

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

June 25, 2024

FROM

TOM BUNTON, County Counsel

NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District

SUBJECT

Agreement with Meyers Nave for Specialized Legal Services

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District:

1. Authorize the Purchasing Agent to increase Purchase Order No. 4100309898 with Meyers Nave by \$350,000, from \$200,000 to a not-to-exceed amount of \$550,000, in order to continue the provision of specialized legal services in connection with the regional Municipal Separate Sewer System National Pollutant Discharge Elimination System permit (Four votes required).
2. Authorize the County Counsel, Chief Assistant County Counsel, or Principal Assistant County Counsel to change or add attorneys, paralegals, consultants or other legal staff assigned to the legal services required for the regional Municipal Separate Sewer System National Pollutant Discharge Elimination System permit.

(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

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The Areawide Urban Stormwater Program (Program) is funded under Implementation Agreement No. 11-545 (Implementation Agreement) approved by the Board of Supervisors (Board) on June 28, 2011 (Item No. 94). The Program is funded by its participants with the following shares: San Bernardino County (County) (19.06%), San Bernardino County Flood Control District (District) (5.00%), and 16 cities (75.94%). Sufficient appropriation and revenue have been included in the District's 2023-24 and 2024-25 budgets (1990002550-76F02509) and will be included in future recommended budgets.

BACKGROUND INFORMATION

The County, District, and Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa (Co-Permittees) within the Santa Ana River Watershed are participating in a joint effort to draft and negotiate a regional Municipal Separate Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit (Permit) with the Counties of Riverside and Orange and the Santa Ana Regional Water Quality Control Board (SARWQCB), with the goal of protecting water quality and the beneficial uses of streams, lakes

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and rivers within the Santa Ana River Watershed. The Program participants, through the Implementation Agreement, fund and perform Program-wide tasks cooperatively. Therefore, there is an economy of scale achieved in that the cost to each participant for a task is lower than if the participant performed the task individually.

On January 29, 2010, the SARWQCB adopted the Permit for urban stormwater discharges from the County, District, and Co-Permittees. The Co-Permittees collectively developed the Program, to cooperatively implement the requirements set forth in the Permit. This cooperative effort is formalized in the Implementation Agreement.

In compliance with Section XXII of the Permit, the Program prepared and submitted a permit application, known as a Report of Waste Discharge, in August 2014. On January 29, 2015, the SARWQCB issued an administrative extension of the Permit, which allows the SARWQCB to continue the expired permit until the effective date of a new Permit.

On December 24, 2021, the SARWQCB issued a draft Permit to the District, County, and Co-Permittees for review and comment. The draft Permit differs from the 2015 administratively extended Permit in that the draft Permit now regulates and governs a broader geographical region that includes the counties of Riverside and Orange.

On March 1, 2024, the SARWQCB released the Tentative Order for public review and comments. The Tentative Order will still govern portions of the Counties of Riverside and Orange. The Tentative Order varies slightly from the previously-released 2021 draft Permit in organization and content. The Tentative Order includes the Fact Sheet, the basis for the requirements outlined within the body of the Tentative Order. The Tentative Order's public comment period ends July 3, 2024, and may be adopted as early as December 2024 or in the first quarter of 2025.

Approval of this item will allow the District, as Principal Permittee, to continue to utilize Meyers Nave for specialized legal NPDES services required to complete the negotiation of the draft regional Permit. The legal services provided include consultation with the legal counsels for the Co-Permittees and the Counties of Riverside and Orange and negotiations with counsel for the SARWQCB as well as the review and revision of the draft regional Permit.

On January 14, 2021, the Office of County Counsel released a Request for Proposals to five law firms experienced in providing NPDES legal services. One proposer declined to submit a proposal due to a conflict of interest. Of the four proposals received, District staff and County Counsel attorneys conducted interviews with three law firms and selected Meyers Nave.

On August 3, 2021, the Purchasing Department approved Purchase Order No. 4100208658 in the amount of \$75,000 to retain Meyers Nave to provide specialized legal services. Purchase Order No. 4100208658 was increased on March 15, 2022 by \$75,000, from \$75,000 to \$150,000, and on May 2, 2022 by \$50,000, from \$150,000 to \$200,000. Purchase Order No. 4100208658 was fully expended.

On July 7, 2022, the Purchasing Department approved Purchase Order No. 4100254357 in the amount of \$200,000. On March 28, 2023 (Item No. 61), the Board authorized the Purchasing Agent to increase Purchase Order No. 4100254357 with Meyers Nave by \$200,000, from \$200,000 to a not-to-exceed amount of \$400,000, in order to continue the provision of specialized NPDES legal services.

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Purchase Order No. 4100254357 was fully expended and on August 1, 2023, the Purchasing Department approved Purchase Order No. 4100309898 in the amount of \$200,000. There is approximately \$82,671.40 remaining in this Purchase Order.

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 the Board's approval. California Government Code Section 25203 requires two-thirds Board approval (four votes) to retain outside counsel services to assist County Counsel.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Sophie A. Curtis, Deputy County Counsel, 387-5455) on June 11, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on June 3, 2024; Finance (Carl Lofton, 387-5404 and Jessica Trillo, 3874222, Administrative Analysts) on June 6, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 10, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 25, 2024



cc: File - Flood Control District
JLL 06/28/2024