

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

133



FROM: Transportation and Land Management Agency

SUBMITTAL DATE:
March 14, 2012

SUBJECT: Sole Source Legal Services Agreement with Robert L. Klotz, Esq. for Implementation of Board Policy B-29 (Solar Power Plants)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the chairman to sign the attached sole source legal services agreement with Robert L. Klotz, Esq., in an amount not to exceed \$100,000, in accordance with the provisions of Board Policy A-18 permitting waiver of a request for proposals; and,
2. Approve and direct the Auditor-Controller to make the budget adjustments contained in Schedule A.

George A. Johnson
George A. Johnson, Director
Transportation and Land Management Agency

(continued on next page)
FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA, AUDITOR-CONTROLLER
BY *Samuel Wong 3/14/12*
SAMUEL WONG

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 75,000	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 75,000	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 25,000	For Fiscal Year:	2011/12 – 2012/13

SOURCE OF FUNDS: Solar Franchise Payments	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Tina Grande*
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL

BY: *Kath A. Lind*
KATHERINE A. LIND
DATE: 03/14/12

Purchasing: *[Signature]*
Departmental Concurrence: *[Signature]*
Seller, Assistant Director

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

Prev. Agn. Ref. 16.2 of 11/08/11 | District: ALL | Agenda Number:

BACKGROUND:

On November 8, 2011, the Board of Supervisors adopted a comprehensive, integrated legislative solar power plant program which included Board Policy B-29 ("Policy"). The Policy provides, among other things, that certain approvals shall not be given for a solar power plant unless the Board of Supervisors first approves a franchise, a real property interest agreement or a development agreement.

In order to fully implement Board Policy B-29, amendments to several ordinances and related resolutions are required, including: Ordinance No. 348 (Land Use), Ordinance No. 499 (Encroachments in County Highways), Ordinance No. 544 (Claims) and Ordinance No. 671 (Consolidated Fees for Land Use). Implementation of Board Policy B-29 also requires the revision of application forms, the establishment of development agreement procedures and requirements and the creation of model franchise, real property interest and development agreements. The County will need to negotiate project-specific agreements as well.

Experienced legal representation will be required for other matters arising out of Board Policy B-29 such as land use, environmental and litigation matters.

County Counsel recommends that Robert L. Klotz provide these services because he is uniquely qualified to do so. He has over 35 years experience specializing in land use and environmental law and related litigation. He served as a Riverside County deputy county counsel for approximately eight years, during which time he drafted the County's development agreement procedures and requirements and created the County's first model development agreement. He also negotiated over 35 development agreements during his tenure in the County Counsel's office. Because his primary assignment was land use and California Environmental Quality Act compliance, he is also familiar with the County's planning process and the ordinances applicable to that process. These unique qualifications constitute good cause and justify a waiver of the RFP provisions of Board Policy A-18.

Working under an agreement approved by the County Purchasing Agent, Mr. Klotz has already provided some of the above-described services. The \$25,000 cap set by the Purchasing Agent has now been reached, however, and additional compensation is required. The \$100,000 authorized by the legal services agreement would be in addition to the \$25,000 already paid.

The cost of all legal services will be covered by franchise payments the County has already collected or by project applicants. The attached budget adjustment allows payment from the Legislative and Litigation Fund in the amount of \$75,000 for the anticipated costs that will be incurred this fiscal year. The remaining \$25,000 will be included in the budget for FY 12/13.

Schedule A

Increase Appropriations 10000-1102900000-525440	Professional Services	\$75,000
Increase Estimated Revenue 10000-1102900000-725020	Franchises	\$75,000

1 LEGAL SERVICES AGREEMENT

2
3 The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and ROBERT L. KLOTZ,
4 hereinafter called "ATTORNEY", hereby agree as follows:

5 1. TERM OF AGREEMENT. This Agreement shall commence upon execution by both
6 parties, and continue until completion of services or use of the funds described in this Agreement,
7 whichever occurs first, unless sooner terminated pursuant to Section 5 or Section 10. This agreement is a
8 continuation of the prior legal services agreement between COUNTY and ATTORNEY executed by
9 COUNTY on January 25, 2012 and executed by ATTORNEY on December 12, 2011. It ratifies and
10 approves the continuation of legal services which were provided in excess of the original amount
11 authorized under the prior legal services agreement.

12 2. ATTORNEY SERVICES AND RESPONSIBILITIES. Upon appointment, ATTORNEY
13 shall provide services in the general nature of comments, advice, recommendations and written drafts with
14 respect to matters concerning implementation of COUNTY'S solar power plant policy (Board of
15 Supervisors Policy B-29) and related matters. Attorney services are more specifically described in
16 attached Exhibit A, consisting of one (1) page, attached hereto and by this reference incorporated herein.
17 ATTORNEY has specialized expertise in land use law, environmental law, municipal law and related
18 litigation.

