

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

328



**FROM:** Economic Development Agency / Facilities Management

**SUBMITTAL DATE:**  
June 28, 2011

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

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

1. Approve and execute an annual Professional Services Agreement with Freeland, McKinley & McKinley (formerly known as Asaro, Keagy, Freeland & McKinley), for an amount not-to-exceed \$300,000 commencing July 1, 2011, and ending June 30, 2012; and,
2. Authorize the Assistant County Executive Officer/EDA, or his designee, to administer this agreement.

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

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 300,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<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

**County Executive Office Signature**

FISCAL PROCEDURES APPROVED  
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
 BY:   
 DATE: 6/22/11  
 DEPARTMENT: SAMUEL WONG

FORM APPROVED COUNTY COUNSEL  
 BY:   
 DATE: 6/22/11  
 MARSHAL VICTOR

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

Prev. Agn. Ref.:

District: 3

Agenda Number:

3.29

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**BACKGROUND:**

The Economic Development Agency (EDA) proposes to contract with attorneys Freeland, McKinley & McKinley (FMM) for legal services in connection with the ongoing litigation with the French Valley Business Center (FVBC) project. Currently, the FVBC project is entering into a critical litigation phase and requires expanded legal services for the defense of two lawsuits filed against the County of Riverside and by the French Valley Business Center, LLC. In 2009, with the assistance of County Counsel, FMM was selected to represent the County based on their legal experience and qualifications.

EDA wishes to establish this annual legal services contract with FMM in a not-to-exceed amount of \$300,000. The contract sets a "not to exceed" limit and provides the County with the right, but no obligation, to request or expend this amount for services over the next year. The focus of these legal services will be to protect the interests of the County.

The use of a master professional service contract avoids the delay and work effort to seek Board authorization for each and every legal task over \$25,000. EDA will return to the Board on an annual basis and to approve a Professional Services Agreement for ongoing legal services as necessary.

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

**FINANCIAL DATA:**

All anticipated costs of legal services associated with this agreement are funded by EDA's Real Estate budget.

**Attachments:**

Professional Services Agreement

1 **LEGAL SERVICES AGREEMENT**

2 The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and FREELAND, MCKINLEY &  
3 MCKINLEY hereinafter called "ATTORNEYS", hereby agree as follows:

4 1. **TERMS OF AGREEMENT.** This Agreement shall commence upon execution, and  
5 continue until June 30, 2012, or completion of the last work assignment, whichever occurs first, unless  
6 sooner terminated pursuant to Section 5, or Section 13.

7 2. **ATTORNEY SERVICES AND RESPONSIBILITIES.** Upon appointment, ATTORNEY shall  
8 provide legal counsel and services. ATTORNEYS legal representation shall include representation of  
9 County in all aspects of the French Valley Business Center, including but not limited to:

10 (a) Legal services necessary and appropriate to the defense and/or settlement of  
11 litigation brought against the County by French Valley Business Center, and/or its partners and affiliates,  
12 arising out of the French Valley Airport ground and office leases, and/or the claim filed by French Valley  
13 Business Center January 28, 2010.

14 3. **KEY ATTORNEY.** ATTORNEY agrees that Steve McKinley, Partner, will be the  
15 supervising attorney assigned to perform the work under this Agreement. Support attorneys and  
16 paralegals shall be designated by ATTORNEYS' lead. Any changes or substitution of the assigned  
17 attorney must have the express written approval of the Assistant County Executive Officer/EDA.

18 4. **COMPENSATION.** COUNTY shall pay ATTORNEY at the following hourly rates for  
19 services rendered:

<u>Partner/Associate</u>	<u>Hourly Rates</u>
Partner	\$300
Of Counsel	\$300
Associates	\$150

23 4.1 The total amount of compensation paid to ATTORNEY under the terms of this Agreement  
24 shall not exceed the sum of Three Hundred Thousand Dollars (\$300,000) in Fiscal Year 2011/2012,  
25 unless a written amendment to this agreement is executed by both parties prior to performance of any  
26 additional services. ATTORNEYS shall notify the COUNTY immediately in writing when ATTORNEYS  
27 have expended seventy-five percent (75%) of the total payment by COUNTY beyond the approved  
28

1 compensation. A written amendment shall be a condition precedent to any obligation for payment by  
2 COUNTY beyond the approved compensation.

