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



FROM: County Counsel

SUBMITTAL DATE:
May 8, 2012

SUBJECT: Amended and Restated 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 approve and authorize the chairman to sign the attached amended and restated legal services agreement with Robert L. Klotz, Esq.

BACKGROUND: On March 20, 2012, (Agenda Item 3.30), the Board of Supervisors approved a legal services agreement with Robert L. Klotz, Esq., in an amount not to exceed \$100,000 to provide necessary legal representation in connection with implementation of the County's recently-approved solar power plant policy. The attached amended and restated legal services agreement increases the maximum compensation by \$100,000 to an amount not to exceed \$200,000 so that further implementation and litigation support services can be provided. Other amendments to the agreement are necessary to accommodate recent organizational changes within the County. No additional budget adjustments are necessary at this time, as they were included in the recommendations in the Third Quarter Report approved by the Board on May 1, 2012 (Agenda Item 3.37). The cost of the services authorized by the legal services agreement will be fully covered by franchise payments the County has already collected or by processing fees paid by applicants.

Pamela Walls
County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 200,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	FY 11/12

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

C.E.O. RECOMMENDATION: APPROVE

BY:
Denise C. Harden

County Executive Office Signature

Department Recommendation: Policy Policy

Per Executive Office: Consent Consent

1 AMENDED AND RESTATED
2 LEGAL SERVICES AGREEMENT BY AND BETWEEN THE
3 COUNTY OF RIVERSIDE AND ROBERT L. KLOTZ
4

5 That certain Legal Services Agreement (“Agreement”) by and between the COUNTY OF RIVERSIDE,
6 hereinafter called “COUNTY” and Robert L. Klotz, hereinafter called “ATTORNEY”, executed by COUNTY on
7 March 20, 2012 and executed by ATTORNEY on March 13, 2012 is hereby amended and restated, as follows:

8 1. TERM OF AGREEMENT. This Agreement shall commence upon execution by both
9 parties and continue until completion of services or exhaustion of the agreed amount of compensation
10 specified below in paragraph 4, unless sooner terminated pursuant to Section 5 or Section 10. This
11 agreement is a continuation of the prior legal services agreement between COUNTY and ATTORNEY
12 executed by COUNTY on January 25, 2012, and executed by ATTORNEY on December 12, 2011. It
13 ratifies and approves the continuation of legal services which were provided in excess of the original
14 amount authorized under the prior legal services agreement.

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

21 3. KEY ATTORNEY. ATTORNEY agrees that Robert L. Klotz will be the sole attorney
22 assigned to perform the work under this Agreement. Any changes or substitution of the assigned
23 attorney must have the express written approval of the County Counsel.

24 4. COMPENSATION.

25 4.1 COMPENSATION RATE. COUNTY shall pay ATTORNEY at the rate of \$330 per hour
26 for all services rendered.

1 4.2 COMPENSATION FOR PROJECT-SPECIFIC SERVICES. With respect to the services
2 described in paragraph (2) of Exhibit A to this Agreement, ATTORNEY shall be compensated solely from
3 processing fees deposited by applicants for each project-specific agreement. COUNTY shall monitor the
4 amount of fees on deposit with respect to each project-specific agreement in order to ensure that adequate
5 funds remain on deposit to compensate both COUNTY and ATTORNEY for necessary services. If
6 adequate funds are not on deposit, COUNTY shall notify ATTORNEY and services shall be suspended.

7 4.3 COMPENSATION FOR OTHER SERVICES. With respect to the services described in
8 paragraphs (1) and (3) of Exhibit A to this Agreement, the total amount of compensation paid to
9 ATTORNEY shall not exceed the sum of TWO HUNDRED THOUSAND dollars (\$200,000) unless a
10 written amendment to this Agreement is executed by both parties prior to performance of any additional
11 services. The TWO HUNDRED THOUSAND dollars authorized by this Agreement is in addition to the
12 TWENTY-FIVE THOUSAND dollars paid under the prior legal services agreement referenced in
13 paragraph 1. COUNTY and ATTORNEY will monitor work requirements and efforts such that the limits
14 of compensation are not exceeded. ATTORNEY shall notify COUNTY immediately in writing when
15 ATTORNEY has expended seventy-five percent (75%) of the pre-approved compensation as stated in this
16 Agreement.

