

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

May 21, 2024

FROM

TOM BUNTON, County Counsel

SUBJECT

Consent to Concurrent Representation, Waiver of Conflict of Interest, and Increase in Purchase Order for Specialized Legal Services

RECOMMENDATION(S)

1. Approve a consent to concurrent representation and waiver of conflict of interest arising out of the representation of Engie North America Inc., Eleanor Alexandra, and Charielle Hudson by Brownstein Hyatt Farber Schreck, LLP, in connection with specialized legal services in the court action titled *People's Collective For Environmental Justice, et al. v. County of San Bernardino, et al.*
2. Authorize the County Counsel or Principal Assistant County Counsel to execute any required documentation to consent to the concurrent representation of Engie North America Inc., Eleanor Alexandra, and Charielle Hudson by Brownstein Hyatt Farber Schreck, LLP, and waiver of conflict of interest.
3. Authorize the Purchasing Agent to increase Purchase Order No. 4100317559 with Brownstein Hyatt Farber Schreck, LLP, increasing the total by \$300,000, from \$455,000 to \$755,000, in order to continue specialized legal services in connection with the court action titled *People's Collective For Environmental Justice, et al. v. County of San Bernardino, et al.* (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.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). All costs of legal services are subject to reimbursement from the project developer associated with the legal action (Howard Industrial Partners). The Land Use Services Department (LUS) has been reimbursed in the amount of \$169,715.67 of the total Purchase Order (PO) thus far and will continue to be reimbursed for the total cost of legal services on an ongoing basis. Sufficient appropriation and revenue have been included in the LUS, Planning Division 2023-24 budget and will be included in future recommended budgets, as necessary.

BACKGROUND INFORMATION

On November 15, 2022 (Item No. 111), the Board of Supervisors (Board) approved the Bloomington Business Park Specific Plan (Specific Plan). The Specific Plan established an industrial business park for approximately 213 acres located within the Bloomington area.

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Concurrently, the Board upzoned a 24-acre site from Single Residential to Multiple Residential to offset the loss of potential residential capacity within the Bloomington area in compliance with the requirements of Senate Bill 330.

Associated Board actions approved the certification of an Environmental Impact Report, including the adoption of a Statement of Overriding Considerations; a Memorandum of Understanding for public benefit contributions to the Bloomington area; and various land use entitlements related to the future construction and operation of high-cube warehouse buildings and a truck and trailer parking lot (Project Approvals).

On or about December 16, 2022, various petitioners filed a petition and complaint against San Bernardino County (County) and the project developer in the San Bernardino Superior Court, entitled *People's Collective For Environmental Justice, et al. v. County of San Bernardino, et al.*, Case No. CIVSB 2228456 (Action), challenging the Project Approvals as violating the California Environmental Quality Act (CEQA), the Duty to Affirmatively Further Fair Housing, and the Fair Employment and Housing Act.

On September 12, 2023 (Item No. 21), the Board approved a waiver of conflict of interest and authorized the Office of County Counsel to retain the law firm of Brownstein Hyatt Farber Schreck, LLP (Brownstein) to defend the County in the Action. Brownstein has requested an additional waiver from the County with regard to a conflict of interest involving Brownstein's concurrent representation of Engie North America Inc. (Engie), Eleanor Alexandra, and Charielle Hudson (collectively Other Clients). The Action is not related to Brownstein's work for the Other Clients. Engie desires to engage Brownstein for its assistance in negotiating potential franchise agreements to convey a generation interconnect through the County's right-of-way for two projects: Zephyr I and Zephyr II. Separately, Brownstein represents Eleanor Alexandra and Charielle Hudson in certain legal matters, including assistance with vacating pandering convictions incurred in the county.

The concurrent representation of the County in the Action while representing the Other Clients constitutes a conflict of interest under the applicable Rules of Professional Conduct and requires the consent of both clients to agree to the proposed representation after being adequately informed of the relevant circumstances and the material ways that the conflict could have adverse effects on their interests. County Counsel has reviewed the consent to concurrent representation and waiver of conflict of interest and believes there would be minimal risk regarding Brownstein's representation of the Other Clients, and it would be appropriate for the Board to approve the waiver of the conflict of interest and authorize County Counsel or a Principal Assistant County Counsel to execute the waiver of conflict of interest.

Approval of this item will also increase PO No. 4100317559 by \$300,000, from \$455,000 to \$755,000, and allow the County to continue to utilize Brownstein for the specialized legal services in the Action. All legal costs incurred by the County in the Action will be subject to reimbursement from the project developer.

PROCUREMENT

Pursuant to Title 1, Division 2, Chapter 19, Section 12.1908 of the County Code and County Policy 11-04, County Counsel is authorized to select and retain, through a PO, specialized legal counsel for a particular matter not-to-exceed \$200,000 per fiscal year. Contracts for specialized legal services in excess of \$200,000 per fiscal year require Board approval.

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On September 15, 2023 (Item No. 21), the Purchasing Department approved PO No. 4100317559 in the amount of \$200,000 to retain Brownstein to provide specialized legal services. On January 23, 2024 (Item No. 31), the Board approved an increase to the PO in the amount of \$255,000, from \$200,000 to \$455,000, due to an increased workload in responding to pleadings, discovery requests, and the need to supplement the administrative record in the Action. A majority of the funds in PO No. 4100317559 have been expended, with approximately \$32,000 remaining. The fees related to this Action through the end of 2023-24 are expected to exceed the remaining balance due to the scheduling of the CEQA trial, and Board approval is required to increase the PO accordingly.

LUS has been reimbursed in the amount of \$169,715.67 of the total Purchase Order thus far and will continue to be reimbursed for the total cost of legal services on an ongoing basis.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on May 2, 2024; Land Use Services Department (Ibeth De La Cruz, Budget Officer, 387-0295) on May 2, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on May 6, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on May 6, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 6, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 21, 2024



cc: File - County Counsel
CCM 05/24/2024