3 5. UNAVAILABILITY OF FUNDS. When funds are not appropriated or otherwise made  
4 available in any Fiscal Year, this Agreement shall be terminated by COUNTY upon immediate notice to  
5 ATTORNEYS. ATTORNEYS shall be reimbursed for the reasonable value of any non-recurring costs  
6 incurred and covered under the terms of this Agreement.

7 6. EXPENSES. COUNTY shall reimburse ATTORNEYS for their actual out-of-pocket  
8 expenses but without any additional costs for having advanced the funds or for expenses generally  
9 considered as overhead already reflected in the ATTORNEYS' hourly rate.

10 6.1 Reimbursable ordinary expenses shall include those expenses incurred on COUNTY'S  
11 behalf, to include but not limited to: (i) postage; (ii) courier service; title reports; (iii) in-house  
12 photocopies of documents; (iv) long distance phone calls; and (v) travel outside of Riverside County. No  
13 single expense shall exceed \$500 without the prior consent of the COUNTY.

14 6.2 Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have  
15 obtained prior approval of COUNTY, and shall include: (i) consultants; (ii) travel outside the County of  
16 Riverside; (iii) investigative services; (iv) and any expense item exceeding Five Hundred Dollars  
17 (\$500.00).

18 6.3 Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime  
19 for performing secretarial, clerical, or word processing functions; (ii) charges for the time spent to provide  
20 necessary information for COUNTY'S audits or billing inquiries; (iii) charges for work performed which  
21 had not been authorized by COUNTY; (iv) mileage or travel expenses from the regular office of  
22 ATTORNEYS to the County of Riverside.

23 ///  
24 ///  
25 ///

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

4           Charlene Reck  
5           Economic Development Agency  
6           County of Riverside  
7           3403 Tenth Street, Suite 500  
8           Riverside, CA 92501  
9           (951) 955-5746

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

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

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

23                 Payments shall be made by COUNTY within thirty (30) days of receipt of itemized billing  
24 statements from ATTORNEYS. COUNTY shall not pay interest or finance charges on any outstanding  
25 balance(s).

26           8.     LICENSES. ATTORNEY, its employees, agents, contractors and subcontractors shall  
27 maintain professional licenses required by the laws of the State of California at all times while performing  
28 services under this agreement.

          9.     NOTICES. Any and all notices and required reports shall be written and hand-delivered or  
mailed by first class, postage prepaid, addressed to the COUNTY or ATTORNEYS at the following

1 addresses below, or at any other address COUNTY or ATTORNEYS shall provide in writing to each  
2 other:

3 Vincent Yzaguirre, Deputy Director  
4 County of Riverside  
5 Economic Development Agency  
6 3403 Tenth Street, Suite 500  
7 Riverside, CA 92501

8 Steven A. McKinley, Esq.  
9 Freeland, McKinley & McKinley  
10 16236 San Dieguito Road, Suite 5-25  
11 Rancho Santa Fe, CA 92067

12 10. LITIGATION. The County of Riverside's Litigation Management Guidelines is attached  
13 hereto as Exhibit A and includes Exhibits B (Case Evaluation Plan), C (Case Status Report), and D (Pre-  
14 Trial Status Report), and together they become an integral part of this contract. The Litigation  
15 Management Guidelines may be updated from time to time. Attachment C, Budget Guidelines becomes  
16 an integral part of this contract and Litigation Guidelines. ATTORNEYS agree that any superseding  
17 update shall become an integral part of this contract and will not change nor alter any other portion of this  
18 contract in anyway whatsoever.

19 11. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to  
20 indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be  
21 maintained, at its sole cost and expense, the following insurance coverage during the term of this  
22 Agreement:

23 a. Workers' Compensation:

24 If ATTORNEYS have employees as defined by the State of California, ATTORNEYS shall  
25 maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the  
26 State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease  
27 with limits not less than \$1,000,000.00 per person per accident. Policy shall be endorsed to waive  
28 subrogation in favor of COUNTY and, if applicable, to provide a Borrowed Servant/Alternate Employer  
endorsement.

b. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability,  
contractual liability, products and completed operations liability, personal and advertising injury, and cross  
liability coverage, covering claims which may arise from or out of ATTORNEYS performance of its

1 obligations hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts  
2 and Departments, their respective directors, officers, Board of Supervisors, employees, elected or  
3 appointed officials, agents or representatives as Additional Insured's. Policy's limit of liability shall not be  
4 less than \$1,000,000.00 per occurrence combined single limit. If such insurance contains a general  
5 aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the  
6 occurrence limit.