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

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

24 6.1 Reimbursable ordinary expenses are those expenses incurred on COUNTY'S behalf, and
25 shall include, but not be limited to: (i) postage; (ii) courier service; (iii) in-house document reproduction;
26 and (iv) long distance phone calls. No single expense shall exceed \$500 without the prior consent of
27 COUNTY.

1 available to auditors upon request and at such reasonable times and locations as may be agreed to between
2 COUNTY and ATTORNEY.

3 7.3 Payments shall be made by COUNTY within thirty (30) days of receipt of itemized billing
4 statements from ATTORNEY. COUNTY shall not pay interest or finance charges on any outstanding
5 balance(s).

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

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

14	Tiffany North	Robert L. Klotz
15	Office of County Counsel	Attorney at Law
16	3960 Orange Street Suite 500	192 N. Buckskin Way
	Riverside, CA 92501	Orange, CA 92869

17 10. TERMINATION. Services performed under this Agreement may be terminated, in whole
18 or in part, at any time COUNTY believes it to be in its best interest. COUNTY shall terminate services by
19 delivering to ATTORNEY a written termination notice executed by COUNTY specifying the extent to
20 which services are terminated and the effective date. With respect to the services described in paragraph
21 (2) of Exhibit A to this Agreement, ATTORNEY may decline to negotiate any new project-specific
22 agreements by giving thirty (30) days written notice to COUNTY.

23 10.1 After receiving a termination notice, and unless otherwise directed by COUNTY,
24 ATTORNEY shall take all steps necessary to stop services on the date and to the extent specified in the
25 termination notice, and submit billing for all services performed before the date of the termination notice,
26 and any services to be completed as set forth in the termination notice, within thirty (30) days from
27 effective termination date. ATTORNEY shall promptly submit a brief report advising of the status of all
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1 matters, including any unresolved matters being handled by ATTORNEY for COUNTY. ATTORNEY
2 shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all
3 matters on which they have been working. This includes any computerized index, computer programs and
4 document retrieval system created or used for these matters.

5 11. SUPERVISION OF AGREEMENT. County Counsel shall have authority to act for
6 COUNTY with respect to all services provided by ATTORNEY under this Agreement. All work shall be
7 performed under the direction and supervision of County Counsel, and all comments, recommendations
8 and advice shall be subject to the approval of County Counsel.

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

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

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

23 14.1 Anyone who is a former employee of COUNTY at the time of execution of this Agreement
24 or who subsequently becomes affiliated with ATTORNEY in any capacity (employee, associate or
25 partner) shall not (i) participate in the services provided by ATTORNEY to COUNTY; or (ii) become a
26 partner, shareholder or otherwise share in the profits of ATTORNEY for a period of one year from the
27 date the former COUNTY employee left COUNTY employment.

1 14.2 Except as provided below, ATTORNEY shall have no interest, and shall not acquire any
2 interest, direct or indirect, which will conflict in any manner or degree with the performance of services
3 required under this Agreement.

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

7 (b) COUNTY agrees that ATTORNEY may continue such representation and waives
8 any conflict of interest related thereto; provided, however, that such conflict waiver shall not apply with
9 respect to any litigation which may be filed by any of such entities against COUNTY. COUNTY further
10 agrees that ATTORNEY may represent other clients in future matters before COUNTY which are adverse
11 to COUNTY, but not directly related to the contract services herein; provided however, that such
12 representation shall not include representation in litigation against COUNTY.

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

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

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

7
8 Dated: _____

COUNTY OF RIVERSIDE

9
10 By: _____
Chairman, Board of Supervisors

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

13
14 By: _____
Deputy

15
16
17 Dated: _____

ATTORNEY

18 _____
19 Robert L. Klotz

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; and,

(3) Comments, recommendations and advice with respect to other matters related to COUNTY'S solar power plant policy, as directed by County Counsel.

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