

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

675



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
June 23, 2009

**SUBJECT:** Professional Service Agreement for Legal Services

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Ratify and execute a 36-month Professional Service Agreement with Asaro, Keagy, Freeland & McKinley LLP., not-to-exceed \$300,000 commencing July 1, 2009, and ending June 30, 2012; and
2. Authorize the undersigned Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions to complete this transaction.

FORM APPROVED COUNTY COUNSEL  
BY: Neal R. Kipnis DATE: 6/23/09

Departmental Concurrence

**BACKGROUND:** (Commences on Page 2)

*Robert Field*

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	<b>Current F.Y. Total Cost:</b>	\$100,000	<b>In Current Year Budget:</b>	Yes
	<b>Current F.Y. Net County Cost:</b>	\$ -0-	<b>Budget Adjustment:</b>	No
	<b>Annual Net County Cost:</b>	\$ -0-	<b>For Fiscal Year:</b>	09/10

<b>SOURCE OF FUNDS:</b> Real Estate Division Budget 100%	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: Jennifer L. Sargent  
Jennifer L. Sargent

**County Executive Office Signature**

Policy  
 Consent  
 Policy  
 Consent  
 Dep't Recomm.:  
 Per Exec. Ofc.:

**Prev. Agn. Ref.:** | **District:** All | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.52

**BACKGROUND:**

The Economic Development Agency (EDA) proposes to contract with attorneys at Asaro, Keagy, Freeland & McKinley LLP for general legal services in connection with the ongoing operations of EDA. Costs for these services will be recovered from the specific projects' budgets. The focus of these legal services will be to protect the interests of the County. If approved by the Board, EDA will have the ability and right but not the obligation, to contract for Asaro, Keagy, Freeland & McKinley LLP's services as needed over the next 36 months. The firm was selected with the assistance of County Counsel, based on their experience with similar legal issues. The proposed contract runs from July 1, 2009, to June 30, 2012. The demand and therefore spending for outside legal service is project driven and is somewhat uncertain. The contract sets "not to exceed" limits and provides the county with the right without an obligation to buy services. To allow the contract to function on demand, \$100,000 of the permitted services may be used in FY 2009/2010, \$100,000 will be budgeted for 2010/2011, and \$100,000 will be budgeted for 2011/2012. Any unused funding authority may be carried into the following two fiscal years. Use of a master professional service contract avoids the delay and work effort to seek Board authorization for each legal task over \$25,000.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

**FINANCIAL DATA:**

All costs associated with this agreement are fully funded in the EDA Real Estate Division budget for FY 2009/2010. Thus, no additional net county cost will be incurred as a result of this transaction.



1 All work performed shall be initiated through Tasking Letters sent by postal service or  
2 email. ATTORNEY shall meet with COUNTY as COUNTY requires and provide all information  
3 and reports, including an estimate of fees for each aspect of representation as identified in the  
4 Tasking Letters, when deemed necessary by COUNTY to keep it informed.

4 4. UNAVAILABILITY OF FUNDS. If funds are not appropriated or otherwise made  
5 available in any Fiscal Year for the services hereunder, the Agreement may be terminated by  
6 COUNTY upon immediate notice to ATTORNEY. ATTORNEY shall be reimbursed for the  
7 reasonable value of any non-recurring costs incurred, but not amortized, in the price of the  
8 supplies and services delivered under this AGREEMENT.

7 5. PRIOR APPROVALS. ATTORNEY shall obtain the prior written approval of  
8 COUNTY before (i) retaining any consultant; (ii) commencing travel on behalf of COUNTY  
9 outside the County of Riverside, unless the travel is between ATTORNEY'S office in San  
10 Diego and the County of Riverside.

9 6. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEY represent and  
10 warrant that no COUNTY employee whose position in COUNTY enables him/her to influence  
11 the award of this AGREEMENT or any competing agreement, and no spouse or economic  
12 dependent of such employee is or shall be employed in any capacity by ATTORNEY, or shall  
13 have any direct or indirect financial interest in this AGREEMENT.

