

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

318 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

April 21, 2009

SUBJECT: Legal Services Agreement
Condemnation and other Related Real Property Services

RECOMMENDED MOTION:

1. Approve the Legal Services Agreement with Best, Best and Krieger, LLP to provide legal services for the District's Condemnation and other Related Real Property services for Flood Control Purposes.
2. Authorize the Chairman to execute the Legal Services Agreement on behalf of District.
3. Authorize the General Manager-Chief Engineer or his designee to execute any other documents and administer all actions necessary to complete any and all transactions.

BACKGROUND: See Page 2

FINANCIAL: See Page 2

KEC:blj

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost	N/A	Budget Adjustment:	No
	Annual Net District Cost:	\$100,000.00	For Fiscal Year:	09/10 10/11, 11/12

SOURCE OF FUNDS: See Page 2

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Gann

County Executive Office Signature

FORM APPROVED-COUNTY COUNSEL
 BY:
 NEAL R. KIPNIS
 DATE: 4/13/09
 Departmental Concurrence
 FINANCIAL OFFICER APPROVED
 MAN M. CHANG, FINANCE DIRECTOR
 4/1/09
 DEPT RECOMM.:
 Per Exec. Ofc.:

Prev. Agn. Ref.:

District: All

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

11.2

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Legal Services Agreement
Condemnation and other Related Real Property Services

SUBMITTAL DATE: April 21, 2009

Page 2

BACKGROUND:

The District has eminent domain cases that require related legal services. On July 31, 2007, the Board approved a multi-year contract with Luce, Forward, Hamilton and Scripps, LLP to provide required legal services. Luce, Forward, Hamilton and Scripps has indicated there may be potential conflict of interest cases and they may not be able to provide legal services to the District in these instances.

The District wishes to have Best, Best and Krieger LLP available to provide contingency legal services in such conflict of interest cases.

County Counsel has approved the Agreement as to legal form

FINANCIAL: Funds will be included in subsequent budget years 09/10, 10/11 and 11/12.

An earlier RFQ was conducted to generate a list of approved consultants. Best, Best and Krieger LLP is a sole source selected from the approved list per Policy H-7.

SOURCE OF FUNDS: 25110-947400-510040 Land Zone 1
25120-947420-540040 Land Zone 2
25130-947440-540040 Land Zone 3
25140-947460-540040 Land Zone 4
25150-947480-540040 Land Zone 5
25160-947500-540040 Land Zone 6
25170-947520-540040 Land Zone 7
Developer Projects

KEC:blj

LEGAL SERVICES AGREEMENT

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and BEST, BEST AND KRIEGER, LLP hereinafter called "ATTORNEY", hereby agree as follows:

1. **SCOPE OF SERVICES** - ATTORNEY shall provide legal counsel and services in connection with DISTRICT'S acquisition and potential Eminent Domain Action and other related matters related to the DISTRICT as designated by the General Manager-Chief Engineer. Included in this work may be, from time to time, the preparation or review of legal documents to be executed by DISTRICT'S Board of Supervisors in connection with such services.
2. **TERMS OF AGREEMENT** - This Agreement shall commence upon execution by the parties hereto. ATTORNEY shall perform said services for a period of three (3) years or until June 30, 2012. By mutual consent of the DISTRICT and ATTORNEY, this Agreement may be extended twice, each for (1) one year period. This will provide a five (5) year maximum term for this Agreement.
3. **KEY ATTORNEY** - ATTORNEY agrees that Kendall H. MacVey will be the lead attorney assigned to perform the work under the Scope of Services and terms of this Agreement with assistance being provided by the attorneys listed on Attachment "A" attached hereto and made a part hereof. Any changes or substitution of the assigned attorney must have the express written approval of the General Manager-Chief Engineer of DISTRICT.
4. **COMPENSATION** - DISTRICT shall pay ATTORNEY for services performed and expenses incurred in accordance with the standard rates set forth on Attachment "A" and under the terms of this Agreement shall not exceed the sum of Three hundred thousand dollars (\$300,000.00) unless a written Amendment to this Agreement is executed by both parties prior to performance of additional services. Since these services are generally required throughout the term of the

1 Agreement, DISTRICT and ATTORNEY will monitor work requirements and
2 efforts such that the limits of compensation are not reached before the last
3 month of the term of the Agreement. Compensation will be limited to no more
4 than one hundred thousand dollars (\$100,000.00) in any single fiscal year over
5 the term of this Agreement.

- 6 5. UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS - When
7 funds are not appropriated or otherwise made available in a subsequent Fiscal
8 Year, this Agreement shall be cancelled and ATTORNEY shall be reimbursed
9 for the reasonable value of any non-recurring costs incurred and covered under
10 the terms of this Agreement.
- 11 6. EXPENSES - Reimbursable expenses shall include billings for costs and
12 expenses incurred on DISTRICT'S behalf, including attorney service courier,
13 photocopies of documents, long distance phone calls and travel. There are no
14 other reimbursable expenses, unless previously agreed to and specified in
15 Attachment "A" hereto. No single expense shall exceed one thousand five
16 hundred dollars (\$1,500.00) without the prior consent of the General Manager-
17 Chief Engineer of DISTRICT.
- 18 7. PAYMENT - ATTORNEY shall submit its billing statement at least quarterly,
19 but no more than monthly, in arrears, following satisfactory performance of
20 services. Payments shall be made by DISTRICT within thirty (30) days after
21 receipt of billing from ATTORNEY. All billings shall be itemized to include (i)
22 staffing levels, hourly rates and specific activities for each Project and for each
23 attorney and/or paralegal; (ii) listing of each activity as a line item in a time
24 reporting format acceptable to DISTRICT with a detailed description of specific
25 activities for each attorney and/or paralegal; (iii) total current period fees and
26 total cumulative fees billed for each staffing level; and (iv) current period

1 expenses and total cumulative expenses billed in itemized categories. Payments
2 shall be made on a progressive basis.