19 3. KEY ATTORNEY. ATTORNEY agrees that Robert L. Klotz will be the sole attorney
20 assigned to perform the work under this Agreement. Any changes or substitution of the assigned
21 attorney must have the express written approval of the Director of the Transportation & Land
22 Management Agency.

23 4. COMPENSATION. COUNTY shall pay ATTORNEY at the rate of \$330 per hour for
24 services rendered. The total amount of compensation paid to ATTORNEY under the terms of this
25 Agreement shall not exceed the sum of ONE HUNDRED THOUSAND dollars (\$100,000) unless a
26 written amendment to this Agreement is executed by both parties prior to performance of any additional
27 services. The ONE HUNDRED THOUSAND dollars authorized by this Agreement is in addition to the
28

1 TWENTY-FIVE THOUSAND dollars paid under the prior legal services agreement referenced in
2 paragraph 1. COUNTY and ATTORNEY will monitor work requirements and efforts such that the limits
3 of compensation are not reached before the last month of the term of the Agreement or completion of
4 services. ATTORNEY shall notify COUNTY immediately in writing when ATTORNEY has expended
5 seventy-five percent (75%) of the pre-approved compensation as stated in this Agreement.

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

10 6. EXPENSES. COUNTY shall reimburse ATTORNEY for his actual out-of-pocket
11 expenses, but without any additional costs for having advanced the funds or for expenses generally
12 considered as overhead already reflected in ATTORNEY'S hourly rate.

13 6.1 Reimbursable ordinary expenses are those expenses incurred on COUNTY'S behalf, and
14 shall include, but not be limited to: (i) postage; (ii) courier service; (iii) in-house document reproduction;
15 and (iv) long distance phone calls. No single expense shall exceed \$500 without the prior consent of
16 COUNTY.

17 6.2 Reimbursable extraordinary expenses are those expenses for which ATTORNEY has
18 obtained prior approval of COUNTY, and shall include, but not be limited to: (i) consultants; (ii) travel
19 outside Riverside County; (iii) investigative services; and (iv) any expense item exceeding \$500.00.

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

25 7. PAYMENT. ATTORNEY shall submit his billing statement monthly, in arrears, no later
26 than the last day of the month following the month(s) for which services were rendered. In order to
27 facilitate COUNTY'S cost recovery, a separate billing statement shall be submitted for the services
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1 described in paragraph (1) of Exhibit A. Billing for all other services shall be submitted as part of a
2 separate monthly billing statement. The original billing statement(s) and one copy shall be submitted to:

3
4 Tiffany N. North
5 Office of County Counsel
6 3960 Orange Street Suite 500
7 Riverside, CA 92501

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

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

19 Payments shall be made by COUNTY within thirty (30) days of receipt of itemized billing
20 statements from ATTORNEY. COUNTY shall not pay interest or finance charges on any outstanding
21 balance(s).

22 8. LICENSES. ATTORNEY, his employees, agents, contractors and subcontractors, shall
23 maintain professional licenses required by the laws of the State of California at all times while performing
24 services under this Agreement. ATTORNEY shall perform all services and duties in conformance to and
25 consistent with the standards generally recognized as being employed by attorneys in the State of
26 California.

27 9. NOTICES. Any and all notices and required reports shall be written and hand-delivered or
28 mailed by first class, postage prepaid, addressed to COUNTY or ATTORNEY at the following addresses
below, or at any other address COUNTY or ATTORNEY shall provide in writing to each other:

1 Transportation & Land Management Agency
2 4080 Lemon Street, 14th Floor
3 Riverside, CA 92501

Robert L. Klotz
Attorney at Law
192 N. Buckskin Way
Orange, CA 92869

Attn: Ed Cooper

4 10. TERMINATION. Services performed under this Agreement may be terminated, in whole
5 or in part, at any time COUNTY believes it to be in its best interest, as determined by the Board of
6 Supervisors upon recommendation of the Director of COUNTY'S Transportation & Land Management
7 Agency. COUNTY shall terminate services by delivering to ATTORNEY a written termination notice
8 executed by COUNTY specifying the extent to which services are terminated and the effective date.

9 10.1 After receiving a termination notice, and unless otherwise directed by COUNTY,
10 ATTORNEY shall take all steps necessary to stop services on the date and to the extent specified in the
11 termination notice, and submit billing for all services performed before the date of the termination notice,
12 and any services to be completed as set forth in the termination notice, within thirty (30) days from
13 effective termination date. ATTORNEY shall promptly submit a brief report advising of the status of all
14 matters, including any unresolved matters being handled by ATTORNEY for COUNTY. ATTORNEY
15 shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all
16 matters on which they have been working. This includes any computerized index, computer programs and
17 document retrieval system created or used for these matters.

18 11. SUPERVISION OF AGREEMENT. County Counsel and the Director of COUNTY'S
19 Transportation & Land Management Agency, or his designee, shall have authority to act for COUNTY
20 with respect to all services provided by ATTORNEY under this Agreement.