7 c. Vehicle Liability:

8 If vehicles or mobile equipment are used in the performance of the obligations under this  
9 Agreement, then ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles  
10 so used in an amount not less than \$1,000,000.00 per occurrence combined single limit. If such  
11 insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less  
12 than two (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts,  
13 Special Districts and Departments, their respective directors, officers, Board of Supervisors, employees,  
14 elected or appointed officials, agents or representatives as Additional Insureds.

15 d. Professional Liability:

16 ATTORNEYS shall maintain Professional Liability Insurance providing coverage for ATTORNEYS'  
17 performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000.00  
18 per occurrence and \$2,000,000.00 annual aggregate. If ATTORNEYS' Professional Liability Insurance is  
19 written on a claims made basis rather than an occurrence basis, such insurance shall continue through  
20 the term of this Agreement and ATTORNEYS shall purchase at his sole expense either 1) an Extended  
21 Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer  
22 with a date retroactive to the date of or prior to, the inception of this Agreement; or 3) demonstrate  
23 through Certificates of Insurance that ATTORNEYS have maintained continuous coverage with the same  
24 or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years  
25 beyond the termination of this Agreement.

26 e. General Insurance Provisions – All Lines:

27 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the  
28 State of California and have an A.M. BEST rating of not less than an A:VIII (A:8) unless such

1 requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager  
2 waives a requirement for a particular insurer such waiver is only valid for the specific insurer and  
3 only for one policy term.

4 2) ATTORNEYS' insurance carrier(s) must declare its insurance self-insured retentions. If  
5 such self-insured retentions exceed \$500,000.00 per occurrence such retentions shall have the  
6 prior written consent of the County Risk Manager before the commencement of operations under  
7 this Agreement. Upon notification of self-insured retentions which are deemed unacceptable to  
8 the COUNTY, at the election of the County's Risk Manager, ATTORNEYS' carriers shall either 1)  
9 reduce or eliminate such self-insured retentions with respect to this Agreement with COUNTY or  
10 2) procure a bond which guarantees payment of losses and related investigations, claims  
11 administration, defense costs and expenses.

12 3) ATTORNEYS shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly  
13 executed original certificate(s) of insurance and original certified copies of endorsements effecting  
14 coverage as required herein and, 2) if requested to do so orally or in writing by the County Risk  
15 Manager, provide original certified copies of policies including all Endorsements and all  
16 attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s)  
17 and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days  
18 written notice be given to COUNTY prior to any material modification, cancellation, expiration, or  
19 reduction in coverage of such insurance. In the event of a material modification, cancellation,  
20 expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless COUNTY  
21 receives, prior to such effective date, another properly executed original Certificate of Insurance  
22 and original copies of endorsements or certified original policies, including all endorsements and  
23 attachments thereto, evidencing coverage's set forth herein and the insurance required herein is  
24 in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall  
25 sign the original endorsements for each policy and the Certificate of Insurance. ATTORNEYS  
26 shall not commence operations until COUNTY has been furnished with original Certificate(s) of  
27 Insurance and certified original copies of endorsements and, if requested, certified original  
28



1 policies of insurance including all endorsements and any and all other attachments as required in  
2 this Section.

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

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

14 6) The insurance requirements contained in this Agreement may be met with a  
15 program(s) of self-insurance acceptable to the County.

16 7) The ATTORNEYS shall pass down the insurance obligations contained herein to  
17 all tiers of subcontractors working under this Agreement.

18 8) ATTORNEYS agree to notify COUNTY of any claim by a third party or any incident  
19 or event that may give rise to a claim arising from the performance of this Agreement.

20 12. INDEMNITY AND HOLD HARMLESS. ATTORNEYS shall indemnify and hold harmless  
21 the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective  
22 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and  
23 representatives (the "Indemnified Parties") from any liability whatsoever, including but not limited to,  
24 property damage, bodily injury, or death, based or asserted upon any services of ATTORNEYS, its  
25 officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this  
26 Agreement; and ATTORNEYS shall defend at its sole expense and pay all costs and fees, including but  
27 not limited to, attorney fees, cost of investigation, defense and settlements or awards, on behalf of the  
28 Indemnified Parties in any claim or action based upon such liability.