- 3 a. It is the expectation of DISTRICT that it will not be billed for ordinary
4 overhead expenses, including (i) ordinary work processing; (ii) time to
5 prepare and review billings and; (iii) local travel.
- 6 b. ATTORNEY shall have and maintain all backup documentation to
7 support all entries included in the monthly billing statement. Such
8 documentation shall be in a form subject to audit and in accordance with
9 generally accepted accounting principles. ATTORNEY shall make such
10 documentation available to auditors upon request and at such reasonable
11 times and locations as may be agreed to between DISTRICT and
12 ATTORNEY.
- 13 c. Statements/invoices shall be submitted directly to DISTRICT'S Finance
14 Division. The Finance Division will accept a mailed or hand delivered
15 original statement/invoice. All inquiries regarding payments and/or
16 status of statements/invoices should be made directly to the Finance
17 Division: Attention Accounts Payable 951.955.8454.

- 18 8. LICENSES - ATTORNEY, its employees, agents, contractors and
19 subcontractors shall maintain professional licenses required by the laws of the
20 State of California at all times while performing services under this Agreement.
- 21 9. NOTICES - Any and all notices sent, or required to be sent, to the parties of this
22 Agreement will be mailed by first class mail, postage prepaid, to the following
23 addresses:

24 RIVERSIDE COUNTY FLOOD
25 CONTROL AND WATER
26 CONSERVATION DISTRICT
27 1995 Market Street
28 Riverside, CA 92502

BEST, BEST & KRIEGER, LLP
3750 University Avenue, Suite 400
Riverside, CA 92501

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2 10. REQUIRED INSURANCE - Without limiting or diminishing ATTORNEY'S
3 obligation to indemnify or hold DISTRICT harmless, ATTORNEY shall
4 procure and maintain or cause to be maintained, at its sole cost and expense, the
5 following insurance coverage during the term of this Agreement:

6 a. Workers' Compensation:

7 If ATTORNEY has employees as defined by the State of California,
8 ATTORNEY shall maintain statutory Workers' Compensation Insurance
9 (Coverage A) as prescribed by the laws of the State of California. Policy
10 shall include Employer's Liability (Coverage B) including Occupational
11 Disease with limits not less than \$1,000,000 per person per accident.
12 Policy shall be endorsed to waive subrogation in favor of DISTRICT
13 and, if applicable, to provide a Borrowed Servant/Alternate Employer
14 endorsement.

15 b. Commercial General Liability:

16 Commercial General Liability insurance coverage, including but not
17 limited to, premises liability, contractual liability, products and
18 completed operations liability, personal and advertising injury, and cross
19 liability coverage, covering claims which may arise from or out of
20 ATTORNEY'S performance of its obligations hereunder. Policy shall
21 name the Riverside County Flood Control and Water Conservation
22 District, its officers, Board of Supervisors, employees, elected or
23 appointed officials, agents or representatives as additional insureds.
24 Policy's limit of liability shall not be less than \$1,000,000 per occurrence
25 combined single limit. If such insurance contains a general aggregate
26 limit, it shall apply separately to this Agreement or be no less than two
27 (2) times the occurrence limit.
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1 c. Vehicle Liability:

2 If vehicles or mobile equipment are used in the performance of the
3 obligations under this Agreement, then ATTORNEY shall maintain
4 liability insurance for all owned, non-owned or hired vehicles so used in
5 an amount not less than \$1,000,000.00 per occurrence combined single
6 limit. If such insurance contains a general aggregate limit, it shall apply
7 separately to this Agreement or be no less than two (2) times the
8 occurrence limit. Policy shall name the Riverside County Flood Control
9 and Water Conservation District, its officers, Board of Supervisors,
10 employees, elected or appointed officials, agents or representatives as
11 additional insureds.

12 d. Professional Liability:

13 ATTORNEY shall maintain Professional Liability Insurance providing
14 coverage for ATTORNEY'S performance of work included within this
15 Agreement, with a limit of liability of not less than \$1,000,000 per
16 occurrence and \$2,000,000 annual aggregate. If ATTORNEY'S
17 Professional Liability Insurance is written on a claims made basis rather
18 than an occurrence basis, such insurance shall continue through the term
19 of this Agreement and ATTORNEY shall purchase at his sole expense
20 either 1) an Extended Reporting Endorsement (also known as Tail
21 Coverage); or 2) Prior Dates Coverage from a new insurer with a date
22 retroactive to the date of or prior to, the inception of this Agreement; or
23 3) demonstrate through Certificates of Insurance that ATTORNEY has
24 maintained continuous coverage with the same or original insurer.
25 Coverage provided under items; 1), 2) or 3) will continue for a period of
26 five (5) years beyond the termination of this Agreement.
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1 e. General Insurance Provisions – All Lines:

- 2 (i) Any insurance carrier providing insurance coverage hereunder
3 shall be admitted to the State of California and have an A.M.
4 BEST rating of not less than an A:VIII (A:8) unless such
5 requirements are waived, in writing, by the County Risk
6 Manager. If the County's Risk Manager waives a requirement for
7 a particular insurer such waiver is only valid for the specific
8 insurer and only for one policy term.
- 9 (ii) ATTORNEY'S insurance carrier(s) must declare its insurance
10 self-insured retentions. If such self-insured retentions exceed
11 \$500,000 per occurrence such retentions shall have the prior
12 written consent of the County Risk Manager before the
13 commencement of operations under this Agreement. Upon
14 notification of self-insured retentions which are deemed
15 unacceptable to the DISTRICT, at the election of the County's
16 Risk Manager, ATTORNEY'S carriers shall either (1) reduce or
17 eliminate such self-insured retentions with respect to this
18 Agreement with DISTRICT or (2) procure a bond which
19 guarantees payment of losses and related investigations, claims
20 administration, defense costs and expenses.
- 21 (iii) ATTORNEY shall cause their insurance carrier(s) to furnish
22 DISTRICT with (1) a properly executed original certificate(s) of
23 insurance and original certified copies of endorsements effecting
24 coverage as required herein and, (2) if requested to do so orally
25 or in writing by the County Risk Manager, provide original
26 certified copies of policies including all Endorsements and all
27 attachments thereto, showing such insurance is in full force and
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1 effect. Further, said Certificate(s) and policies of insurance shall
2 contain the covenant of the insurance carrier(s) that thirty (30)
3 days written notice be given to DISTRICT prior to any material
4 modification, cancellation, expiration, or reduction in coverage of
5 such insurance. In the event of a material modification,
6 cancellation, expiration, or reduction in coverage, this Agreement
7 shall terminate forthwith, unless DISTRICT receives, prior to
8 such effective date, another properly executed original Certificate
9 of Insurance and original copies of endorsements or certified
10 original policies, including all endorsements and attachments
11 thereto, evidencing coverage's set forth herein and the insurance
12 required herein is in full force and effect. Individual(s)
13 authorized by the insurance carrier to do so on its behalf shall
14 sign the original endorsements for each policy and the Certificate
15 of Insurance. ATTORNEY shall not commence operations until
16 DISTRICT has been furnished with original Certificate(s) of
17 Insurance and certified original copies of endorsements and, if
18 requested, certified original policies of insurance including all
19 endorsements and any and all other attachments as required in
20 this Section.

21 (iv) It is understood and agreed by the parties hereto and
22 ATTORNEY'S insurance shall be construed as primary insurance
23 and DISTRICT'S insurance and/or deductibles and/or self-insured
24 retentions or self-insured programs shall not be construed as
25 contributory.

26 (v) If during the term of this Agreement or any extension thereof,
27 there is a material change in the scope of services; there is a
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1 material change in the equipment to be used in the performance
2 of the scope of work which will add additional exposures (such
3 as the use of aircraft, watercraft, cranes, etc.); or, the term of this
4 Agreement, including any extensions thereof, exceeds five (5)
5 years, the DISTRICT reserves the right to adjust the types of
6 insurance required under this Agreement and the monetary limits
7 of liability for the insurance coverages currently required herein,
8 if in the County Risk Manager's reasonable judgment, the amount
9 or type of insurance carried by ATTORNEY has become
10 inadequate.

11 (vi) The insurance requirements contained in this Agreement may be
12 met with a program(s) of self-insurance acceptable to DISTRICT.

13 (vii) ATTORNEY shall pass down the insurance obligations contained
14 herein to all tiers of subcontractors working under this
15 Agreement.

16 11. INDEMNIFICATION - ATTORNEYS shall indemnify and hold harmless the
17 Riverside County Flood Control and Water Conservation District, its officers,
18 Board of Supervisors, elected and appointed officials, employees, agents and
19 representatives (the "Indemnified Parties") from any liability whatsoever,
20 including but not limited to, property damage, bodily injury, or death, based or
21 asserted upon any services of ATTORNEY, its officers, employees,
22 subcontractors, agents or representatives rendered to DISTRICT by
23 ATTORNEY pursuant to or arising out of or in any way relating to this
24 Agreement and ATTORNEY shall defend at its sole expense and pay all costs
25 and fees, including but not limited to, attorney fees, cost of investigation,
26 defense and settlements or awards on behalf of the Indemnified Parties in any
27 claim or action based upon such liability.
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- 1 a. With respect to any action or claim subject to indemnification herein by
2 ATTORNEY, ATTORNEY shall, at their sole cost, have the right to use
3 counsel of their choice and shall have the right to adjust, settle, or
4 compromise any such action or claim without the prior consent of
5 DISTRICT; provided, however, that any such adjustment, settlement or
6 compromise in no manner whatsoever limits or circumscribes
7 ATTORNEY'S indemnification to the Indemnified Parties as set forth
8 herein.
- 9 b. ATTORNEY'S obligation hereunder shall be satisfied when
10 ATTORNEY has provided DISTRICT the appropriate form of dismissal
11 relieving DISTRICT from any liability for the action or claim involved.
- 12 c. The specified insurance limits required in this Agreement shall in no way
13 limit or circumscribe ATTORNEY'S obligations to indemnify and hold
14 harmless the Indemnified Parties herein from third party claims.

