

BACKGROUND:

Remcho, Johansen & Purcell, LLP, has represented governmental and private clients in the governmental process for more than 25 years. Because of its expertise in this area, the firm was involved in drafting Proposition 71. James Harrison, a partner in the firm, was one of five attorneys who worked closely with Bob Klein in researching and drafting the measure. James Harrison was also involved in the implementation of Proposition 71, including participating in a meeting convened by the National Academy of Sciences in December 2004 to discuss “best practices” for CIRM.

The firm has represented CIRM since the agency’s inception in 2005. Until CIRM hired a General Counsel in April 2007, James Harrison acted as counsel to the agency and he continues to serve as board counsel. The firm has been involved in virtually every aspect of the agency’s operations, including defending the agency in litigation, drafting and reviewing agency policies, advising the agency on conflict of interest issues, and interfacing with constitutional officers and legislators on matters ranging from financing to proposed legislation. In addition, as counsel to the Board, James Harrison participates in executive committee meetings and meetings of the ICOC and its subcommittees. As a result of the firm’s extensive involvement in the research and drafting of Proposition 71 and the establishment of CIRM and its policies, the firm is uniquely positioned to assist CIRM without incurring significant research time. The firm has also been able to rely on its experience representing state agencies, including the Controller, the Department of Education, First Five Commission, and the Legislature, to assist CIRM.

Along with the Attorney General’s Office, the firm defended CIRM against statutory and constitutional challenges. The firm’s experience defending Proposition 10 against similar claims reduced the costs to CIRM. Because the agency was unable to issue bonds until the litigation was resolved, the firm agreed to let CIRM defer payment, without interest, on its bills for approximately eighteen months.

The firm charges CIRM a significantly discounted public agency rate of \$350 per hour for partners. From 2005 until 2007, the rate was \$300, which was equal to the rate the firm charged the Controller’s Office on a contract that began in 1999. Market rates for firms with similar expertise are significantly higher.

As a result of a variety of factors, including the challenges facing CIRM, and in particular, the state’s fiscal crisis, CIRM has incurred additional, unexpected expenses for the firm’s services in fiscal year 2008-2009. These services include:

- Extensive work relating to Little Hoover Commission, including drafting written testimony and meeting with LHC staff
- Extensive work relating to CIRM’s financial condition, including interactions with State Treasurer, State Controller, Department of Finance, and Attorney General relating to PMIA loan, bond proceeds, and administrative cap

- Research and draft legal opinion regarding validity of CIRM grant agreements
- Work on major facilities issues, including reviewing grant award agreements and work with grantees on guarantee and drafting a collateral pledge agreement
- Work on private placement of bonds
- Extensive work on loan program, including drafting loan policy materials and request for information for delegated underwriter and legal opinion regarding warrants
- Work with Governance Subcommittee on CIRM governance issues
- Work on SB 1565, including memorandum regarding the constitutionality of SB 1565
- Develop Extraordinary Petition policy
- Develop policy regarding telephonic participation in board meetings
- Develop pre-application review policy, including legal issues relating to policy

CONTRACT TIMELINE 2008-2009:

CIRM started the contract with Remcho for the new fiscal year (08/09 for the period from July 1, 2008 – June 30, 2009) on July 1, 2008 for the total amount of \$45,000.

CIRM started with this small amount so that we could bridge the time until the Governance Subcommittee could meet on July 30, 2008.

At the Governance Subcommittee meeting on July 30, 2008, the Governance Subcommittee approved an amendment to the Remcho contract. That amendment brought the new contract total for the one-year period a total of \$450,000.

CIRM's Contracts Administrator and Finance Officer monitor CIRM's Contracts and realized that the Remcho contract was likely to need additional funds to see it through to the end of the contract period.

An item was placed on the agenda for the March 5, 2009 Governance Subcommittee Meeting requesting the consideration of an amendment to the contract with Remcho. CIRM requested that an additional \$180,000 be added to the maximum amount of the contract.

After discussion at the March 5th meeting, the Governance Subcommittee voted to recommend an amendment to the Remcho contract to add an additional \$180,000. The CIRM Contracting Policy calls for contracts of over \$500,000 to be approved by the Independent Citizens Oversight Committee (ICOC).

Therefore, agenda item 20 has been placed on the agenda for the March 12 ICOC meeting. Agenda item 20 requests the ICOC to approve an amendment to the Remcho contract in the amount of \$180,000.

A copy of the proposed amendment is attached.

