that guarantees to WLS, \$300,000 minimum annual amount of revenue generated under the filing fee.

AGENDA ITEM # 16

PREVIOUS ACTION

July 24, 2012 – the Board approved a three-year renewal agreement between the County of Washoe and Washoe Legal Services to provide for the legal representation of children in the Child Protective Services system effective July 1, 2012 for a fixed annual amount of \$243,764, in addition to revenue generated by AB192. The County agreed to reimburse WLS annually for the difference between the estimated \$300,000 in anticipated revenue versus the actual amount collected.

Assembly Bill 192 of the 76th (2011) Session of the Nevada Legislature granted the Board of County Commissioners the authority to impose an additional fee on the recording of certain documents by the County Recorder. The purpose of the additional fee was to provide legal services for abused and neglected children. The Board approved the FY12/13 Budget which included plans for both the creation/implementation of the new fee which was estimated to generate \$300,000 in new revenue, together with a reduction of \$213,000. The ordinance creating the fee was adopted by the Board on July 10, 2012, and became effective August 1, 2012.

June 22, 2010 – the Board approved a three-year renewal agreement for a fixed annual amount of \$468,014.

October 27, 2009 – the Board considered a proposal from WLS for a renewal agreement for three years for a fixed annual amount of \$468,014.

July 11, 2006 – the Board approved a four-year agreement with WLS to provide legal representation to the abused children in the custody of the County.

BACKGROUND

Starting in 2002 in Nevada, WLS began providing legal representation of children with one attorney position funded by statute using revenues generated by court filing fees.

Then in 2005, WLS received a one-year federal grant in the amount of \$513,669 to provide bridge funding for legal representation of abused and neglected children in Washoe County. Through grant amendment, this federal funding was spread over two years. Washoe Legal Services also raised approximately \$100,000 in private, foundational, and in-house money as bridge funding for the second year of the project. Receipt of these funds was contingent upon the County continuing to fund the program in full thereafter.

As a result, on July 11, 2006 the Commission approved a four-year contract between Washoe County and WLS to provide representation to the abused children in the custody of the County. The program cost the County -0- in 2006-07; -0- in 2007-08; \$520,016 in 2008-09; and in 2009-10, due to county-wide budget cuts, the amount of the agreement was reduced from \$548,575 to \$468,014.

On June 22, 2010 the Board approved a three-year renewal agreement which required WLS to use a combination of community and foundational support to subsidize the programs with annual County funding fixed at \$468,014.

Assembly Bill 192 of the 76th (2011) Session of the Nevada Legislature granted the Board of County Commissioners the authority to impose an additional fee on the recording of certain documents by the County Recorder. The purpose of the additional fee is to provide legal services for abused and neglected children. The fees collected are transmitted monthly by the County Treasurer to the organization operating the program for legal services of the indigent that receives fees charged pursuant to NRS 19.031 and Washoe County Code Chapter 21. In Washoe County, this service is provided by Washoe Legal Services (WLS).

As approved by the Board, the FY12/13 Budget included plans for both the creation/implementation of the new fee, estimated to generate \$300,000 in new revenue, together with a reduction in the amount to be paid to WLS under the current agreement with the County. The net impact on WLS was expected to be an increase of approximately \$90,000 (20% over the current contract) which would provide for an expansion in the program whereby an estimated 80% (double from the start of the program in 2006) of the children in foster care would receive legal counsel. This ordinance was adopted by the Board on July 10, 2012, and became effective August 1, 2012.

The intent of the County under this agreement historically was to expand the legal services program by providing services to approximately 400 children in County foster care. Therefore, the County agreed to reimburse WLS annually for the difference between the estimated \$300,000 in anticipated revenues versus the actual amount collected. This annual difference, if there is any, will be added to the base amount \$226,014 for the succeeding year thus guaranteeing the minimum annual amount of new revenue to WLS. In addition, given systemic changes within the legal system and increased caseloads, future increases may be necessary, however this will be brought forward as necessary for Board approval.

In FY13/14 the revenue generated by the \$3 fee was \$310,129.78. It is estimated revenue in the current year will be \$320,000.

Staff recommends the Commission approve the agreement renewing the program and authorize the Chairman to execute same for a three-year period for a fixed annual amount of \$226,014.

FISCAL IMPACT

The fixed annual funding amount for this agreement is set at \$226,014. The County also agrees to reimburse WLS annually for the difference between the estimated \$300,000 in anticipated revenues versus the actual amount collected. This annual difference, if there is any, will be added to the base amount \$226,014, thus guaranteeing the minimum annual amount of revenue to WLS.

