

704B



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

FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 10, 2010

SUBJECT: Legal Services Agreement
Municipal Separate Stormwater System Permits and other Related Regulatory Services

RECOMMENDED MOTION:

1. Approve the Legal Services Agreement with Burhenn & Gest LLP, as a sole source basis, to provide legal services for the District's Municipal Separate Stormwater System (MS4) Permits and other related regulatory services.
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

WARREN D. WILLIAMS
General Manager-Chief Engineer

AD:blj

| | | | | |
|-----------------------|-----------------------------|----------------|-------------------------|---------------------|
| FINANCIAL DATA | Current F.Y. District Cost: | \$300,000.00 | In Current Year Budget: | YES |
| | Current F.Y. County Cost | N/A | Budget Adjustment: | No |
| | Net District Cost: | \$1,200,000.00 | For Fiscal Year: | 10/11, 11/12, 12/13 |

| | | | | |
|-------------------------|--------------------------------------|--|----------------------------------|--------------------------|
| SOURCE OF FUNDS: | | | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| 25190-947560-525440 | Santa Ana NPDES Legal Services | | Requires 4/5 Vote | <input type="checkbox"/> |
| 25200-947580-525440 | Santa Margarita NPDES Legal Services | | | |
| 25180-947540-525440 | Whitewater NPDES Legal Services | | | |

C.E.O. RECOMMENDATION:

APPROVE

BY:
Jerry Norris

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
DATE: 7/1/2010
BY: NEAL R. KIPNIS

Departmental Concurrence

FISCAL PROCEDURES APPROVED
BY: M. CHANG, FINANCIAL DIRECTOR
DATE: 7/1/2010

Policy Policy
Consent Consent

Dept't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: | District: All | Agenda Number: **11.1**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

SUBJECT: Legal Services Agreement
Municipal Separate Stormwater System Permits and other Related Regulatory Services

SUBMITTAL DATE: August 10, 2010

Page 2

BACKGROUND:

The District serves as Principal Permittee in the administration of the Santa Ana, Santa Margarita and Whitewater Regions MS4 Permits issued by the Santa Ana, San Diego and Colorado River Regional Water Quality Control Boards (Regional Boards), respectively.

The District requires specialized legal services in order to effectively support the development of the recently adopted Santa Ana Regional Board MS4 Permit, the pending San Diego Regional Board MS4 Permit and the Colorado River Regional Board Coachella Valley Stormwater Channel Bacterial Indicator Total Maximum Daily Load (TMDL). These MS4 Permits and regulatory actions can carry significant legal and fiscal liabilities for both the District and the Permittees that the District represents as Principal Permittee for the three NPDES MS4 Permits. Due to the relatively arcane nature of the legal issues, the potential significance of the liabilities and the need to move quickly to engage legal support, County Counsel has recommended solicitation of outside legal services.

Burhenn & Gest LLP (Attorney) has provided accurate legal representation in the negotiation process with the Santa Ana Regional Water Quality Control Board for both the recently adopted MS4 Permit and an Administrative Civil Liability issued to the County of Riverside. Attorney has also provided legal representation during MS4 permit negotiations for Los Angeles County. During the Santa Ana Region MS4 Permit negotiations, Attorney provided legal review in preparation for a Regional Board workshop, hearings and other meetings related to the MS4 Permits. Attorney provided critical input on the issues of unfunded mandates and the EPA Water Transfer Rule.

As the District enters into negotiations with the San Diego Regional Water Quality Control Board on the Santa Margarita Region MS4 Permit and prepares to address the Coachella Valley Stormwater Channel Bacterial Indicator TMDL, it is essential to have legal representation that is familiar with the stormwater pollution prevention program in Riverside County.

County Counsel has approved the Agreement as to legal form and the Attorney has executed the Agreement.

FINANCIAL: Sufficient funds are included in the District's FY 2010-2011 budget. Additional funds will be allocated in subsequent budget years 11/12 and 12/13.

AD:blj

LEGAL SERVICES AGREEMENT

Burhenn & Gest LLP

Fiscal Years 2010-2011 through 2012-2013

The RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and BURHENN & GEST LLP, hereinafter called "ATTORNEY," hereby agree as follows:

1. SCOPE OF SERVICES – ATTORNEY shall provide "on-call" legal counsel and services in connection with the District's various municipal separate storm sewer system ("MS4") permits (Permits). Included in this work may be the legal review of Permits and regulatory actions; the preparation for and participation in testimony at Regional Board workshops, hearings and other meetings related to the Permits; and other related regulatory services as assigned.