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

26 13. NON-DISCRIMINATION. In the performance of the terms of this Agreement,
27 ATTORNEY shall not engage in nor permit others they may employ to engage in discrimination in the
28 employment of persons because of the race, color, national origin or ancestry, religion, physical handicap,

1 disability as defined by the Americans with Disabilities Act (ADA), medical condition, marital status or
2 sex of such persons, in accordance with the provision of California Labor Code Section 1735.

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

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

12 Except as provided below, ATTORNEY shall have no interest, and shall not acquire any
13 interest, direct or indirect, which will conflict in any manner or degree with the performance of services
14 required under this Agreement.

15 (a) ATTORNEY currently represents Sunny Sage LLC and RANPAC Inc. with respect
16 to matters related to County Specific Plan No. 327 and related land use approvals,
17 which matters are adverse to COUNTY, but not directly related to the contract
18 services herein.

19 (b) COUNTY agrees that ATTORNEY may continue such representation and waives
20 any conflict of interest related thereto; provided, however, that such conflict waiver
21 shall not apply with respect to any litigation which may be filed by any of such
22 entities against COUNTY. COUNTY further agrees that ATTORNEY may
23 represent other clients in future matters before COUNTY which are adverse to
24 COUNTY, but not directly related to the contract services herein; provided
25 however, that such representation shall not include representation in litigation
26 against COUNTY.

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

8 16. COMMUNICATIONS WITH COUNTY. ATTORNEY recognizes that his relationship
9 with COUNTY and its officers, officials, employees, agents and representatives is subject to the attorney-
10 client privilege and that any information acquired during the term of this Agreement from or through
11 COUNTY is confidential and privileged. ATTORNEY warrants that he shall not disclose or use in any
12 manner whatsoever any of the information from COUNTY and its officers, officials, employees, agents
13 and representatives in connection with said relationships or proceedings. ATTORNEY understands that
14 the County Counsel is the empowered legal representative of COUNTY and its officers, officials,
15 employees, agents and representatives, and ATTORNEY shall not without specific direction from the
16 County Counsel communicate with, advise or represent the COUNTY'S legislative body.

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

5
6 Dated: _____

COUNTY OF RIVERSIDE

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8 By: _____
Chairman, Board of Supervisors

9
10 ATTEST:
Kecia Harper-Ihem, Clerk of the Board

11
12 By: _____
Deputy

13
14
15 Dated: _____

ATTORNEY

16 _____
17 Robert L. Klotz

18 FORM APPROVED COUNTY COUNSEL

19 BY: Kath A. Lind 03/14/12
KATHERINE A. LIND DATE

EXHIBIT A

ATTORNEY shall provide the following services:

- (1) Recommendations for development agreement procedures, a model development agreement and related ordinance amendments implementing COUNTY'S solar power plant policy (Board of Supervisors Policy B-29).
- (2) Negotiation of project-specific agreements implementing COUNTY'S solar power plant policy as directed by County Counsel.
- (3) Comments, recommendations and advice with respect to other matters related to COUNTY'S solar power plant policy as directed by County Counsel.

All work shall be performed under the direction and supervision of the Office of County Counsel and the Director of COUNTY'S Transportation & Land Management Agency, and all comments, recommendations and advice shall be subject to their review and approval.

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Date: March 8, 2012
From: George Johnson Department/Agency: TLMA
To: Board of Supervisors/Purchasing Agent
Via: Purchasing Agent
Subject: Sole Source Procurement; Request for (Legal Services Agreement)

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Legal services are required to prepare amendments to several county ordinances to fully implement Board Policy B-29. Implementation of Board Policy B-29 also requires the revision of application forms, the establishment of development agreement procedures and requirements and the creation of model franchise, real property interest and development agreements. Further legal services are required for other matters arising out of Board Policy B-29 such as land use, environmental and litigation matters.
2. **Supplier being requested:** Robert L. Klotz, Esq.
3. **Alternative suppliers that can or might be able to provide supply/service:** The specialized nature of the legal services is specific to the selected provider.
4. **Extent of market search conducted:** The selected provider has unique experience and expertise for the work required.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** The selected provider has over 35 years experience specializing in land use and environmental law and related litigation. He served as a Riverside County deputy county counsel for approximately eight years, during which time he drafted the County's development agreement procedures and requirements and created the County's first model development agreement. He also negotiated over 35 development agreements during his tenure in the County Counsel's office. Because his primary assignment was land use and California Environmental Quality Act compliance, he is also familiar with the County's planning process and the ordinances applicable to that process.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** Board Policy B-29 is a significant public policy milestone. Its implementation will require outside expertise to assure that its goals are achieved.
7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The rate of \$330.00 per hour is significantly below the average rates for counsel of comparable experience and expertise.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** No.
9. **Period of Performance:** Two fiscal years

(Provide a defined period of performance. Please note multi-year terms require Board approval, unless renewable in one year increments and the Purchasing Agent approves the terms.)