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

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

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

11 13. TERMINATION. Services performed under this Agreement may be terminated in whole or  
12 in part at any time the COUNTY determines to be in its best interest, as determined by the Board of  
13 Supervisors upon the recommendation of the Assistant County Executive Officer/EDA, or designee.  
14 COUNTY shall terminate services by delivering to ATTORNEYS a written termination notice executed by  
15 COUNTY and specifying the extent to which services are terminated and the effective date.

16 13.1 After receiving a termination notice, and unless otherwise directed by COUNTY,  
17 ATTORNEYS shall take all steps necessary to stop services on the date and to the extent specified in the  
18 termination notice, and submit billing for all services performed to date of notice of termination and any  
19 services to be completed as set forth in the notice of termination within thirty (30) days from effective  
20 termination date. ATTORNEY shall promptly submit a brief report advising of the status of all matters,  
21 including any unresolved matters being handled by ATTORNEYS for COUNTY. ATTORNEYS shall give  
22 COUNTY copies or originals, as appropriate of all files and attorney work product for all matters on which  
23 it has been working. This includes any computerized index, computer programs and document retrieval  
24 system created or used for these matters.

25 14. SUPERVISION OF AGREEMENT. The Assistant County Executive Officer/EDA shall  
26 designate an individual in his office to act in his stead. The Assistant County Executive Officer/EDA, or  
27 his designee, shall have authority to act for COUNTY on all daily operational matters under this  
28

1 Agreement and shall review and approve all ATTORNEYS' invoices, reports, whether written or verbal,  
2 and any change in ATTORNEYS' Supervising Attorney.

3 15. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is  
4 assignable without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or  
5 subcontract services relating to this Agreement without the consent of COUNTY shall constitute a  
6 material breach of this Agreement. However, ATTORNEYS may retain consultants and experts as  
7 ATTORNEYS deem appropriate after receiving the written approval of COUNTY.

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

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

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

23 It is possible that some of the ATTORNEYS' present or future clients will have disputes  
24 with COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and  
25 ATTORNEYS agree that should the situation arise where a new or existing client engages ATTORNEYS  
26 in any matter in a position adverse to COUNTY or in which COUNTY'S interest may be adversely  
27 affected, that ATTORNEYS will so advise COUNTY and upon receipt of such notice COUNTY may  
28 determine that the conflict may be waived or may determine that it is in the COUNTY'S best interest to

1 terminate the services of ATTORNEYS. Should COUNTY determine that it is best to terminate the  
2 services of ATTORNEYS, COUNTY will notify ATTORNEYS of such decision. ATTORNEYS may then  
3 submit any outstanding invoices for payment up to the date of termination as determined by the notice  
4 from COUNTY.

5 18. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information  
6 which it may acquire arising out of or connected with activities under this Agreement in accordance with  
7 all applicable Federal, State and County laws, regulations, ordinances and directives relating to  
8 confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all of its  
9 principals, employees and agents providing services hereunder of the confidentiality provisions of this  
10 Agreement. These confidentiality obligations shall survive the termination or expiration of this  
11 Agreement.

12 19. COMMUNICATIONS WITH COUNTY. ATTORNEYS recognize that their relationship with  
13 COUNTY and its agents, employees, officers and/or representatives is subject to the attorney-client  
14 privilege and that any information acquired during the term of this Agreement from or through COUNTY is  
15 confidential and privileged. ATTORNEYS warrant that they shall not disclose or use in any manner  
16 whatsoever any of the information from COUNTY and its officers, employees and agents in connection  
17 with said relationships or proceedings. ATTORNEYS understand that the County Counsel is the  
18 empowered legal representative of COUNTY and its officers and employees and ATTORNEYS shall not  
19 without specific direction from the County Counsel communicate with, advise or represent the COUNTY  
20 legislative body.

21 20. COMPLETE AGREEMENT. This Agreement shall constitute the complete and exclusive  
22 statement of understanding between COUNTY and ATTORNEY which supercedes all previous written or  
23 oral agreements, and all prior communications between COUNTY and ATTORNEYS relating to the  
24 subject matter of this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute  
2 this agreement on the date noted below.

