



# Board Agenda Item 33

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DATE: April 9, 2024

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Specialized Legal Services Agreement with Downey Brand, LLP - Friant Ranch

**RECOMMENDED ACTION(S):**

1. **Make a finding that it is in the best interests of the County to suspend the competitive bidding process under Administrative Policy No. 34 for specialized legal services which are unique to Downey Brand, LLP; and**
2. **Approve and authorize the Chairman to execute Specialized Legal Services Agreement engaging the law firm of Downey Brand, LLP to assist the County in the preparation of the Partially Recirculated Revised Draft Environmental Impact Report (State Clearinghouse No. 2007101016) prepared for the “Friant Ranch Project,” located approximately five miles north of the Fresno city limits and 21 miles east of the city of Madera, within the Friant Community Plan Area and the Friant Ranch Specific Plan Area, effective upon execution through December 31, 2025, with the option to extend for two additional one-year terms, total not to exceed \$150,000, to be reimbursed by project applicant.**

There is no additional Net County Cost associated with the recommended actions, which will engage the law firm Downey Brand, LLP (Downey), under the direction of the County Counsel, to provide legal advice to the County relating to the Partially Recirculated Revised Draft Environmental Impact Report (PRRDEIR) (State Clearinghouse No. 2007101016) prepared for Environmental Impact Report Application No. 5481, General Plan Amendment Application No. 511, Amendment to Text No. 363, and Amendment Application No. 3751, also known as the Friant Ranch Project (Project). Downey is able to provide a level of specialization and experience with the environmental review process which is not available within the County Counsel's Office.

The Project is located in Supervisorial District No. 5.

**ALTERNATIVE ACTION(S):**

Your Board may decline to enter into the recommended Specialized Legal Services Agreement (Agreement), and the County would lack the specialized legal services proposed to be provided by Downey.

**SUSPENSION OF COMPETITION/SOLE SOURCE CONTRACT:**

County Counsel's request for suspension of competitive bidding process is consistent with Administrative Policy No. 34 when obtaining the services of expert witnesses for litigation or special counsel to assist the County, as the level of specialization which the County seeks is not available in the County Counsel's office.

**FISCAL IMPACT:**

If the Agreement is approved, the amount payable to Downey under the Agreement would not exceed \$150,000, with this amount to be paid by the Department of Public Works and Planning. All amounts paid by the County would be reimbursed by the Project applicant, Friant Ranch, LP, pursuant to its Applicant Agreement dated October 21, 2020. Accordingly, there will be no net County cost associated with approval of the proposed Agreement. Sufficient appropriations are included in the Public Works and Planning Org 43600200 FY 2023-24 Adopted Budget and will be included in subsequent budget requests.

Downey charges hourly rates of \$450 to \$465 for the partners assigned to the Project, \$350 per hour for the associate, and \$265 per hour for paralegals. The County Counsel believes the hourly rate increase to be reasonable and competitive with other firms offering specialized legal services.

**DISCUSSION:**

On February 1, 2011, your Board conducted a public hearing, considered public testimony, and voted to certify the Environmental Impact Report prepared for the Project, and approved the proposed General Plan Amendment, rezoning and amendment to text, subject to Mitigation Measures (collectively, "Project Approvals").

Under the Project Approvals, the County adopted the Friant Community Plan Update and expanded the community plan boundary by adding the 942.2-acre Friant Ranch Specific Plan and designated the Specific Plan Area for a variety of residential, commercial, and open space uses, and adopted the Friant Ranch Specific Plan containing goals, policies, implementation measures and development standards for the Specific Plan Area. In addition, your Board approved the rezoning of the project site to various zone districts, rezoned the 7.19-acre "Depot Parcel" from Single-Family Residential Agricultural District (R-A) to General Commercial (C-6), rezoned two parcels totaling 6.6 acres from R-A and C-6 to Open Space (OS), and rezoned a 106-acre parcel from AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District to OS. Your Board also adopted an amendment to text which adopted the Friant Ranch Zoning Regulations, containing specific zoning districts for the Friant Ranch Specific Plan Area.

Following the County's approval, the Sierra Club, Revive the San Joaquin, and League of Women Voters of Fresno challenged the Project Approvals. Petitioners filed a petition for writ of mandate against the County in Superior Court on March 4, 2011. The case was ultimately heard by the California Supreme Court, which determined in 2018 that portions of the County's air quality analysis violated the California Environmental Quality Act ("CEQA"). Following a total of almost a decade of litigation, and an additional appeal from the final judgment entered by the Superior Court, the case was remanded back to the Superior Court for final disposition. On February 16, 2021, the Court issued an order requiring the County to rescind the Project Approvals, which your Board did on April 13, 2021.

To comply with the law expressed in the opinion of the Supreme Court, the County prepared the PRRDEIR, releasing that document last year. Since the public circulation of the PRRDEIR, the County received public comment, and is currently in the process of preparing a final environmental document based on the PRRDEIR and comments.

Under the Project's Applicant Agreement dated October 21, 2020, the County may hire, at the Project applicant's expense, outside counsel to assist in the review of the PRRDEIR and the Project in general. Due to the complexity of the issues presented by the PRRDEIR and comments, the County Counsel has determined that engaging outside counsel would be helpful for this Project, as the outside counsel could provide additional specialization and experience in environmental law.

Following up on several recommendations made by the attorney representing the Project applicant, the County Counsel's Office contacted three different law firms, including Downey. Competitive bidding is not required when the County Counsel selects outside legal services. Based on discussions with the various law firms' partners, County Counsel elected to recommend the engagement of Downey for review of the

Project and PRRDEIR, under the supervision of Partner Kathryn Oehlschlager. The County Counsel understands that the Department of Public Works and Planning has confirmed with the Project applicant that it has no objection to the retention of Downey on the Project. Accordingly, the County Counsel respectfully recommends your Board approve the proposed Agreement and believes that the \$150,000 cap on expenses will be sufficient for the Project.

REFERENCE MATERIAL:

BAI #10, April 13, 2021

BAI #9, February 1, 2011

ATTACHMENTS INCLUDED AND/OR ON FILE:

Form PD-048 - Suspension of Competition

On file with Clerk - Agreement for Specialized Legal Services

CAO ANALYST:

Ahla Yang