2. TERM OF AGREEMENT – The term of this Agreement shall commence on July 1, 2010 and terminate on June 30, 2013. By mutual consent of DISTRICT and ATTORNEY, this Agreement may be extended, twice for one (1) year periods. This will provide a five (5) year maximum term for this Agreement.

3. KEY ATTORNEY – ATTORNEY agrees that David Burhenn will be the lead attorney assigned to perform the work under the Scope of Services and terms of this Agreement. Any changes or substitution of the assigned attorney must have the express written approval of the General Manager-Chief Engineer of DISTRICT or his designee. In addition to Mr. Burhenn, Howard Gest may also provide services under this Agreement.

4. COMPENSATION – DISTRICT shall pay ATTORNEY for services performed and expenses incurred in accordance with the standard rates set forth on Attachment "B" and under the terms of this Agreement shall not exceed the sum of one-million five-hundred thousand dollars (\$1,500,000) unless a written Amendment to this Agreement is executed by

1 both parties prior to performance of additional services. Since these services are generally
2 required throughout the term of the contract, DISTRICT and ATTORNEY will monitor work
3 requirements and efforts such that the limits of compensation are not reached before the last
4 month of the term of the Agreement.

5 5. UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS – When
6 funds are not appropriated or otherwise made available in a subsequent Fiscal Year, this
7 Agreement shall be cancelled and ATTORNEY shall be reimbursed for the reasonable value of
8 any non-recurring costs incurred and covered under the terms of this Agreement.
9

10 6. EXPENSES – Reimbursable expenses shall include billings for costs and
11 expenses incurred on DISTRICT's behalf, including attorney service courier, photocopies of
12 documents, filing fees, and travel. There are no other reimbursable expenses, unless previously
13 agreed to. No single expense shall exceed \$1,500 without the prior consent of the General
14 Manager-Chief Engineer of DISTRICT or his designee.
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16 7. PAYMENT – ATTORNEY shall submit its billing statement at least quarterly,
17 but no more than monthly, in arrears, following satisfactory performance of services. Payments
18 shall be made by DISTRICT within thirty (30) days after receipt of billing from ATTORNEY.
19 All billings shall be itemized to include (i) staffing levels, hourly rates and specific activities
20 for each attorney and/or paralegal; (ii) listing of each activity as a line item in a time reporting
21 format acceptable to DISTRICT with a detailed description of specific activities for each
22 attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each
23 staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized
24 categories. Payments shall be made on a progressive basis.
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1 It is the expectation of DISTRICT that it will not be billed for ordinary overhead
 2 expenses, including (i) ordinary word processing; (ii) time to prepare and review billings; and
 3 (iii) local travel.

4 ATTORNEY shall have and maintain all backup documentation to support all
 5 entries included in the monthly billing statement. Such documentation shall be in a form
 6 subject to audit and in accordance with generally accepted accounting principles. ATTORNEY
 7 shall make such documentation available to auditors upon request and at such reasonable times
 8 and locations as may be agreed to between DISTRICT and ATTORNEY.
 9

10 Statements/invoices shall be submitted directly to DISTRICT'S Finance
 11 Division. The Finance Division will accept a mailed or hand delivered original
 12 statement/invoice. All inquiries regarding payments and/or status of statements/invoices
 13 should be made directly to the Finance Division: Attention Accounts Payable, 951.955.8454.
 14

15 8. LICENSES – ATTORNEY, its employees, agents, contractors and
 16 subcontractors shall maintain professional licenses required by the laws of the State of
 17 California at all times while performing services under this Agreement.

18 9. NOTICES – Any and all notices sent, or required to be sent, to the parties of this
 19 agreement will be mailed by first class mail, postage prepaid, to the following addresses:

20 Riverside County Flood Control &
 21 Water Conservation District
 22 1995 Market Street
 23 Riverside, CA 95201
 Attn: Jason Uhley

Burhenn & Gest, LLP
 624 South Grand Avenue
 Suite 2200
 Los Angeles, CA 90017
 Attn: David W. Burhenn

24 10. REQUIRED INSURANCE – Without limiting or diminishing ATTORNEY'S
 25 obligation to indemnify or hold DISTRICT harmless, ATTORNEY shall procure and maintain
 26 or cause to be maintained, at its sole cost and expense, the following insurance coverage during
 27 the term of this Agreement:
 28