15 12. TERMINATION - This Agreement may be terminated by either ATTORNEY
16 or DISTRICT upon a ten (10) day written notice to the other party, or in the
17 event DISTRICT shall elect, at its sole discretion, to abandon or postpone the
18 project and gives notice of termination. After receiving a termination notice,
19 ATTORNEY shall take all steps necessary to stop services on the date and to the
20 extent specified in the termination notice and submit a billing for all services
21 performed to date of notice of termination and any services to be completed as
22 set forth in the notice of termination within thirty (30) days from effective
23 termination date. ATTORNEY shall promptly submit a brief report advising of
24 the status of all matters, including any unresolved matters being handled by
25 ATTORNEY for DISTRICT. ATTORNEY shall give DISTRICT copies or
26 originals, as appropriate, of all files and attorney work product for all matters on
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1 which it has been working. This includes any computerized index, computer
2 programs and document retrieval system created or used for these matters.

3 13. ASSIGNMENT - Neither this Agreement nor any part thereof shall be assigned
4 by ATTORNEY without the prior written consent of DISTRICT.

5 14. NON-DISCRIMINATION - In the performance of the terms of this Agreement,
6 ATTORNEY shall not engage in nor permit others he may employ to engage in
7 discrimination in the employment of persons because of the race, color, national
8 origin or ancestry, religion, physical handicap, disability as defined by the
9 Americans with Disabilities Act (ADA), medical condition, marital status or sex
10 of such persons, in accordance with the provision of California Labor Code
11 Section 1735.

12 15. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEY represents and
13 warrants that no DISTRICT employee whose position in DISTRICT enables
14 him/her to influence the award of this Agreement or any competing agreement,
15 and no spouse or economic dependent of such employee is or shall be employed
16 in any capacity by ATTORNEY, or shall have any direct or indirect financial
17 interest in this Agreement.

18 a. Anyone who is a former employee of DISTRICT at the time of
19 execution of this Agreement or who subsequently becomes
20 affiliated with ATTORNEY in any capacity (employee, associate
21 or partner) shall not (i) participate in the services provided by
22 ATTORNEY to DISTRICT; or (ii) become a partner, shareholder
23 or otherwise share in the profits of ATTORNEY for a period of
24 one year from the date the former DISTRICT employee left
25 DISTRICT employment.

26 b. It is possible that some of the ATTORNEY'S present or future
27 clients will have disputes with DISTRICT during the time that
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1 ATTORNEY is representing the DISTRICT. DISTRICT and
2 ATTORNEY agree that should the situation arise where a new or
3 existing client engages ATTORNEY in any matter in a position
4 adverse to DISTRICT or in which DISTRICT'S interest may be
5 adversely affected, that ATTORNEY will so advise DISTRICT
6 and upon receipt of such notice DISTRICT may determine that
7 the conflict may be waived or may determine that it is in the
8 DISTRICT'S best interest to terminate the services of
9 ATTORNEY. Should DISTRICT determine that it is best to
10 terminate the services of ATTORNEY, DISTRICT will notify
11 ATTORNEY of such decision. ATTORNEY may then submit
12 any outstanding invoices for payment up to the date of
13 termination as determined by the notice from DISTRICT.

14 16. CONFIDENTIALITY - ATTORNEY shall maintain the confidentiality of all
15 information which it may acquire arising out of or connected with activities
16 under this Agreement in accordance with all applicable Federal, State and
17 County laws, regulations, ordinances and directives relating to confidentiality,
18 including the Code of Professional Responsibility. ATTORNEY shall inform
19 all of its principals, employees and agents providing services hereunder of the
20 confidentiality provisions of this Agreement. These confidentiality obligations
21 shall survive the termination or expiration of this Agreement.

22 17. The Litigation Management Guidelines are attached hereto as Exhibit A and
23 includes Exhibits B, C, and D, and together they become an integral part of this
24 Agreement. The Litigation Management Guidelines may be updated from time
25 to time. Attachment C, Budget Guidelines is effective June 7, 2005 and
26 becomes an integral part of this Agreement and Litigation Guidelines.
27 ATTORNEY agree that each superseding update shall become an integral part
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of this Agreement and will not change nor alter any other portion of this Agreement in any way whatsoever.

18. The Case Evaluation and Plan is attached hereto as Exhibit B, and Case Status Report is attached hereto as Exhibit C each of which becomes an integral part of this Agreement.

19. COMPLETE AGREEMENT. This Agreement shall constitute the complete and exclusive statement of understanding between DISTRICT and ATTORNEY which supersedes all previous written or oral agreements, and all prior communications between DISTRICT and ATTORNEY relating to the subject matter of this Agreement.