12 It is possible that some of the ATTORNEY'S present or future clients will have disputes  
13 with COUNTY during the time that ATTORNEY are representing the COUNTY. COUNTY and  
14 ATTORNEY agree that should the situation arise where a new or existing client engages  
15 ATTORNEY in any matter in a position adverse to COUNTY or in which COUNTY'S interest  
16 may be adversely affected, that ATTORNEY will so advise COUNTY and upon receipt of such  
17 notice COUNTY may determine that the conflict may be waived or may determine that it is in  
18 the COUNTY'S best interest to terminate the services of ATTORNEY, COUNTY will notify  
19 ATTORNEY of such decision. Should COUNTY determine that it is best to terminate the  
20 services of ATTORNEY, ATTORNEY may then submit any outstanding invoices for payment  
21 up to the date of termination as determined by the notice from AGENCY.

18 7. TERMINATION. Services performed under this AGREEMENT may be  
19 terminated in whole or in part at any time the COUNTY deems to be in its best interest, as  
20 determined by the Board of Supervisors, or the Assistant County Executive Officer, Economic  
21 Development Agency Director (Assistant CEO, EDA), or designee. COUNTY shall terminate  
22 services by delivering to ATTORNEY a written Termination Notice executed by COUNTY and  
23 specifying the extent to which services are terminated and the effective termination date.

21 8. EFFECT OF TERMINATION. After receiving a Termination Notice and unless  
22 otherwise directed by COUNTY, ATTORNEY shall: (1) take all steps necessary to stop  
23 services on the date and to the extent specified in the Termination Notice; (2) complete  
24 services not terminated by the Termination Notice; (3) submit final billing for terminated  
25 services within thirty (30) days from the effective termination date; and (4) promptly submit a  
brief closing report advising COUNTY of the status of the matters being handled, including any  
unresolved matters being handled by ATTORNEY for COUNTY.

1           9.     CLOSING REPORT UPON TERMINATION.  ATTORNEY shall deliver a  
2 Closing Report to COUNTY immediately after termination of services under Section 6 or  
3 Section 7 which shall include, but not be limited to:

4                 (a)     A brief description of the status of all matters or projects that had been  
5 assigned to ATTORNEY.

6                 (b)     A discussion of COUNTY's exposure and applicable law, if appropriate.  
7           ATTORNEY shall give COUNTY copies or originals, as appropriate, of all files and  
8 attorney work product for all matters on which it has been working. This includes any  
9 computerized index, computer programs and document retrieval system created or used for  
10 these matters.

11           10.    COMPENSATION.  The total amount of compensation paid to ATTORNEY  
12 under the terms of this Agreement shall not exceed the sum of Three Hundred Thousand  
13 Dollars (\$300,000) in any single Fiscal Year, nor shall it exceed a sum total of \$300,000 over  
14 the entire term of this Agreement unless a written amendment to this AGREEMENT is  
15 executed by both parties prior to performance of any additional services. ATTORNEY shall  
16 notify the COUNTY immediately in writing when ATTORNEY has expended seventy-five  
17 percent (75%) of the total compensation. A written amendment shall be a condition precedent  
18 to any obligation for payment by COUNTY beyond the approved compensation.

19           11.    FEES.  The billing rate for all ATTORNEY that provide services under this  
20 AGREEMENT shall be per hour as set forth in Attachment "A", attached hereto and by this  
21 reference incorporated herein.

22           12.    EXPENSES.  COUNTY shall reimburse ATTORNEY for their actual out-of-  
23 pocket expenses but without any additional costs for having advanced the funds or for  
24 expenses generally considered as overhead already reflected in the ATTORNEY'S hourly rate.

25                 Reimbursable ordinary expenses shall include, but not be limited to, ATTORNEY'S  
actual cost of: (i) postage; (ii) courier service; (iii) title reports; (iv) in-house document  
reproduction, provided, however, that if the amount charged for in-house document production  
in any one month exceeds \$500.00, prior approval of COUNTY shall be obtained.

Reimbursable extraordinary expenses shall include charges of which ATTORNEY have  
obtained prior approval of COUNTY. Such expenses shall include, but not be limited to: (i)  
consultants; (ii) travel outside the County of Riverside; (iii) investigative services; and (iv) any  
expense item exceeding Five Hundred Dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to: (i) staff time or  
overtime for performing secretarial, clerical, or word processing functions; (ii) charges for time  
spent to provide necessary information for COUNTY's audits or billing inquiries; (iii) charges  
for work performed which had not been authorized by COUNTY; (iv) mileage or travel  
expenses between the regular office of ATTORNEY and the County of Riverside.

