

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

June 9, 2020

FROM

MICHELLE D. BLAKEMORE, County Counsel

SUBJECT

Increase Purchase Order with Meyers Nave Riback Silver & Wilson for Specialized Legal Services

RECOMMENDATION(S)

Authorize the Purchasing Agent to increase Purchase Order No. 4100100467 with Meyers Nave by \$25,000, from \$600,000 to \$625,000, for the provision of continuing legal services in connection with the lawsuit entitled *Michael Gomez Daly and Inland Empire United v. Board of Supervisors of San Bernardino County*, Case No. CIVDS1833846 (Fourth District Court of Appeal Case No. E073730; Supreme Court of California Case No. S260209) and related actions that concern a challenge to the process by which the Board of Supervisors filled the Third District Supervisor vacancy in December 2018. (Four votes required).
(Presenter: Michelle D. Blakemore, 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 additional Discretionary General Funding (Net County Cost). The costs for the identified legal services for the matter *Michael Gomez Daly and Inland Empire United v. Board of Supervisors of San Bernardino County* are included in the Litigation Fund (134 1000). Sufficient appropriation and revenue are included in the 2019-20 budget.

BACKGROUND INFORMATION

Approval of this item will allow the County to continue to utilize Meyers Nave Riback, Silver & Wilson (Meyers Nave) for legal services associated with the above-entitled lawsuit. The legal services required to defend the County have significantly expanded due to several extraordinary orders from the trial court and Court of Appeal, and actions by the Petitioners to enforce the trial court judgment and writ, necessitating an immediate appeal to the California Supreme Court.

This lawsuit concerns allegations of violations of the California Ralph M. Brown Act (Brown Act) in connection with the process taken on December 18, 2018 by which the Board of Supervisors (Board) filled the vacancy created by then current Third District Supervisor James Ramos' election to the California State Assembly.

The Petition for Writ of Mandate was filed by Petitioners, Michael Daly and IE United, in the San Bernardino County Superior Court on December 31, 2018. The trial court granted the Petition for Writ of Mandate by a judgment and writ issued on November 8, 2019. Petitioners

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aggressively sought to enforce the judgment and the writ and the trial court agreed with Petitioners' position that Supervisor Rowe's appointment be rescinded immediately, among other things. Not only did the County need to file an appeal on November 13, 2019, the County had to seek a Writ of Supersedeas with the California Court of Appeal, Fourth Appellate District, Division Two on November 21, 2019 to stay the trial court's judgment. On November 26, 2019, the Court of Appeal granted the stay, however, without additional briefing, on January 8, 2020 the Court of Appeal lifted its stay. The Petitioners immediately sought, once again, to enforce the trial court decision.

These actions required the County seek immediate relief from the California Supreme Court. On January 17, 2020, the County filed a Writ of Supersedeas with the Supreme Court requesting immediate stay of the trial court decision and review of the Court of Appeal decision denying the stay. The League of Cities and the California State Association of Counties agreed to support the County's appeal of error the trial court and Court of Appeal decisions and joined with the County as Amicus in the Supreme Court filing. On January 23, 2020, the Supreme Court issued a temporary stay and on February 19, 2020 granted review of the County's petition including review of the substantive legal issues of error by the trial court. Thereafter, on February 25, 2020, Petitioners requested that the Supreme Court lift its stay arguing that Supervisor Rowe's ballot designation for the March 3, 2020 Primary Election was improper. On March 5, 2020, the Supreme Court denied Petitioners' requests and then set a briefing schedule for the appeal. The County timely filed its opening brief on May 4, 2020, and Petitioner's brief is due in July.

In preparing for the continued litigation of this matter, it was determined that an increase to Purchase Order (PO) No. 4100100467 with Meyers Nave by \$25,000, from \$ \$600,000 to \$625,000, is necessary to complete the appeal of the trial court judgment and writ.

PROCUREMENT

Due to an immediate need for specialized legal services, on January 7, 2019 the County Counsel's Office requested a non-competitive purchase order (Purchase Order No. 4100073136) in the amount of \$100,000 to retain Meyers Nave. Meyers Nave was selected due to their availability and experience with similar legal matters. On April 29, 2019, the purchase order was increased by \$75,000, from \$100,000 to \$175,000. On June 25, 2019, the purchase order was increased by \$25,000, from \$175,000 to \$200,000. Thereafter, Purchase Order No. 4100073136 was exhausted and on July 12, 2019, Purchase Order No. 4100100467 was issued in the amount of \$100,000. On January 7, 2020, the purchase order was increased by \$75,000, from \$100,000 to \$175,000. On January 28, 2020 the purchase order was increased by \$425,000 from \$175,000 to \$600,000.

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 purchase order, 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 (Penny Alexander-Kelley, Chief Assistant County Counsel, 387-5455, and Robin Simon, Chief of Administration, 387-5455) on May 27, 2020; Purchasing Department (Leo Gomez, Purchasing Manager, 387-2063) on May 27, 2020; Finance (Carl Lofton, Administrative Analyst, 387-5404) on June 1, 2020; and County Finance and Administration Robert Saldana, Deputy Executive Officer, 387-5423) on June 1, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Josie Gonzales Seconded: Robert A. Lovingood
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 9, 2020



cc: File - County Counsel
KS 06/10/2020