



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Counsel

DATE: July 27, 2009
BOARD MEETING DATE: August 4, 2009
SPECIAL NOTICE/HEARING: No
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: County Counsel
SUBJECT: Delegation of authority to terminate County agreements for lack of funding

RECOMMENDATION:

Adopt a resolution delegating to the County Manager the authority: (1) to terminate County "Board level" agreements for unavailability of state or federal funding, and/or (2) to execute amendments to County board-level agreements, which amendments reduce the level of services provided by contractor(s) and make corresponding reduction in payments to contractor(s), if and when said amendments are necessitated by said unavailability of state or federal funding.

BACKGROUND:

The County enters into agreements with a variety of contractors to provide services to the public and to the County government. Agreements of more than \$100,000 are required to be approved by the Board of Supervisors, and agreements which provide for the expenditure of more than \$100,000 are sometimes referred to as "Board level" agreements.

Many County "Board level" service agreements are supported by federal funds, state funds, and/or federal funds administered by the state or other government agencies. The state budget crisis and the current economic downturn mean that anticipated and traditional funding sources may no longer be available to support some of the services the County provides, and some agreements may need to be terminated or amended to correspond to reductions in funding.



Section 4 of the standard county agreement form authorizes County department heads to terminate with or without cause on thirty (30) days' written notice to the contractor. In addition, Section 5 of the agreement form authorizes the County to terminate for unavailability of outside funding.

The termination for unavailability of funding is typically presented to the Board of Supervisors for approval. Amendment of a Board-level agreement typically requires approval of the Board of Supervisors.

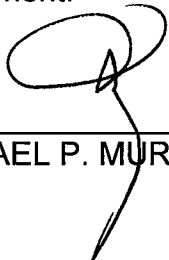
DISCUSSION:

In order to respond quickly and efficiently to recent and ongoing developments concerning the state budget, the Board could delegate to the County Manager or the Manager's designee the authority to terminate County "Board level" agreements (or portions of those agreements) for unavailability of state or federal funding and/or to execute amendments to County board-level agreements, which amendments reduce the level of services provided by contractor(s) and payments to contractor(s), if and when said amendments are necessitated by the unavailability of funding.

The delegation could include terminations and/or amendments that are necessary because of the unavailability of federal funds, state funds, County funds, grant funds, or any funds that were anticipated at the time the agreement was approved, but have subsequently become unavailable to support all services that were to have been provided under the agreement. This authority could include situations in which the unavailability of funds is caused by the State of California's reallocation of property tax or any other revenues that would otherwise be used to fund the services provided under this agreement, and/or the County's decision to re-allocate funds to different County programs or contracts. The termination could take place by providing written notice to Contractor as soon as is reasonably possible after the County Manager learns of the unavailability of funding, but in no event on less than fifteen (15) days' notice. The County Manager would be required to report monthly to the Board of Supervisors on all agreements terminated and/or amended under this resolution.

FISCAL IMPACT:

The delegation of authority to terminate and/or execute amendments to County agreements for lack of funding could save the County significant amounts of County general funds that would be required to be spent to make up for the unanticipated loss of funding from the state or federal government.



MICHAEL P. MURPHY, COUNTY COUNSEL

cc: David Boesch, County Manager