Attachments

- 1. ATTACHMENT A-Rates and Personnel
- 2. Exhibits A-D: Litigation Management Guidelines including ATTACHMENT C "BUDGET GUIDELINES"

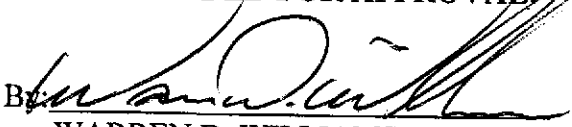
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IN WITNESS HEREOF the parties hereto have executed this Agreement on
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: 
WARREN D. WILLIAMS
General Manager-Chief Engineer

By: _____
MARION V. ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

Dated: _____

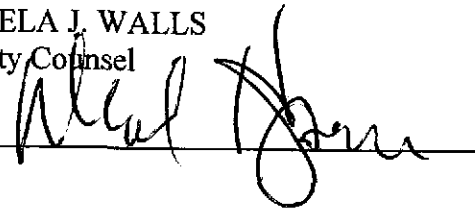
ATTEST:

Clerk of the Board

By: _____
Deputy

Dated: _____

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel
By: 

Title

(SEAL)

03/19/09
KEC:blj

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123390

BEST, BEST & KRIEGER, LLP

By: Kendall H. Mac Vey
KENDALL H. MAC VEY
Partner

03/19/09
KEC:blj

ATTACHMENT A

FEE SCHEDULE LEGAL SERVICES AGREEMENT

NAME	TITLE	HOURLY RATE
Kendall H. Macvey	Partner	\$300
Monical M. Nemat	Attorney	\$225
Micabel Mus-fisher	Attorney	\$225
Mark Easter	Attorney	\$300
Marvin Cohen	Paralegal	\$145
Monica Smith	Paralegal	\$145
Margaret "Peggy" Barnes	Paralegal	\$145
Lisa Geiss	Paralegal	\$145

EXHIBIT A

Riverside County Flood Control and Water Conservation District

Litigation Management Guidelines

Claims Philosophy

The District's claims philosophy is to identify, on a timely basis, those claims for which there is liability and to make settlement offers promptly. The District will generally not settle claims on a nuisance value basis as a matter of policy. The District, hereinafter referred to as District, policy is to defend all claims where there is no liability or where liability is questionable. Thorough, early investigation and rigorous development of the legal issues will identify the strengths and weaknesses of a case and allow us to develop a negotiating or trial strategy properly which is reflective of the case's value. It is always appropriate for counsel to provide us with settlement or trial recommendations.

I. LITIGATION COUNSEL

- A. Selection. Litigation counsel for each case shall be selected by the District or Office of County Counsel, where appropriate. The selection shall be based on the nature and complexity of the case, the experience and ability of the attorney, as well as other relevant factors.
- B. Terms. Upon appointment in any litigation, counsel shall provide the following to the District:
 1. The names of other professionals (partners, associates, law clerks, paralegals, etc.) who will assist in the case. The functions to be performed by each professional shall also be provided. We request no junior attorney be assigned our files. A junior attorney may be utilized for research, minor discovery and court appearances with the senior attorney being fully responsible for the quality of the work product. The District retains the right to approve or disapprove of any and all attorney assignments.

II. CASE ANALYSIS, STRATEGY AND BUDGET

- A. Development of an effective and strategically sound legal approach is the responsibility of counsel and includes the following:
 1. Identifying and developing all liability issues.
 2. Bringing viable third-party actions and/or cross actions against co-defendants.
 3. Developing the defense of contributory or comparative negligence.
 4. Raising causation issues to ascertain whether there is a nexus between the District's alleged act(s) and the actual damages sustained.

5. Critically analyzing the basis for all claims alleged or damages claimed.
- B. Within ninety (90) days following receipt of a case, counsel shall prepare and send to District, a Case Evaluation Plan (see Exhibit B) and as follows:
1. Analysis. (a comprehensive written analysis of the case). This analysis shall provide an initial evaluation of the case, including a brief synopsis of the facts of the case, damages and exposures in the case, and identification of the strengths and weaknesses of the case. Counsel shall also provide an initial impression of liability and identify the pertinent statutes and/or case law that may affect the outcome of the litigation.
 2. Investigation. We require investigations be done timely. This includes but is not limited to:
 - a. Identification of and taking statements of witnesses.
 - b. Accident reconstruction (including photographs, diagrams, measurements, etc.).
 - c. Production of documents.
 - d. Purchase order/contracts/lease agreements.
 - e. Internal statements, memos, and correspondence
 - f. Inspections, etc.
 - g. Blue prints, if applicable.

Counsel shall identify any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses in the action. Where it is believed further investigation is necessary, please discuss this with County Counsel prior to it being initiated.

3. Strategy. Counsel shall define the strategy to be used in defending each lawsuit, including, but not limited to:
 - a. The anticipated course of action to be taken and prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.).
 - b. The facts or elements which must be proved or disproved and the discovery necessary to establish these defenses or proof.
 - c. The timing of the discovery, filing of motions, negotiations or other objectives.
 - d. A description of how the work will be distributed among those who will be working on the case.
 - e. The tactics to be used in defending the case and the advantages to be gained by use of these tactics.
 - f. When appropriate, bifurcation of liability from damages' issues should be considered.

- C. Budget. Litigation counsel will also provide an estimate of the anticipated cost of each significant aspect of the litigation, pursuant to the attached Budget Guidelines Attachment C. These guidelines may change from time to time and you should always familiarize yourself with all changes.