13.    PAYMENT.  ATTORNEY shall submit its billing statement monthly, in arrears,  
no later than the last day of the month following the month(s) for which services were  
rendered. The original billing statement(s) and one copy shall be submitted to:

1 Charlene Reck  
2 Economic Development Agency  
3 County of Riverside  
4 3133 Mission Inn Avenue  
5 Riverside, CA 92507  
6 (951) 955-5746

7 The original of each billing statement shall have the declaration of ATTORNEY'S  
8 Supervising Attorney and shall be itemized to include: (i) staffing level(s), hourly rates and  
9 specific activities for each attorney and/or paralegal; (ii) listing of each activity as a line item in  
10 a time reporting format acceptable to COUNTY with a description of specific activities for each  
11 attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each  
12 staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized  
13 categories, including all invoices for disbursements paid to others.

14 It is the expectation of COUNTY that it will not be billed for ordinary overhead  
15 expenses, including (i) ordinary word processing; (ii) time to prepare and review billings; and  
16 (iii) local travel.

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

22 COUNTY shall make payment(s) for services rendered under this Agreement monthly  
23 in arrears based on the itemized billing statement(s) submitted by ATTORNEY. Payment shall  
24 be made by COUNTY within thirty (30) days after receipt of billing from ATTORNEY.  
25 COUNTY shall not pay interest or finance charges on any outstanding balance(s).

14. SUPERVISION OF AGREEMENT. The COUNTY Assistant CEO/EDA may  
designate an individual in his office to act in his stead. The Assistant CEO, or his designee,  
shall have full authority to act for COUNTY on all daily operational matters under this  
Agreement and shall review and approve all ATTORNEY'S invoices, reports, whether written  
or verbal, and any change in ATTORNEY'S Supervising Attorney.

(a) The County of Riverside's Case Management Forms, attached hereto  
as Attachment B, which include the following:

- (1) Exhibit A - Litigation Management Guidelines
- (2) Exhibit B - Case Evaluation and Plan
- (3) Exhibit C - Case Status Report
- (4) Exhibit D - Pre-Trial Status Report

and together they become an integral part of this contract. The Litigation Management  
Guidelines may be updated from time to time. ATTORNEY agree that any superseding  
update shall become an integral part of this contract and will not change nor alter any other  
portion of this contract in anyway whatsoever.

1 (b) Attachment C, Budget Guidelines becomes an integral part of this  
2 contract and Litigation Guidelines.

3 15. CONFIDENTIALITY. ATTORNEY shall maintain the confidentiality of all  
4 information which it may acquire arising out of or connected with activities under this  
5 AGREEMENT in accordance with all applicable federal, State and County laws, regulations,  
6 ordinances and directive relating to confidentiality, including the Code of Professional  
Responsibility. ATTORNEY shall inform all of its principals, employees and agents providing  
services hereunder of the confidentiality provisions of this AGREEMENT. These  
confidentiality obligations shall survive the termination or expiration of this AGREEMENT.

7 16. COMMUNICATIONS WITH COUNTY. ATTORNEY recognize that their  
8 relationship with COUNTY and its agents, employees, officers and/or representatives is  
9 subject to the attorney-client privilege and that any information acquired during the term of this  
10 AGREEMENT from or through COUNTY is confidential and privileged. ATTORNEY warrant  
11 that they shall not disclose or use in any manner whatsoever any of the information from  
COUNTY and its officers, employees and agents in connection with said relationships or  
proceedings. ATTORNEY understand that the County Counsel is the empowered legal  
representative of COUNTY and its officers and employees and ATTORNEY shall not without  
specific direction from the County Counsel communicate with, advise or represent the  
COUNTY legislative body.

12 17. INSURANCE. Without limiting or diminishing the ATTORNEY's obligation to  
13 indemnify or hold the COUNTY harmless, ATTORNEY shall procure and maintain or cause to  
14 be maintained, at its sole cost and expense, the following insurance coverages during the term  
of this Agreement.