1 A. Workers' Compensation:

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

10 B. Vehicle Liability:

11 If ATTORNEY'S vehicles or mobile equipment are used in the performance of
12 the obligations under this Agreement, then ATTORNEY shall maintain liability
13 insurance for all owned, non-owned or hired vehicles so used in an amount not
14 less than \$1,000,000 per occurrence combined single limit. If such insurance
15 contains a general aggregate limit, it shall apply separately to this Agreement or
16 be no less than two (2) times the occurrence limit. Policy shall name the
17 Riverside County Flood Control and Water Conservation District, the County of
18 Riverside, its agencies, districts, special districts and departments, their
19 respective directors, officers, Board of Supervisors, employees, elected or
20 appointed officials, agents or representatives as additional insureds.
21

22 C. Professional Liability:

23 ATTORNEY shall maintain Professional Liability Insurance providing coverage
24 for ATTORNEY'S performance of work included within this Agreement, with a
25 limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000
26 annual aggregate. If ATTORNEY'S Professional Liability Insurance is written
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1 on a claims made basis rather than an occurrence basis, such insurance shall
2 continue through the term of this Agreement and ATTORNEY shall purchase at
3 his sole expense either 1) an Extended Reporting Endorsement (also known as
4 Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a
5 retroactive date back to the date of or prior to, the inception of this Agreement;
6 or 3) demonstrate through Certificates of Insurance that ATTORNEY has
7 maintained continuous coverage with the same or original insurer. Coverage
8 provided under items: 1), 2) or 3) will continue as long as the law allows.
9

10 D. General Insurance Provisions – All Lines:

- 11 1) Any insurance carrier providing insurance coverage hereunder shall be
12 admitted to the State of California and have an A.M. BEST rating of not
13 less than an A: VIII (A: 8) unless such requirements are waived, in
14 writing, by the County Risk Manager. If the County Risk Manager
15 waives a requirement for a particular insurer such waiver is only valid
16 for that specific insurer and only for one policy term.
17
- 18 2) The ATTORNEY must declare its insurance self-insured retention for
19 each coverage required herein. If any such self-insured retention
20 exceeds \$500,000 per occurrence each such retention shall have the prior
21 written consent of the County Risk Manager before the commencement
22 of operations under this Agreement. Upon notification of self-insured
23 retention deemed unacceptable to the DISTRICT, and at the election of
24 the County Risk Manager, ATTORNEY'S carriers shall either: 1) reduce
25 or eliminate such self-insured retention with respect to this Agreement
26 with DISTRICT, or 2) procure a bond which guarantees payment of
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1 losses and related investigations, claims administration, and defense
2 costs and expenses.

- 3 3) ATTORNEY shall cause their insurance carrier(s) to furnish DISTRICT
4 with 1) a properly executed original Certificate(s) of Insurance and
5 certified original copies of Endorsements effecting coverage as required
6 herein; and 2) if requested to do so orally or in writing by the County
7 Risk Manager, provide original certified copies of policies including all
8 Endorsements and all attachments thereto, showing such insurance is in
9 full force and effect. Further, said Certificate(s) and policies of
10 insurance shall contain the covenant of the insurance carrier(s) that thirty
11 (30) days written notice shall be given to DISTRICT prior to any
12 material modification, cancellation, expiration or reduction in coverage
13 of such insurance. In the event of a material modification, cancellation,
14 expiration or reduction in coverage, this Agreement shall terminate
15 forthwith, unless DISTRICT receives, prior to such effective date,
16 another properly executed original Certificate of Insurance and original
17 copies of Endorsements or certified original policies, including all
18 endorsements and attachments thereto, evidencing coverages set forth
19 herein and the insurance required herein is in full force and effect.
20 ATTORNEY shall not commence operations until DISTRICT has been
21 furnished with original Certificate(s) of Insurance and certified original
22 copies of Endorsements and if requested, certified original policies of
23 insurance including all endorsements and any and all other attachments
24 as required in this Section. An individual authorized by the insurance
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1 carrier to do so on its behalf shall sign the original endorsements for each
2 policy and the Certificate of Insurance.

3 4) It is understood and agreed by the parties hereto that ATTORNEY'S
4 insurance shall be construed as primary insurance, and DISTRICT'S
5 insurance and/or deductibles and/or self-insured retentions or self-
6 insured programs shall not be construed as contributory.

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

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

19 7) The insurance requirements contained in this Agreement may be met
20 with a program(s) of self-insurance acceptable to DISTRICT.