III. COMMUNICATION

- A. Correspondence and pleadings. Copies of all pertinent correspondence, investigations, and summaries of depositions, interrogatories and pertinent pleadings shall be promptly provided by litigation counsel to County Counsel and the excess and/or reinsurance carrier when the case meets the excess reporting criteria. Litigation counsel will promptly respond to all letters or phone calls and will keep County Counsel fully advised of the progress in each case.
- B. Depositions and hearings. We require timely notification of all scheduled depositions, deposition preparations, mediations, MSC, VSC, arbitrations, trials, etc. We consider timely notification to be not less than 2 weeks in advance with 3-4 weeks advanced notice being preferable. Notice of all hearings shall be sent by Litigation counsel to County Counsel and to the excess carrier when the case meets excess reporting requirements to allow them to attend the hearing. It is required that within 10 days of any District employee's deposition being taken, litigation counsel will meet with the District employee for the purpose of preparing the employee for their depositions and for trials in which they will serve as witnesses and/or experts. There are to be no telephone preparations (See VII Trials and Reports).
- C. Evaluations. We request evaluations as to liability and settlement value issues as early in the case as possible. Upon request, and at such other times as deemed necessary, Litigation counsel shall provide written or oral evaluations of the litigation. These evaluations shall disclose any weaknesses or strengths that have been discovered, any changes in applicable statutes or case law, any increase or decrease in anticipated costs, and (if possible) the potential liability and settlement value of the case. These evaluations should be as straight-forward and as objective as possible to allow County Counsel to meaningfully analyze the case and to determine the course of action to be taken.

IV. UPDATES

It is the responsibility of counsel to update any item of information contained in the initial status report, including judgments and opinions of counsel, promptly when a change occurs. All updates shall also be concise. If six months elapse since the initial report or the last previous update and no changes have occurred, counsel shall advise County Counsel of that fact in a written update. Consequently, no six-month period shall expire without written communication from litigation counsel to County Counsel.

V. SETTLEMENT AUTHORITY

Litigation counsel shall not settle any lawsuit or make a settlement offer in any amount or make any representation as to settlement possibilities without prior authorization of the County Counsel and/or Board of Supervisors approval when necessary.

VI. LEGAL BILLINGS

- A. All bills for legal services and costs shall be submitted at least quarterly. Fees and costs shall be billed at the rates previously agreed upon. All bills shall state with particularity the legal work performed, the hours expended to perform the work and the costs incurred. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the District to resolve problems or answer questions.

Legal fees will not be paid unless submitted in the following format:

1. Each legal activity will be dated and itemized (multiple daily descriptive explanations of activities with a single time entry is not acceptable).
2. We require all billings be itemized to indicate the following:
 - a. The attorney doing the work.
 - b. Hours spent for each specific task.
 - c. Hourly rate.
 - d. Work being done by paralegals or law clerks should be identified.

Please advise if research time and/or overtime is billed and how it is indicated on the billing.

3. The amount of time to complete the task must be broken down into tenths of hours. Block time billing is not acceptable; therefore, not reimbursable.
4. The rates charged by each attorney working on the case must be summarized with the amount of hours to depict a cost per attorney.
5. Where expenses have been incurred for others, such as copy service, court reporters, experts, etc, please submit bills directly to District after approving them for payment. If you inadvertently paid a bill, please submit the itemized invoice you have paid along with your billing requesting reimbursement.
6. We understand the need to pay for unusual expenses incurred by you on behalf of District, however, we should not be asked to pay for ordinary overhead expenses, which we believe includes:
 - a. Ordinary postage.
 - b. Local telephone calls and faxes.
 - c. Ordinary word processing.
 - d. Time to prepare and review billings.

- e. Local travel (30 miles or less, round trip.)
- f. Meals when involved in local (in-town) cases.

7. If overpayments are/have been made by the District, the attorney firm must remit a reimbursement payment to the District within 30 days. No credit balances will be acceptable.

B. We will gladly pay for unusual charges which we believe include:

- 1. Long distance telephone calls - these should be itemized whenever possible.
- 2. Express mail when deemed necessary.
- 3. Long distance fax charges.
- 4. Photocopy charges - must include itemization, showing the number of pages and the cost per page which must not be excessive nor above industry standards. Where expense has been extensive, we would appreciate an explanation.
- 5. Travel time - if you are required to fly to another destination, reimbursable time begins at the airport you are departing from and ends at the arriving destination airport. Other out of town travel is reimbursable from your office location to your destination utilizing the most direct or quickest route.
- 6. Out of town travel – you must obtain prior authorization for any out of town travel. We ask that you do not fly first class or business class nor stay in a hotel whose rates are expensive or above the average daily rate of \$159.00, or \$239.00 in high cost cities such as San Francisco, New York, Washington D.C., etc (averages may vary by locale). We do not reimburse alcoholic beverage consumption. Food consumption should be reasonable and not excessive. Meals must be itemized as to food, beverages and tips. Itemization of all travel expenses by each person incurring those expenses must be made. This includes airfare, hotel, food, ground travel and any other major costs. Arrangements must be made to use a local court reporter or any other local service you believe is necessary as we will not authorize travel expenses for these services. Car rentals should be compact to mid-size vehicles and not in the luxury class.

C. Use of Appropriate Personnel

Within a law firm, research and minor discovery work should be performed by the lowest level of personnel (e.g. junior attorneys, paralegals) capable of performing a given task. Responsibility for the quality of the work product remains with the assigned trial attorney.

D. Multiple Attorney Conferences/Attendance

- 1. We will not pay for attendance by more than one representative of a law firm at meetings, court appearances, conferences, etc. without our prior approval.