15 (a) Workers' Compensation:

16 If the ATTORNEY has employees as defined by the State of California,  
17 the ATTORNEY shall maintain statutory Workers' Compensation Insurance (Coverage A) as  
18 prescribed by the laws of the State of California. Policy shall include Employers' Liability  
(Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person  
per accident. The policy shall be endorsed to waive subrogation in favor of the County of  
Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

19 (b) Commercial General Liability:

20 Commercial General Liability insurance coverage, including but not  
21 limited to, premises liability, contractual liability, products and completed operations liability,  
22 personal and advertising injury, and cross liability coverage, covering claims which may arise  
23 from or out of ATTORNEY's performance of its obligations hereunder. Policy shall name the  
24 County of Riverside, its Agencies, Districts, Special Districts, and Departments, their  
25 respective directors, officers, Board of Supervisors, employees, elected or appointed officials,  
agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than  
\$1,000,000 per occurrence combined single limit. If such insurance contains a general  
aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the  
occurrence limit.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(c) Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this agreement, then ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

(d) Professional Liability:

ATTORNEY shall maintain Professional Liability Insurance providing coverage for performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If ATTORNEY's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement. Upon termination of this Agreement or the expiration or cancellation of the claims made insurance policy ATTORNEY shall purchase at his sole expense either (1) an Extended Reporting Endorsement (also known as Tail Coverage); or (2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or (3) demonstrate through Certificates of Insurance that ATTORNEY has maintained continuous coverage with the same or original insurer. Coverage provided under items (1), (2) or (3) will continue for a period of five (5) years beyond the termination of this Agreement.

(e) General Insurance Provisions – All Lines:

(1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

(2) The ATTORNEY's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, ATTORNEY's carriers shall either (a) reduce or eliminate such self-insured retention as respects this Agreement with the County, or (b) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(3) ATTORNEY shall cause ATTORNEY's insurance carrier(s) to furnish the County of Riverside with either (a) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and (b) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance

1 shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall  
2 be given to the County of Riverside prior to any material modification, cancellation, expiration  
3 or reduction in coverage of such insurance. In the event of a material modification,  
4 cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith,  
5 unless the County of Riverside receives, prior to such effective date, another properly  
6 executed original Certificate of Insurance and original copies of endorsements or certified  
7 original policies, including all endorsements and attachments thereto evidencing coverage's  
8 set forth herein and the insurance required herein is in full force and effect. ATTORNEY shall  
9 not commence services until the COUNTY has been furnished original Certificate(s) of  
10 Insurance and certified original copies of endorsements and if requires, certified original  
11 policies of insurance including all endorsements and any and all other attachments as required  
12 in this Section. An individual authorized by the insurance carrier to do so on its behalf shall  
13 sign the original endorsements for each policy and the Certificate of Insurance.

8 (4) It is understood and agreed to by the parties hereto that the  
9 ATTORNEY's insurance shall be construed as primary insurance, and the COUNTY's  
10 insurance and/or deductibles and/or self insured retention's or self-insured programs shall not  
11 be construed as contributory.

11 (5) If, during the term of this AGREEMENT or any extension thereof,  
12 there is a material change in the scope of services; or, there is a material change in the  
13 equipment to be used in the performance of the scope of work which will add additional  
14 exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement,  
15 including any extensions thereof, exceeds five (5) years the COUNTY reserves the right to  
16 adjust the types of insurance required under this Agreement and the monetary limits of liability  
17 for the insurance coverage's currently required herein, if; in the County Risk Manager's  
18 reasonable judgment, the amount or type of insurance carried by the ATTORNEY has become  
19 inadequate.

16 (6) ATTORNEY shall pass down the insurance obligations contained  
17 herein to all tiers of subcontractors working under this Agreement.

17 (7) The insurance requirements contained in this Agreement may be  
18 met with a program(s) of self-insurance acceptable to the COUNTY.

19 (8) ATTORNEY agrees to notify COUNTY of any claim by a third  
20 party or any incident or event that may give rise to a claim arising from the performance of this  
21 Agreement.

21 18. INDEMNIFICATION. ATTORNEY shall indemnify and hold harmless the  
22 County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective  
23 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents  
24 and representatives from any liability whatsoever, based or asserted upon any services of  
25 ATTORNEY, its officers, employees, subcontractors, agents or representatives arising out of  
or in any way relating to this AGREEMENT, including but not limited to property damage,  
bodily injury, or death or any other element of any kind or nature whatsoever arising from the  
performance of ATTORNEY, its officers, agents, employees, subcontractors, agents or  
representatives from this Agreement. ATTORNEY shall defend, at its sole expense, including,  
but not limited to, litigation expenses, attorney fees, cost of investigation, defense and

1 settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and  
2 Departments, their respective directors, officers, Board of Supervisors, elected and appointed  
3 officials, employees, agents and representatives in any claim or action based upon such  
alleged acts or omissions.