21 8) ATTORNEY agrees to notify DISTRICT of any claim by a third party or
22 any incident or event that may give rise to a claim arising from the
23 performance of this Agreement.
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1 11. INDEMNIFICATION – ATTORNEY shall indemnify and hold harmless
2 DISTRICT (including its officers, Board of Supervisors, elected and appointed officials,
3 employees, agents and representatives) from any and all liability, claim, damage, proceeding
4 or action, present or future, based upon, arising out of or in any way relating to ATTORNEY'S
5 (including its partners, employees, subcontractors and agents) actual or alleged negligent,
6 reckless or willful misconduct, acts or omissions related to this Agreement, performance under
7 this Agreement, or failure to comply with the requirements of this Agreement, including but not
8 limited to: (a) property damage; (b) bodily injury or death; or (c) any other element of any kind
9 or nature whatsoever, in any claim or action brought by a third party.

11 ATTORNEY shall defend, at its sole expense, including all costs and fees (including
12 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
13 DISTRICT (its officers, Board of Supervisors, elected and appointed officials, employees,
14 agents and representatives) in any claim, proceeding or action for which indemnification is
15 required.

17 With respect to any of ATTORNEY'S indemnification requirements, ATTORNEY
18 shall, at its sole cost, have the right to use counsel of their own choice and shall have the right
19 to adjust, settle, or compromise any such claim, proceeding or action without the prior consent
20 of DISTRICT; provided, however, that such adjustment, settlement or compromise in no
21 manner whatsoever limits or circumscribes ATTORNEY'S indemnification obligations to
22 DISTRICT.

24 ATTORNEY'S indemnification obligations shall be satisfied when ATTORNEY has
25 provided to DISTRICT the appropriate form of dismissal (or similar document) relieving
26 DISTRICT from any liability for the claim, proceeding or action involved.

1 The specified insurance limits required in this Agreement shall in no way limit or
2 circumscribe ATTORNEY'S obligations to indemnify and hold harmless DISTRICT from third
3 party claims.

4 12. TERMINATION – This Agreement may be terminated by either ATTORNEY
5 or DISTRICT upon a ten (10) day written notice to the other party. After receiving a
6 termination notice, ATTORNEY shall take all steps necessary to stop services on the date and
7 to the extent specified in the termination notice and submit a billing for all services performed
8 to date of notice of termination and any services to be completed as set forth in the notice of
9 termination within thirty (30) days from effective termination date. ATTORNEY shall
10 promptly submit a brief report advising of the status of all matters, including any unresolved
11 matters being handled by ATTORNEY for DISTRICT. ATTORNEY shall give DISTRICT
12 copies or originals, as appropriate of all files and attorney work product for all matters on
13 which it has been working. This includes any computerized index, computer programs and
14 document retrieval system created or used for these matters.
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17 13. ASSIGNMENT – Neither this Agreement nor any part thereof shall be assigned
18 by ATTORNEY without the prior written consent of DISTRICT.

19 14. NON-DISCRIMINATION – In the performance of the terms of this Agreement,
20 ATTORNEY shall not engage in nor permit others he may employ to engage in discrimination
21 in the employment of persons because of the race, color, national origin or ancestry, religion,
22 physical handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
23 condition, marital status or sex of such persons, in accordance with the provision of California
24 Labor Code Section 1735.
25

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

4 Anyone who is a former employee of the DISTRICT at the time of execution of
5 this Agreement or who subsequently becomes affiliated with ATTORNEY in any capacity
6 (employee, associate or partner) shall not (i) participate in the services provided by
7 ATTORNEY to DISTRICT; or (ii) become a partner, shareholder or otherwise share in the
8 profits of ATTORNEY for a period of one year from the date the former DISTRICT employee
9 left DISTRICT employment.
10

11 It is possible that some of ATTORNEY's present or future clients will have
12 disputes with DISTRICT during the time that ATTORNEY is representing the DISTRICT.
13 DISTRICT and ATTORNEY agree that should the situation arise where a new or existing
14 client engages ATTORNEY in any matter in a position adverse to DISTRICT or in which
15 DISTRICT's interest may be adversely affected, that ATTORNEY will so advise DISTRICT,
16 and upon receipt of such notice, DISTRICT may determine that the conflict may be waived or
17 may determine, in the event that ATTORNEY wishes to continue to represent the other client,
18 that it is in DISTRICT's best interest to terminate the services of ATTORNEY. Should
19 DISTRICT determine that it is best to terminate the services of ATTORNEY, DISTRICT will
20 notify ATTORNEY of such decision. ATTORNEY may then submit any outstanding invoices
21 for payment up to the date of termination as determined by the notice from DISTRICT.
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24 16. CONFIDENTIALITY – ATTORNEY shall maintain the confidentiality of all
25 information which it may acquire arising out of or connected with activities under this
26 Agreement in accordance with all applicable Federal, State and County laws, regulations,
27 ordinances and directives relating to confidentiality, including the Code of Professional
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1 Responsibility. ATTORNEY shall inform all of its principals, employees and agents providing
2 services hereunder of the confidentiality provisions of this Agreement. These confidentiality
3 obligations shall survive the termination or expiration of this Agreement.