2. Attorney office conference time must be itemized and is subject to review and may be disallowed.

E. Research

1. We will not pay for extensive research of relatively routine matters which should otherwise be within the knowledge of experienced practitioners.
2. We will only pay for review and revision of prior research; we will not pay each time as if previous research was conducted de novo.

F. Copy Service

We prefer to use one copy service wherever possible so that we can participate in volume discounts. We may establish and provide a panel of copy service vendors for your reference. Until you receive this panel, please continue using your current copy service making the effort to negotiate volume discounts. We want to utilize one court reporter whenever possible for the same reason - volume discount. Please provide us names and telephone numbers of court reporters you use by area (i.e., Riverside, Indio, Blythe, etc).

G. Audit

Attorneys shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. Attorneys shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between District and Attorneys.

The District retains the right to have legal billings audited.

VII. TRIALS AND REPORTING

- A. Within ten (10) to thirty (30) days prior to trial, Litigation counsel will meet with District employees who will be called as witnesses.
- B. Within thirty (30) days of the conclusion of all trials, a brief summary trial report should be directed to the County Counsel outlining the trial results.

VIII. FINAL REPORTS

- A. At the conclusion of the case, a short summary report should be directed to the County Counsel. Original closing papers and the final billing should be attached.
- B. Within ninety (90) days following the termination of each lawsuit, the County Counsel will review the file to determine compliance with the District's guidelines and the strategy and budget developed by litigation counsel for the case. If appropriate, a meeting will be

arranged to discuss perceived problems and/or ways to improve litigation of the District's claims.

IX. Electronic Communication/Data Storage/Presentation

- A. The District strongly suggests all attorneys handling District files have the ability to communicate individually via electronic mail (E-Mail).
- B. The County of Riverside Superior Courts has equipment that is available for presenting evidence electronically (photos, text, animation, etc.) via the use of an Elmo and a computer. The Courts also have a large screen which is used to project the electronic evidence and information onto so that all jurors can easily view the evidence presented. The District believes that jurors will retain 80%-90% of what they hear **if** they see it simultaneously. In addition, the management and storage of data on CD-ROM is beneficial to the success of the presentations of most of our cases. Therefore, the District strongly suggests all attorneys handling cases on behalf of the District become proficient in managing and presenting cases via electronic medium.

X. Miscellaneous

There may be additional reporting requirements required by County Counsel. You will be notified in writing of any additional requirements which we deem necessary.

The foregoing is not meant to be burdensome - it is meant to control and manage our costs as well as to be knowledgeable and involved with each of our cases.

EXHIBIT B

INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:

DISTRICT FILE #:

INCIDENT DATE:

CLAIM DATE:

COMPLAINT FILED DATE:

TYPE OF CASE:

CASE/MATTER DESCRIPTION AND FACTS:

OPPOSING ATTORNEY'S NAME (if applicable):

2. INVESTIGATION NEEDED:

3. INJURIES OR DAMAGES CLAIMED (list punitive damages separately):

4. SPECIAL DAMAGES:	MEDICAL	\$
	LOSS OF EARNINGS	\$
	OTHER (specify)	\$

5. PLAINTIFF'S CONTENTION:

6. AFFIRMATIVE DEFENSES:

7. INITIAL DISCOVERY (designate expert/parties):

- a. Depositions to be taken (list names).
- b. Interrogatories to be sent (list names).
- c. Records/Documents to be produced (list names).

8. RESEARCH REQUIRED (general description of issues and extent): Specifically identify any research requiring original effort as opposed to research that has generally been done previously by your FIRM.

9. MONETARY EVALUATION OF CASE:

Potential Liability/Exposure:	\$
Verdict Range:	\$

Settlement Value: \$

10. RECOMMENDED CASE STRATEGY:
11. STAFFING/HOURLY RATE (list names, titles, hourly rate, and estimated number of hours for each partner, associate and/or paralegal).
12. CONSULTANT AND/OR EXPERT WITNESS (list names, specialty, hourly rate, and estimated number of hours for each consultant and/or expert).
13. INITIAL COST ESTIMATE (projected budget, including attorney fees and expenses for handling each case to/through each of the stages as provided in the Attachment C for our (estimated) Budget Guidelines. Trial costs **should not** be included until MSC and/or Trial date has been set. Please base your best estimate on past experience with similar case(s).
14. Estimated final disposition date.

Approved by: _____
(Firm's Supervising Attorney)

Date: _____

EXHIBIT C

CASE STATUS REPORT GUIDELINE
To be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:
DISTRICT FILE #:

INCIDENT DATE:
CLAIM DATE:
COMPLAINT FILED DATE:
2. STATUS OF DISCOVERY (since last status report). List depositions taken.
3. INTERROGATORIES SENT/RECEIVED (list names):
4. REQUESTS FOR MEDICAL EXAMS:
5. STATUS OF EXPERT WITNESS/CONSULTANT INVESTIGATIONS:
6. RESULTS OF MOTIONS (describe all Motions and indicate outcome):
7. SIGNIFICANT DEVELOPMENTS WHICH MAY INCREASE OR DECREASE DISTRICT'S EXPOSURE/LIABILITY:
8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to strategy):
9. SIGNIFICANT EVENTS:
Trial Setting Conference Date:
Arbitration Date:
Voluntary Settlement Conference Date:
Mandatory Settlement Conference Date:
Department
Jury ____ Non-Jury ____ (check one)
10. Please update Attachment C - Cost Estimates and Budget Guidelines.

