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COUNTY OF NEVADA**

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April 16, 2018

Honorable Board of Supervisors  
Eric Rood Administrative Center  
950 Maidu Avenue  
Nevada City, CA 95959

**DATE OF MEETING:** April 24, 2018

**SUBJECT:** Resolution Authorizing Participation in the California Counties Opioid Consortium, Approving a Representation Agreement Between the County of Nevada and Baron & Budd, P.C., et al, for Legal Services Related to Opioid Litigation, and Authorizing the County Counsel to Execute the Agreement and Related Documents

**RECOMMENDATION:** Adopt the attached Resolution

**FUNDING:** The Representation Agreement is funded solely from the recovery of monies, if any, as result of the proposed litigation and would be paid only if and when the litigation successfully concludes. The General Fund and various department budgets may be positively impacted, and a budget amendment will be brought to the Board of Supervisors when any funds are received. There is no charge to the County for attorneys' fees or costs if the County does not recover anything from the litigation.

**BACKGROUND:** Counties are on the front lines of the opioid crisis. Several states and over 100 counties nationwide have filed federal multi-district opioid litigation ("MDL") against manufacturers and distributors of opioids to recover the costs of prevention efforts, treatment and services, as well as costs associated with jailing residents addicted to prescription painkillers and heroin. The types of damages being sought include employee costs, including overtime, health insurance, and workers compensation costs; criminal justice services, including medical examiner costs, toxicology lab costs, police services, corrections costs, and Narcan/naloxone training; health and human service costs, including addiction counseling, substance abuse services, public health response and education, child protective services and other public assistance costs; court-related costs, including public defense services, prosecutions, probation, specialized drug courts, juvenile courts and detention, and DUI services. Through this litigation, counties can potentially recover damages for costs incurred over the past several years as well as

monies for programs that will be needed in the future to address the ongoing impacts of the opioid epidemic. Staff is supportive of this effort.

Nevada County has a unique opportunity to join a recently formed consortium of California counties for the purpose of joining in the MDL ("Consortium"). To date, approximately 18 California counties have committed to this Consortium, including the counties of Placer, El Dorado, Yuba, Sutter, Shasta and Butte. Members of the consortium agree to work together as a team using the same firm, the same general master complaint and the same general litigation strategy. The Consortium's efforts will be led by a team of 3-5 attorneys from member counties who will serve as a liaison between the Consortium and the selected firm, provide general leadership for the litigation and help ensure that member counties receive regular updates.

This approach allows counties to consolidate their collective resources, use their collective "buying power" to get a proverbial "seat at the table" in this litigation and make it as easy and efficient as possible for counties, especially the smaller ones, to participate in this nationwide litigation effort. At the same time, consistent with California law, the County Counsel retains complete control over the course and conduct of our individual County's case, veto power over any decisions made by outside counsel, and either the Assistant County Counsel or I will be involved in overseeing the litigation of our case.

To participate in this type of large-scale litigation, the County must hire a highly specialized national firm with the resources to handle the unique demands of the litigation. On March 16, 2018, Nevada County together with three other counties interviewed three major firms who specialize in this type of litigation and are already working on the MDL. While all of these firms were well-respected, qualified and capable of representing the Consortium's interests, we ultimately selected Baron & Budd to represent the Consortium counties. We were particularly impressed by Baron & Budd's specialized and unique experience representing public entities in this type of litigation, its positioning and leadership within the MDL, its established and well developed client support structure for handling everything from discovery to closed sessions, and its solid and sophisticated understanding of the State-County relationship and the strategies that might be employed to help protect our County's interests. While Baron & Budd is our primary counsel and point of contact, Baron & Budd is also coordinating with the consortium of private firms identified in the Representation Agreement which means we will also benefit from the combined expertise, skills and resources of multiple national firms in this litigation. At the request of RCRC, the core counties extended the Consortium opportunity to other counties, primarily the smaller rural counties. We have been overwhelmed by the significant interest in this approach and by how rapidly the consortium has grown in a very short period of time.

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As a one-time offer to consortium members, Baron agreed to reduce its contingency fee from 25% (the normal rate for counties with populations of less than 1M) to 18%. This rate is slightly lower than the 20% initially offered by the two other firms interviewed. Baron & Budd will advance and cover all litigation costs and attorneys' fees and its only right to recovery will be against any monies the County receives as a result of this litigation. If the County does not prevail for any reason, or if the County determines that it is no longer in our best interests to continue with the litigation, the County may withdraw with no further obligation to pay any attorneys' fees or costs.

Due to the Consortium's commitment to filing all complaints on the same day and the desire to file before an early May settlement conference, it is necessary that interested counties have Board approval of the Representation Agreement no later than May 1, 2018.

I recommend that you approve participation in the California County Opioid Consortium, approve the Representation Agreement in substantially the form attached, and authorize the County Counsel to execute all documents necessary to participate in and work with the Consortium for purposes of participating in the MDL.

Respectfully submitted,



Alison A. Barratt-Green  
County Counsel

ABG/ch

Attachments: Resolution Approving Participation in the California Counties Opioid Consortium and Representation Agreement  
Representation Agreement between the County of Nevada and Baron & Budd, P.C., et al