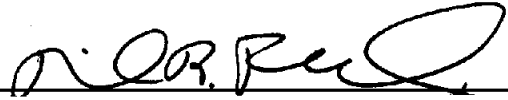
3  
4 COUNTY OF RIVERSIDE

5 Dated: \_\_\_\_\_

6 By: \_\_\_\_\_  
7 Bob Buster, Chairman  
8 Board of Supervisors

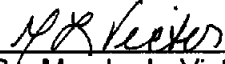
9 FREELAND, MCKINLEY & MCKINLEY

10 Dated: 6/24/11

11 By:   
12 Richard R. Freeland, Esq.

13 APPROVED AS TO FORM  
14 Pamela Walls, County Counsel

15 Dated: \_\_\_\_\_

16  6/22/11  
17 By: Marsha L. Victor, Deputy

18 ATTACHMENTS:

- 19 Exhibit A: Litigation Management Guidelines
- 20 Exhibit B, C, and D
- 21 Attachment C – Budget Guidelines

22 CR:jg  
23 11/23/10  
24 158FM  
25 13.790

## County of Riverside

## Litigation Management Guidelines

Claims Philosophy

The County's claims philosophy is to identify, on a timely basis, those claims for which there is liability and to make settlement offers promptly. The County of Riverside will generally not settle claims on a nuisance value basis as a matter of policy. 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 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 Economic Development Agency, hereinafter referred to as Agency, with assistance from the Office of County Counsel. 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. The County 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 County's alleged act(s) and the actual damages sustained.
  5. Critically analyzing the basis for all claims alleged or damages claimed.

B. Within thirty (30) days following receipt of a case, counsel shall prepare and send to County Counsel, 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. 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 or to establish defenses in the action. Where it is believed further investigation is necessary, please discuss this with Agency prior to it being initiated.

3. Strategy. Counsel shall define the strategy to be used in 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 handling 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. Defense 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 defense counsel to County Counsel.

Defense 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 defense counsel to County Counsel. It is required that within 10 days of any County employee's deposition being taken, defense 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 County Counsel to meaningfully analyze the case and to determine the course of action to be taken.
- D. Any demand, settlement, or judgment that includes or requests a "non-monetary" remedy from the court will be immediately communicated to the director(s) of the involved Agency. Non-monetary remedies can include, but is not limited to, injunctions (mandatory or prohibitory), remedies with policy implications, including labor relations, and/or any other non-monetary remedies. Such communication will include a request for either approval or rejection of the proposed remedy.
- E. Insofar as the non-monetary remedies may require approval of the Board of Supervisors, litigation counsel shall communicate to County Counsel the nature and effect of the proposed remedy for determination by County Counsel as to any Board involvement.

#### 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 County 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 County Counsel 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

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 County and Attorneys.

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, defense 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 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 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 handling of the County's cases.

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 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 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 #:  
  
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 COUNTY'S EXPOSURE/LIABILITY:
8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to strategy):
9. SIGNIFICANT EVENTS:  
Trail 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:

CASE NAME:

FROM:

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

III. SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM

IV. CO-DEFENDANTS AND/OR THIRD PARTY DEFENDANTS

- A. Identity of parties.
- B. Respective attorneys - Names, business address, telephone numbers.
- C. Factual and legal basis for plaintiff's/cross-complainant's claims against other parties.
- D. Brief summary of probable exposure.
- E. Other Insurance Coverage - type of policy, policy number, claim number, carrier name, address and phone number, name of claims person, type of other insurance clause



(excess, escape, etc), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

V. WITNESSES

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

VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

- A. Plaintiff's theories.
- B. Defense theories.
- C. Co-defendants and/or third-party defendant theories.
- D. Strengths and weaknesses of subsections A, B, and C above.
- E. Chance of defense verdict for 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.)?

# County of Riverside Budget Guidelines

<b>Case Name:</b>		<b>Date of this Evaluation:</b>	
<b>Attorney(s):</b>		<b>Case No.:</b>	
<b>Type of Litigation Expense</b>	<b>Attorney Hours</b>	<b>Actuals To Date</b>	<b>Anticipated Projected Expenses</b>
<b>Case Assessment, Development and Administration</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Pre-Trial Pleadings and Motions</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Discovery</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Trial Preparation and Trial</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Enforcement</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Appeal</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00
<b>Oral Argument</b>			
Case Assessment			
Case Development			
Case Administration			
Discovery			
Pre-Trial Pleadings and Motions			
Trial Preparation and Trial			
Enforcement			
Appeal			
<b>Total Hours and Expenses</b>	0	\$0.00	\$0.00