Approved by: _____ Date: _____
(Firm's Supervising Attorney)

ATTACHMENT C

COST ESTIMATES AND BUDGET GUIDELINES

Case Name:	Date of this Evaluation:		
Attorney(s):	Case No.:		
Type of Litigation Expense	Attorney Hours	Actual To Date	Anticipated Projected Expenses
Case Assessment, Development and Administration			
Facts Investigation/Development Analysis/Strategy			
Experts/Consultants			
Document/File Management			
Budgeting			
Settlement			
Other Case Activity			
Total Hours and Expenses	0	\$0.00	\$0.00
Pre-Trial Pleadings and Motions			
Pleadings			
Preliminary Injunctions/Provisional Remedies			
Court Mandated Conferences			
Dispositive Motions			
Other Written Motions and Submissions			
Class Action Certification and Notice			
Total Hours and Expenses	0	\$0.00	\$0.00
Discovery			
Written Discovery			
Document Production			
Depositions			
Expert Discovery			
Discovery Motions			
Other Discovery			
Total Hours and Expenses	0	\$0.00	\$0.00
Trial Preparation and Trial			
Fact Witnesses			
Expert Witnesses			
Written Motions and Submissions			
Other Trial Preparation			

Trial and Hearing Attendance			
Post-Trial Motions and Submissions			
Enforcement			
Total Hours and Expenses	0	\$0.00	\$0.00
Appeal			
Appellate Motions and Submissions			
Appellate Briefs			
Oral Argument			
Total Hours and Expenses	0	\$0.00	\$0.00
Expenses (Itemize)			
Copying, Printing, Facsimile			
Messenger, Postage			
Travel, Meals, Telephone			
Subpoena Fees, Witness Fees			
Online Research			
Total Hours and Expenses	0	\$0.00	\$0.00
Grand Total	0	\$0.00	\$0.00

EXHIBIT D

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO:
CASE NAME:
FROM:

DISTRICT FILE NO.:
DATE:
EXPECTED TRIAL DATE:
VENUE:

I. **DEFENDANT**

- A. Effectiveness of each anticipated witness; rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- B. Other Insurance Coverage - type of policy, policy number and/or claim number, carrier name, address and phone number, claims person, type of other insurance clause (excess, escape or proratal), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

II. **PLAINTIFF**

- A. Name, address, age, marital status and occupation. If plaintiff is a business, provide a description.
- B. Dependents, if any; their names, ages, and relationships.
- C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- D. Name of plaintiff attorney and his/her ability. You may also want to include any comments as to his/her success on high profile or high value cases. High values cases would be those above \$750,000.00.

III. **SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM**

IV. **CO-DEFENDANTS AND/OR THIRD PARTY DEFENDANTS**

- A. Identity of parties.
- B. Respective attorneys - Names, business address, telephone numbers.

- C. Factual and legal basis for plaintiff's/cross-complainant's claims against other parties.
- D. Brief summary of probable exposure.
- E. Other Insurance Coverage - type of policy, policy number, claim number, carrier name, address and phone number, name of claims person, type of other insurance clause (excess, escape, etc), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

V. WITNESSES

- A. Name, address, age and occupation.
- B. Event they perceived.
- C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.

VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

- A. Plaintiff's theories.
- B. Defense theories.
- C. Co-defendants and/or third-party defendant theories.
- D. Strengths and weaknesses of subsections A, B, and C above.
- E. Chance of defense verdict for District, co-defendant and/or third party defendant (discuss each separately).
- F. If the District, co-defendant and/or third-party defendant settle, the probability of success of the non-settling defendant(s) in obtaining indemnity against the settling defendant (discuss each separately).
- G. Causation issues, i.e., was the District's alleged negligence a cause in fact of the damages claimed.
- H. Probable damages (compensatory) if case is lost.
- I. Punitive damage exposure? Will Plaintiff's attorney's fees be recoverable?
- J. Probability of contributory negligence finding (i.e., defense verdict) or probable percentage of comparative negligence (i.e., plaintiff's percentage of fault).
- K. Probable apportionment of fault among defendants (assign percentages).

- L. Net exposure (state a dollar amount) to District after all apportionment and based on probable damages.
- M. Settlement value and basis for evaluation.
- N. Should case be tried? Explain risks.
- O. Brief summary of probable outcome as to both liability and damage issues, indicating whether you consider this a case of liability and why.

VII. SETTLEMENT DISCUSSIONS

- A. What is the demand?
 - (a) Original amount and date.
 - (b) Present amount and date.
- B. What, if anything, has the District offered? If a definite offer has not been made, but an indicator or range has been discussed, so state, listing each indicator or range figure discussed.
- C. What, in your opinion, can the case be settled for at this time?
- D. Do you recommend that we settle? Why?

VIII. FUTURE HANDLING

- A. In your opinion, is the investigation of this case complete?
- B. If not complete, what further investigation do you suggest and what would it cost?
- C. What further discovery is needed; what would it cost to conclude the discovery and when do you expect discovery to be completed?
- D. Experts - explain need, their field, the number, probable testimony, cost of each, and whether plaintiff has experts (if so, who and how effective is he/she?).

IX. LEGAL EXPENSES

- A. What are the total legal expenses to date?
- B. If the is case is tried, what would be the approximate cost of defense through trial excluding IX.A. above (include the expense described in VIII.D.)?