The FY2016 adopted budget of the conflict counsel cost center C101010-710120, includes budget authority in support of this contract.

RECOMMENDATION

Recommendation to approve a three-year renewal agreement between the County of Washoe and Washoe Legal Services to provide for the legal representation of children in the Child Protective Services system effective July 1, 2015 through June 30, 2018 [fixed annual amount of \$226,014].

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve a three-year renewal agreement between the County of Washoe and Washoe Legal Services to provide for the legal representation of children in the Child Protective Services system effective July 1, 2015 through June 30, 2018 [fixed annual amount of \$226,014]..

**RENEWAL AGREEMENT FOR PROVISION OF LEGAL SERVICES
TO CHILDREN IN ABUSE AND NEGLECT PROCEEDINGS**

This Agreement, is made and entered into this 1st day of July, 2015, by and between WASHOE COUNTY, a political subdivision of the State of Nevada (hereinafter "County"), and WASHOE LEGAL SERVICES, a Nevada non-profit corporation (hereinafter "WLS").

WHEREAS, chapter 432B of the Nevada Revised Statutes allows the appointment of an attorney and requires the appointment of a guardian ad litem for a child in an abuse and neglect proceeding; and

WHEREAS, pursuant to chapter 19 of the Nevada Revised Statutes, WLS is designated as a recipient of filing fee surcharges to provide, in part, child advocacy services to minors in the custody of County as the result of abuse or neglect; and

WHEREAS, filing fee surcharges to date had been insufficient to fund the provision of child advocacy services by attorneys for all minors in the custody of County, and resources were available to represent approximately 10 percent of those in need of such services; and

WHEREAS, WLS originally applied for and obtained a federal grant in the amount of \$513,669.00 and \$100,000 in community funding to provide child advocacy services in Washoe County; and

WHEREAS, these funds were used to implement an expanded child advocacy program at WLS over a two year period and the expanded child advocacy program, as required by the federal grant, was implemented on July 1, 2008.

WHEREAS, as a condition of receipt and use of federal and community funds, the grantors of said funds required that local government underwrite and completely fund the expanded child advocacy program at WLS when the granted funds were exhausted.

WHEREAS, on October 27, 2009, the Board of County Commissioners directed staff to return with an agreement to renew the original agreement for a period of three years for a fixed annual amount of \$468,014; and

WHEREAS, on June 22, 2010, the Board of County Commissioners approved a three-year renewal agreement for a fixed annual amount of \$468,014; and

WHEREAS, Assembly Bill 192 of the 76th (2011) Session of the Nevada Legislature granted the Board of County Commissioners the authority to impose an additional fee of \$3.00 on the recording of certain documents by the County Recorder which is to provide legal services for abused and neglected children and be transmitted monthly to the organization operating the program for legal services for the indigent that receives fees charged pursuant to NRS 19.031 and Washoe County Code Chapter 21 which is WLS; and

WHEREAS, on May 17, 2012, the Board of County Commissioners adopted the Final Budget for FY2013 which included a \$213,000 reduction in the amount (\$439,014) originally budgeted for FY2013, the third year of the three-year agreement and directed that action be taken to seek Board approval to impose an additional \$3.00 fee pursuant to Assembly Bill 192; and

WHEREAS, on July 10, 2012, the Board adopted the ordinance establishing the new fee to become effective August 1, 2012 which is estimated to generate an additional \$300,000 in revenue which is to be transmitted to WLS and used to expand the program of providing legal services for children; and

NOW, THEREFORE, the parties agree as follows:

1. Obligations Provided by Statute: Chapter 432B of the Nevada Revised Statutes allows the appointment of an attorney and requires the appointment of a guardian ad litem to represent a child in an abuse and neglect proceeding. Washoe County, as the government unit with the responsibility for child welfare services, acknowledges that it is the entity obligated to ensure that these appointments are made and the services provided to children.
2. Assumption of Statutory Obligations by WLS: In consideration of the payments set forth in paragraph three below, WLS, to the extent grant and contract funding is sufficient, hereby agrees to provide the services described in this Agreement in order to meet the obligations established by chapter 432B from July 1, 2015 to June 30, 2018.
3. Amount of Compensation to be Paid: In consideration of child advocacy services provided by WLS pursuant to chapter 432B, County agrees to pay WLS \$226,014.00 for the provision of said services for each year of this agreement. The payments shall be made to WLS on a quarterly basis at the address set forth below in four equal payments during the fiscal year, with payment due within twenty-five days of the end of a quarter.
 - a. The parties agree that the intent of this agreement is to fund the legal services program to provide services to children in County foster care. Therefore, the County agrees to reimburse WLS annually for the difference between the estimated \$300,000 in anticipated new revenues versus the actual amount collected. This annual difference, if there is any, will be added to the base amount \$226,014 for the succeeding year thus guaranteeing the minimum annual amount of new revenue to WLS. For example, if the actual amount received under the new fee is only \$280,000, the shortfall of \$20,000 will be added to the base amount of \$226,014 and funded quarterly pursuant to Paragraph 3.
4. Term of Agreement: This Renewal Agreement shall be effective on July 1, 2015 and shall remain in effect for a period of three (3) years. The Agreement may be renewed for additional term upon written agreement of both parties entered into before the expiration date of June 30, 2018. This Agreement may be terminated immediately if WLS fails to perform its obligation hereunder, upon thirty days written notice by County given in accordance with paragraph eight below and a subsequent failure to cure by WLS within a reasonable period of time.

5. Relationships Created: The parties understand and agree that no attorney client relationship is created under this Agreement between WLS and County. It is the intention of the parties only that WLS shall provide the services and assistance outlined in this Agreement, and that the only attorney client relationship that arises from the services provided hereunder shall be between the attorney employed by WLS and the child represented.

6. Procedure for Provision of Services: The obligation of WLS to provide child advocacy services hereunder shall accrue upon appointment to a child dependency case by the Family Court and shall continue until an order is entered by the Court relieving WLS of its obligation or the case is dismissed. Additionally, WLS shall represent all minors in the custody of Washoe County Social Services who are the subject of involuntary mental health commitment proceedings.

7. Indemnification and Insurance Requirements: County has established specific indemnification and insurance requirements for contracts and agreements for professional services to help assure that reasonable insurance coverage is maintained. Exhibit A is attached hereto and incorporated herein by reference. All conditions and requirements identified in this exhibit shall be completed prior to the provision of any services under this Agreement.

8. Notices: Any notice to be provided to a party to this Agreement shall be made by ordinary mail (effective three days after deposit in an approved U.S. Mail facility), or by hand delivery as follows:

To County: Washoe County Manager
P.O. Box 30083
Reno, Nevada 89520

To Washoe Legal Services: Executive Director
299 South Arlington Ave
Reno, Nevada 89501

9. Condition of Funding For Enforcement of Agreement: As required by N.R.S. 244.320 and N.R.S. 354.626, the parties acknowledge that the participation of County in this Agreement is contingent upon the appropriation of public funds to support the activities described herein and that the Agreement will terminate if the appropriation of funds does not occur. In this event, immediate written notice of termination will be given in accordance with paragraph eight above.

10. Sole Agreement: This Agreement contains all the commitments and agreements of the parties, and oral or written commitments not contained herein shall have no force or effect to alter any term or condition of this Agreement, unless modified in accordance with paragraph eleven below.

11. Amendment: This Agreement may be amended or modified only by the mutual written agreement of the parties which has been ratified in accordance with law.

12. Severability: In case any one or more of the terms, sentences, paragraphs or provisions contained herein shall for any reason be held to be invalid, illegal, or non-enforceable, in any respect, such invalidity, illegality, or non-enforceability shall not affect any other terms, sentences, paragraphs, or provisions and this Agreement shall be construed as if such invalid, illegal, or non-enforceable provision had never been contained herein.

13. Waiver: A waiver of any breach of any provision of this Agreement by any party shall not be construed to be a waiver of any preceding or succeeding breach.

14. Governing Law; Venue: This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Nevada and venue for any action based upon its terms and the parties' performance thereunder shall be in the Second Judicial District Court of Washoe County.

IN WITNESS WHEREOF, the parties have set their hands with the intent to be bound.

WASHOE COUNTY

WASHOE LEGAL SERVICES

By: _____
Marsha Berkbigler, Chair

By: _____
Executive Director

ATTEST:

County Clerk

Exhibit A**INSURANCE/HOLD HARMLESS REQUIREMENTS
FOR LEGAL SERVICES****INDEMNIFICATION****Professional Liability**

As respects acts, errors or omissions in the performance of professional services, SUB-RECIPIENT agrees to indemnify and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability of any kind or nature arising directly out of SUB-RECIPIENT'S negligent acts, errors or omissions in the performance of its professional services under the terms of this agreement.