4 17. LITIGATION MANAGEMENT GUIDELINES – The Litigation Management
5 Guidelines are attached hereto as Exhibit A and includes Exhibits B (Initial Case Evaluation
6 and Plan), C (Case Status Report), and D (Pre-Trial Status Report), and together they become
7 an integral part of this Agreement. The Litigation Management Guidelines may be updated
8 from time to time. ATTORNEY agrees that each superseding update shall become an integral
9 part of this Agreement and will not change nor alter any other portion of this Agreement in any
10 way whatsoever.

12 18. COST ESTIMATES AND BUDGET GUIDELINES – The Cost Estimates and
13 Budget Guidelines is attached hereto as Attachment C which becomes an integral part of this
14 Agreement.

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

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22 ATTACHMENTS:

- 23 Attachment A – Not used
- 24 Attachment B – Fee Schedule
- Attachment C – Cost Estimates and Budget Guidelines

25 EXHIBITS:

- 26 Exhibit A - Litigation Guidelines
- 27 Exhibit B - Initial Case Evaluation and Plan Guideline
- 28 Exhibit C - Case Status Report Guideline
- Exhibit D - Attorney Pre-Trial Status Report Guideline

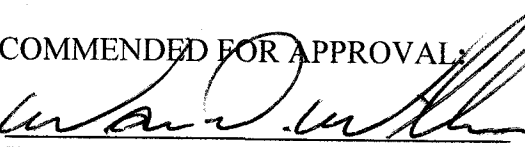
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

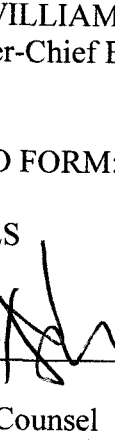
**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By 
NEAL KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By _____
Deputy

(SEAL)

Legal Services Agreement: Burhenn & Gest LLP
6/29/10
AD:bjj

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BURHENN & GEST LLP

By 
DAVID W. BURHENN

Partner
Title

(213) 629-8788
Area Code/Phone Number

(ATTACH NOTARY WITH CAPACITY STATEMENT)

Legal Services Agreement: Burhenn & Gest LLP
6/29/10
AD:bjj

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On 7-15-2010 before me, Rita Kaye Woodfork
Date Here Insert Name and Title of the Officer

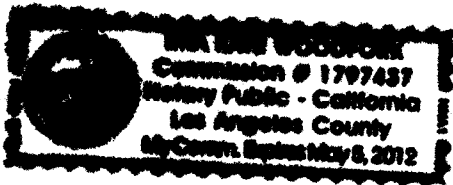
personally appeared David Burhenn
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rita Kaye Woodfork
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

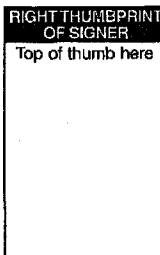
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

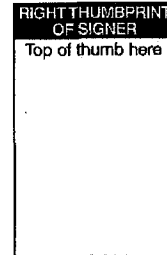
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

**ATTACHMENT A
LEGAL SERVICES AGREEMENT**

LIST OF ATTORNEYS

(NOT USED)

ATTACHMENT B

**FEE SCHEDULE
Burhenn & Gest LLP**

| NAME | TITLE | HOURLY RATE |
|---------------|--------------|--------------------|
| Howard Gest | Attorney | \$350 |
| David Burhenn | Attorney | \$350 |
| --- | Associates | \$250 |
| --- | Paralegals | \$95 |

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 |

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICTLitigation Management GuidelinesClaims 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 (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 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.

INITIAL CASE EVALUATION AND PLAN GUIDELINETo 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.

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: _____

EXHIBIT C

CASE STATUS REPORT GUIDELINETo 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: _____
(Firm's Supervising Attorney)

Date: _____

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 CLAIMIV. 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.)?