4 With respect to any action or claim subject to indemnification herein by ATTORNEY,  
5 ATTORNEY shall, at their sole cost, have the right to use counsel of their own choice and shall  
6 have the right to adjust, settle, or compromise any such action or claim without the prior  
consent of COUNTY; provided, however, that any such adjustment, settlement or compromise  
in no manner whatsoever limits or circumscribes ATTORNEY's indemnification to COUNTY as  
set forth herein.

7 ATTORNEY's obligation hereunder shall be satisfied when ATTORNEY has provided  
8 to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the  
action or claim involved.

9 The specified insurance limits required in this Agreement shall in no way limit or  
10 circumscribe ATTORNEY's obligations to indemnify and hold harmless the COUNTY herein  
from third party claims.

11 In the event there is conflict between this clause and California Civil Code Section  
12 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall  
13 not relieve the ATTORNEY from indemnifying the COUNTY to the fullest extent allowed by  
law.

14 19. NOTICES. All notices and required reports shall be written and hand-delivered  
15 or mailed by first class, postage prepaid, addressed to COUNTY or ATTORNEY at the  
addresses below, or at any other address COUNTY or ATTORNEY shall provide in writing to  
each other:

16 If to COUNTY: Steve Gilbert, Principal Real Property Agent  
17 Economic Development Agency, Real Estate Division  
18 County of Riverside  
3133 Mission Inn Avenue  
Riverside, CA 92507

19 If to ATTORNEY: Steven A. McKinley, Esq.  
20 Asaro, Keagy, Freeland & McKinley  
3170 Fourth Avenue, Fourth Floor  
21 San Diego, CA 92103

22 20. ASSIGNMENT. No part of this AGREEMENT or any right or obligations arising  
23 from it is assignable without the written consent of COUNTY. Any attempt by ATTORNEY to  
24 assign or subcontract services relating to this AGREEMENT without the consent of COUNTY  
shall constitute a material breach of this AGREEMENT. However, ATTORNEY may retain  
25 consultants and experts as ATTORNEY deem appropriate after receiving the written approval  
of COUNTY.

1           21. MERGER. All the attachments and exhibits are attached and incorporated as  
2 part of this AGREEMENT.

3           22. COMPLETE AGREEMENT. This AGREEMENT shall constitute the complete  
4 and exclusive statement of understanding between the COUNTY and ATTORNEY which  
5 supersedes all previous written or oral agreements, and all prior communications between  
6 COUNTY and ATTORNEY relating to the subject matter of this AGREEMENT.

7 IN WITNESS WHEREOF, the parties hereto have caused their duly authorized  
8 representatives to execute this Agreement.

9 Dated: \_\_\_\_\_

**COUNTY OF RIVERSIDE**  
Board of Supervisors

By: \_\_\_\_\_

Jeff Stone, Chairman  
Board of Supervisors

10 **ATTEST:**  
11 Kecia Harper-Ihem  
12 Clerk of the Board

13 By: \_\_\_\_\_

Deputy

14 **APPROVED AS TO FORM:**

15 Pamela J. Walls  
16 County Counsel

17 By:  \_\_\_\_\_

Synthia M. Gunzel  
Deputy County Counsel

**ASARO, KEAGY, FREELAND & MCKINLEY**

20 By: \_\_\_\_\_

21 Steven A. McKinley, Esq.

ATTACHMENT A TO AGREEMENT

BETWEEN  
RIVERSIDE COUNTY  
AND  
ASARO, KEAGY, FREELAND &McKINLEY  
FOR PROFESSIONAL SERVICES

The following is a list of attorneys expected to provide services under the Agreement, and their hourly rates:

<u>Attorney</u>	<u>Hourly Rate</u>	<u>Services</u>
Richard D. Freeland, Of Counsel	\$300 per hour	Supervision; Client Meetings; Strategy
Steven A. McKinley, Partner	\$300 per hour	Supervision; Client Meetings; Strategy; Trial and Hearings
Charles D. Campbell, Partner	\$300 per hour	Research; motions, briefing and appeals; Client Meetings
Roscoe D. Keagy, Of Counsel	\$300 per hour	Client Meetings; Strategy
Karen G. McKinley, Of Counsel	\$200 per hour	Research; Procedural Hearings
Chris Harvey, Independent Contractor	\$150 per hour	Research

Travel between ATTORNEY'S San Diego office and Riverside County will be charged at one half the foregoing rates. ATTORNEY will appear at routine, non-dispositive hearings by telephone court call, unless COUNTY requests or the Court requires to the contrary.

