

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

May 21, 2024

FROM

TOM BUNTON, County Counsel

NOEL CASTILLO, Director, Department of Public Works - Transportation

SUBJECT

Increase Purchase Order with Procopio, Cory, Hargreaves & Savitch LLP for Specialized Legal Services

RECOMMENDATION(S)

Authorize the Purchasing Agent to increase Purchase Order No. 4100327534 with Procopio, Cory, Hargreaves & Savitch LLP by \$500,000, from \$200,000 to \$700,000, 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. Cushman Contracting, et al.* (Case No. 37-2022-00011325-CU-BC-CTL), that concerns defects discovered following construction of the Dola Ditch and Lanzit Ditch bridges located on National Trails Highway (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.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

This item will not result in the use of additional Discretionary General Funding (Net County Cost). Expenditures for Purchase Order No. 4100327534 (PO) will be funded by Discretionary General Funds allocated to the Department of Public Works (Department) in the 2014-15 through 2016-17 and 2018-19 budgets for use on the National Trails Highway bridge projects. Sufficient appropriation is included in the Department's 2023-24 Road Operations budget (6650002000 02H14496) and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended increase to the PO will allow the Department and County Counsel to continue to utilize Procopio, Cory, Hargreaves & Savitch LLP for legal services associated with the abovementioned lawsuit. This lawsuit arises from cracks, checking, and other deficiencies in the wooden beams that support the Dola Ditch and Lanzit Ditch bridges located on the National Trails Highway. The County hired two companies to design and build the two bridges and a third company to oversee the construction management. The bridges were finished in 2018 and shortly thereafter the deficiencies and defects in both bridges were discovered.

The County demanded that the companies responsible for the design, construction, and construction management pay for the work necessary to replace the bridges. When those companies refused, on July 8, 2020, the County filed a complaint in San Bernardino County

**Increase Purchase Order with Procopio, Cory, Hargreaves & Savitch
LLP for Specialized Legal Services
May 21, 2024**

Superior Court against the three companies responsible for the County's damages. The case is currently scheduled for trial on October 18, 2024. The litigation costs and expenses will include discovery, consultation and expert witness services, and trial. In preparing for the trial, it was determined that an increase to the amount of the PO with Procopio, Cory, Hargreaves & Savitch LLP by \$500,000, from \$200,000 to \$700,000, is necessary for continued legal, expert witness services and trial preparation.

Government Code section 25203 requires a two-thirds vote of all members of the governing body (four votes), as the Board of Supervisors (Board) is approving employment of counsel to assist County Counsel in an ongoing legal matter.

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 Purchase Order, 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.

On April 2, 2019, the Purchasing Department (Purchasing) approved PO No. 4100086745 in the amount of \$50,000 to retain Procopio, Cory, Hargreaves & Savitch LLP to provide specialized legal services. PO No. 4100086745 was fully expended.

On March 22, 2021, Purchasing approved PO No. 4100191906 in the amount of \$150,000 in order to continue the provision of legal services. PO No. 4100191906 was fully expended.

On March 9, 2023, Purchasing approved PO No. 4100289972 in the amount of \$50,000 in order to continue the provision of legal services. On June 9, 2023, PO No. 4100289972 was increased by \$150,000 for a total amount of \$200,000. PO No. 4100289972 was fully expended.

On November 16, 2023, Purchasing approved the PO in the amount of \$200,000. There is approximately \$31,000 remaining on this PO. The fees in this matter are expected to be up to \$500,000 through June 30, 2024, requiring Board approval to increase the PO accordingly.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on May 7, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on April 22, 2024; Finance (Carl Lofton, Administrative Analyst, 387-4222) on May 7, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 7, 2024.

**Increase Purchase Order with Procopio, Cory, Hargreaves & Savitch
LLP for Specialized Legal Services
May 21, 2024**

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