GENERAL LIABILITY

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, SUB-RECIPIENT agrees to indemnify, defend (at COUNTY'S option), and hold harmless COUNTY, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability of any kind or nature arising out of or in connection with SUB-RECIPIENT'S performance or failure to perform, under the terms of this agreement; excepting those which arise out of the negligence of COUNTY.

In determining the nature of the claim against COUNTY, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against COUNTY.

GENERAL REQUIREMENTS

COUNTY requires that SUB-RECIPIENT purchase Industrial Insurance, General and Auto Liability, and Lawyers Professional Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work here under by SUB-RECIPIENT, its agents, representatives, employees or Sub-consultants. The cost of all such insurance shall be borne by SUB-RECIPIENT.

INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for SUB-RECIPIENT by COUNTY. SUB-RECIPIENT agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the COUNTY to make any payment under this Agreement to provide COUNTY with a certificate issued in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.

If SUB-RECIPIENT is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance. Such requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B627(2).

MINIMUM LIMITS OF INSURANCE

SUB-RECIPIENT shall maintain coverages and limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply. Coverage limits for a sole proprietor may be reduced to \$500,000.
3. Lawyers Professional Liability: \$1,000,000 per claim and as an annual aggregate. Premium costs incurred to increase SUB-RECIPIENT'S insurance levels to meet minimum contract limits shall be borne by the SUB-RECIPIENT at no cost to the COUNTY. SUB-RECIPIENT will maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project if available and affordable. The unavailability and/or unaffordability of coverage must be demonstrated by SUB-RECIPIENT to COUNTY. In the event that SUB-RECIPIENT goes out of business during the term of this Agreement or the three (3) year period described above, SUB-RECIPIENT shall purchase at the request and expense of COUNTY, if available, Extended Reporting Coverage for claims arising out of SUB-RECIPIENT'S negligent acts, errors and omissions committed during the term of the Lawyers Professional Liability Policy.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY Risk Management Division prior to the start of work under this Agreement. COUNTY reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles and self-insured retention and prior to executing the underlying agreement. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be approved by the COUNTY Risk Manager prior to the change taking effect.

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability Coverages
 - a. COUNTY, its officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of SUB-RECIPIENT, including the insured's general supervision of SUB-RECIPIENT; products and completed operations of SUB-RECIPIENT; or premises owned, occupied or used by SUB-RECIPIENT. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its officers, agents, employees or volunteers.
 - b. SUB-RECIPIENT'S insurance coverage shall be primary insurance as respects COUNTY, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, agents, employees or volunteers shall be excess of SUB-RECIPIENT'S insurance and shall not contribute with it in any way.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, agents, employees or volunteers.
- d. SUB-RECIPIENT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. SUB-RECIPIENT'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to COUNTY except for nonpayment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. COUNTY with the approval of the Risk Manager may accept coverage with carriers having lower Best's ratings upon review of financial information concerning SUB-RECIPIENT and insurance carrier. COUNTY reserves the right to require that the SUB-RECIPIENT'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

SUB-RECIPIENT shall furnish COUNTY with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms approved by COUNTY. All certificates and endorsements are to be addressed to the specific COUNTY contracting department and be received and approved by COUNTY before work commences. COUNTY reserves the right to require complete, certified copies of all required insurance policies, at any time.

MISCELLANEOUS CONDITIONS

1. SUB-RECIPIENT shall be responsible for and remedy all damage or loss to any property, including property of COUNTY, caused in whole or in part by SUB-RECIPIENT, any Sub-consultant, or anyone employed, directed or supervised by SUB-RECIPIENT.
2. Nothing herein contained shall be construed as limiting in any way the extent to which SUB-RECIPIENT may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Sub-consultants under it.
3. In addition to any other remedies COUNTY may have if SUB-RECIPIENT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, COUNTY may, at its sole option:
 - a. Order SUB-RECIPIENT to stop work under this Agreement and/or withhold any payments which become due SUB-RECIPIENT here under until SUB-RECIPIENT demonstrates compliance with the requirements hereof;
 - b. Purchase such insurance to cover any risk for which COUNTY may be liable through the operations of SUB-RECIPIENT under this Agreement if SUB-RECIPIENT is unable to comply with the

insurance requirements, and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;

- c. Terminate the Agreement.