**ATTACHMENT B**  
**CASE MANAGEMENT FORMS**

Exhibit A  
County of Riverside  
Litigation Management Guidelines

Philosophy

Our claims philosophy is to identify, on a timely basis, those matters for which there is liability and to address issues promptly. The County of Riverside, hereinafter referred to as County, 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 defense 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. Counsel for each matter shall be selected by the requesting County Department. 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 County:
  - 1. The names of other professionals (partners, associates, law clerks, paralegals, etc.) who will assist in the defense of 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.
  - 2. We also request no more than two (2) senior attorneys in the firm handle our files for each line of coverage i.e., general liability, auto liability and medical malpractice; any exceptions must be approved in writing by the County Department. See Use of Appropriate Personnel. The County Department 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 defense 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. If applicable, developing the defense of contributory or comparative negligence.

4. Raising causation issues to ascertain whether there is a nexus between the County's alleged act(s) and the actual damages sustained.
  5. Critically analyzing the basis for all damages claimed.
- B. Within ninety (90) days following receipt of a case, counsel shall prepare and send to County Department, 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, an analysis of plaintiff's injuries, 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. Production of documents.
    - c. Purchase order/contracts/lease agreements.
    - d. Internal statements, memos, and correspondence
    - e. Inspections, etc.
    - f. Blue prints, if applicable.

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

3. Strategy. Counsel shall define the strategy to be used in defending or presenting 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. Counsel will also provide an estimate of the anticipated cost of each significant aspect of the litigation, pursuant to the attached Budget Guidelines Exhibit 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 counsel to County Department. Counsel will promptly respond to all letters or phone calls and will keep County Department and Office of 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 counsel to the County Department. It is required that within 10 days of any County employee's deposition being taken, counsel will meet with the county 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, defense 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 the County Department 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 the County Department of that fact in a written update. Consequently, no six-month period shall expire without written communication from counsel to the County Department.

### V. SETTLEMENT AUTHORITY

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 Department and/or Board of Supervisors approval when necessary.

## VI. LEGAL BILLINGS

- A. Unless otherwise provided in the Agreement, 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 County Department to resolve problems or answer questions.

Legal fees will not be paid unless submitted with the following information:

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 County Department 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 Riverside County, 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 County, the attorney firm must remit a reimbursement payment to the County of Riverside 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

ATTORNEY 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. ATTORNEY shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between COUNTY and ATTORNEY.

The County of Riverside retains the right to have legal billings audited.

VII. TRIALS AND REPORTING

- A. Within ten (10) to thirty (30) days prior to trial, counsel will meet with County 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 Department outlining the trial results.

VIII. FINAL REPORTS

- A. At the conclusion of the case, a short summary report should be directed to the County Department. Original closing papers and the final billing should be attached.
- B. Within ninety (90) days following the termination of each lawsuit, the County Department will review the file to determine compliance with the County's guidelines and the strategy and budget developed by defense counsel for the case. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve defense or representation of the County's claims.

IX. ELECTRONIC COMMUNICATION/DATA STORAGE/PRESENTATION

- A. The County of Riverside strongly suggests all attorneys handling County 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 (photo's, 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 County of Riverside 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 County of Riverside strongly suggests all attorneys handling cases on behalf of the County become proficient in managing and presenting cases via electronic medium.

X. MISCELLANEOUS

There may be additional reporting requirements required by the County Department. 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.



INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

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: \_\_\_\_\_

**CASE STATUS REPORT GUIDELINE**

To be completed by Firm's Supervising Attorney

1. FIRM NAME:  
  
CASE NAME:  
  
COURT CASE #:  
COUNTY FILE #:  
  
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 COUNTY'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)

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO:  
FROM:  
DATE:

CASE NAME:  
COUNTY FILE NO.:

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.
- F. 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 County, co-defendant and/or third party defendant (discuss each separately).
- F. If the County, 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 County'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 County 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 County 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.