



County of San Mateo

Inter-Departmental Correspondence

Department: BOARD OF SUPERVISORS
DISTRICT 4
File #: 24-394

Board Meeting Date: 6/11/2024

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Warren Slocum, Supervisor - District 4
Subject: Authorization of an Agreement with County Attorney

RECOMMENDATION:

Adopt a resolution authorizing and directing the execution of a new agreement with John D. Nibbelin for his services as the County Attorney for a new four-year term.

BACKGROUND:

John D. Nibbelin was appointed by this Board as the County Attorney (also sometimes referred to as "County Counsel") effective April 1, 2022. Initially, the County and John D. Nibbelin entered into a written agreement for John to serve as County Attorney for the term of April 1, 2022 through March 31, 2026.

John's legal and leadership experience is vast and varied. He has been with the County Attorney's Office since 2001, initially serving as a Deputy County Counsel and then promoting to Chief Deputy County Counsel in 2011. Prior to joining the County, John worked as assistant district counsel at the U.S. Immigration and Naturalization Services, a law clerk to a U.S. District Court judge and in private practice. He has also served our country in the U.S. Army as a commissioned officer, including as a Judge Advocate. He holds a BA in Latin American Studies and a law degree, both from U.C. Berkeley. Since being appointed as the County Attorney in 2022, John has provided exemplary service and leadership to the County.

Counties throughout the state, pursuant to Government Code section 27641, customarily appoint their County Counsel for four-year terms. San Mateo County has had contracts with its appointed County Counsel since 2012.

DISCUSSION:

Adoption of the recommended resolution will retain John D. Nibbelin to serve as County Attorney through May 31, 2028, and will authorize the execution of an agreement setting forth the salary and terms of employment to be provided in connection with these services.

The Agreement provides that John D. Nibbelin will be employed for a new four-year term as County Attorney. At the end of four years, he may continue service on terms determined by the parties at that time. The Agreement provides for compensation and benefits in line with those already set forth in the County Resolution Establishing the Salary and Benefits of Unrepresented Management employees, with the following additions:

- The County Attorney will be moved from the D-Step to the E-Step for salary for the County Attorney position, as set forth in the Resolution Establishing the Salary and Benefits of Unrepresented Management Employees of the County of San Mateo;
- The County Attorney will receive twelve (12) hours of vacation time per pay period, with a cap on vacation accrual of 624 hours;
- Each pay period, the County Attorney will receive a contribution from the County to a defined contribution plan in an amount equivalent to three percent (3%) of his base salary and longevity pay; and
- If the County Attorney is terminated without cause, he will be entitled to severance pay in an amount equivalent to twelve (12) months' salary, or whatever amount of time is remaining in the term of the Agreement, not to exceed twelve (12) months, as well as payment of the County's share of the cost of continuing him in the County's health care benefits program for the same number of months. In the case of a termination for cause, County Attorney will instead be entitled to thirty (30) days' written notice.

Contracting with John D. Nibbelin for a new four-year term will provide continuity to his position, which in turn provides stable legal representation for the County.

Financial Impact on County's Retirement System

Government Code Section 31515.5 requires the County to provide the estimated financial impact that proposed benefit changes or salary increases for current employees would have on the funding status of SamCERA's retirement fund, the County's retirement system.

The attached letter from SamCERA's actuary, Milliman, indicates that the increase from the D-Step to the E-Step on the salary scale for the County Attorney position is in addition to the assumed annual salary increases of affected current employees, and increases the Actuarial Accrued Liability (AAL) by approximately \$179,000. However, as also referenced in the actuary's letter, compensation and compensation increases in excess of Internal Revenue Code maximum benefit limits, would not be pensionable. The D-Step is already above the IRC maximum benefit limits and, therefore, the increased compensation that comes with moving to the E-Step would not be pensionable, at this time. However, even if such limits were not applicable, while the Unfunded Actuarial Accrued Liability (UAAL) of SamCERA would be higher by this amount, the funded ratio, rounded to the nearest one basis point, will be unchanged.

FISCAL IMPACT:

These actions represent an estimated annual salary and benefits cost of \$34,889. All other compensation and benefits for this position are set forth in the County's Resolution establishing the salary and benefits for the unrepresented Management Employees of the County.