

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

February 6, 2024

FROM

TOM BUNTON, County Counsel

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Increase Purchase Order with King & Spalding, LLP for Specialized Legal Services

RECOMMENDATION(S)

Authorize the Purchasing Agent to increase Purchase Order No. 4100330437 with King & Spalding, LLP by \$800,000, from \$200,000 to \$1,000,000, to continue the provision of legal services in connection with the lawsuit initiated by San Bernardino County in the matter of *County of San Bernardino v. Blue Cross of California, Anthem Blue Cross Life and Health Insurance* (CIVDS1723565), that concerns Anthem Blue Cross Life and Health Insurance and PrimeCare Medical Network, Inc., reimbursement rate to Arrowhead Regional Medical Center for emergency and post-stabilization medical care (Four votes required).
(Presenter: Tom Bunton, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

This item will not result in the use of Discretionary General Funding (Net County Cost). Expenditures for Purchase Order (PO) No. 4100330437 will be funded by Arrowhead Regional Medical Center (ARMC) departmental revenue. Sufficient appropriation and revenue are included in ARMC's 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of this item will allow Arrowhead Regional Medical Center (ARMC) and County Counsel to continue to utilize King & Spalding, LLP for legal services associated with the abovementioned lawsuit. This lawsuit concerns a dispute over reimbursement rates of PrimeCare Medical Network, Inc. (PrimeCare) and Anthem Blue Cross Life Insurance (Anthem) to ARMC for emergency and post-stabilization medical care that ARMC provided to their respective members. The case follows a 2017 lawsuit and successful jury trial against Anthem concerning the reasonable rates for ARMC's emergency and post-stabilization services for the time period covered by that lawsuit. The jury determined that 85.4% of ARMC's billed charges was the reasonable rate for these services. However, the verdict did not operate prospectively, and the County alleges in the current lawsuit that Anthem and PrimeCare have underpaid ARMC for emergency and post-stabilization services, for dates subsequent to the previous litigated matter.

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The complaint was filed in San Bernardino County Superior Court on November 29, 2017, and the case is currently scheduled for trial on March 11, 2024, against Anthem and June 3, 2024, against PrimeCare. The litigation costs and expenses will include discovery, consultation and expert witness services, and trial. In preparing for trial, it was determined that an increase to the amount of PO No. 4100330437 with King & Spalding, LLP by \$800,000, from \$200,000 to \$1,000,000, is necessary for continued legal and expert witness services.

PROCUREMENT

In June 2013, a Request for Proposals for legal services was released through the County's Electronic Procurement Network (ePro) and five firms submitted proposals. On November 19, 2013 (Item No. 6), Hooper, Lundy and Bookman, PC (HLB) was one of two firms awarded contracts for legal services by the Board of Supervisors (Board). Thereafter, HLB provided legal services to the County in the 2017 case against Anthem, as well as the present lawsuit. HLB invoiced the County \$125,259.80 for legal services associated with the present case.

In Fall 2018, Daron L. Tooch, the primary attorney assigned to the present lawsuit changed firms, from HLB to King & Spalding, LLP. Based on Mr. Tooch's experience and expertise, County Counsel requested and Purchasing approved PO No. 4100074086 in the amount of \$100,000, with Mr. Tooch's new firm, King & Spalding LLP. The County also filed a substitution of attorney in the present case to reflect Mr. Tooch's new firm as counsel to the County. On May 21, 2019, County Counsel approved an increase to the not-to-exceed amount of PO No. 4100074086 by \$50,000, from \$100,000 to \$150,000. On August 14, 2019, County Counsel requested and Purchasing approved PO No. 4100106206 in the amount of \$100,000 for continued legal services in the present lawsuit.

On September 24, 2019 (Item No. 18), the Board authorized the Purchasing Agent to increase PO No. 4100106206 by \$1,200,000, from \$100,000 to \$1,300,000, in order to continue the provision of legal services.

On December 7, 2023, County Counsel requested and Purchasing approved PO No. 4100330437, in the amount of \$200,000 for King & Spalding's continued provision of legal services in the lawsuit. Pursuant to Title 1, Division 2, Chapter 19, Section 12.1908 of the County Code, County Counsel is authorized to select and retain through a PO, specialized counsel for a particular matter not to exceed \$200,000 per fiscal year. Contracts for services in excess of that amount require Board approval.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on January 3, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on January 17, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on January 22, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 22, 2024.

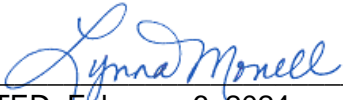
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: February 6, 2024



cc: File - County Counsel
CCM 02/12/2024