

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

449



FROM: Code Enforcement Department and County Counsel

SUBMITTAL DATE:
June 20, 2012

SUBJECT: Sole Source Legal Services Agreement with Best, Best & Krieger, LLP, Attorneys at Law, for their legal assistance in the code enforcement prosecution against illegal marijuana dispensaries and Approval of Budget Adjustments.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and authorize the chairman to sign the sole source legal services agreement with Best, Best & Krieger, LLP, 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. (Attachment "A")
2. Approve and direct the Auditor-Controller to make the budget adjustments in Attachment "B."

(See Background on next page)

Juan C. Perez, Director
Transportation & Land Management

Patti F. Smith
Deputy County Counsel for
Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 9,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 9,000	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 91,000	For Fiscal Year:	11/12-12/13

SOURCE OF FUNDS: Contingency	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

County Executive Office Signature

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: SAMUEL WONG
 Date: 6/20/12

FORM APPROVED COUNTY COUNSEL
 BY: PATTI F. SMITH
 DATE: 6/20/12

Departmental Concurrence

Policy
 Consent
 Policy
 Consent

Dept' Recomm.:
 Per Exec. Ofc.:

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

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.4

BACKGROUND:

On December 13, 2011, the Board approved the initiation of civil litigation to obtain injunctive relief against all marijuana dispensaries located within the unincorporated area of Riverside County for violations of Riverside County Ordinances, including the County Land Use/Zoning Ordinance No. 348. Litigation has been subsequently filed against 26 illegal dispensaries, and other relevant persons.

The Code Enforcement Department previously entered into a contract with Best, Best & Krieger, LLP (BB&K) not to exceed \$25,000 for legal consultation which has concluded. Due to the complex and rapidly changing nature of the litigation and need for an appellate court filing, it is necessary to initiate a second and separate agreement (attached as Attachment "A") not to exceed \$100,000 (including \$9,000 of which was expended in FY 11/12) to obtain the specialized legal services of Jeffery V. Dunn, partner of BB&K.

Not only is Mr. Dunn considered to be one of California's most preeminent land use attorneys, but he has also gained widespread recognition for his representation of many cities and counties in the complex legal arena of regulation of marijuana distribution facilities. He was the lead trial and appellate counsel in three landmark decisions affirming local government's authority to protect public safety and local land use authority: *City of Corona v Naulls* (2008) 166 Cal.App.4th 418, *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 and *City of Riverside v. Inland Empire Patients' Health and Wellness Center* (2011) 200 Cal.App.4th 885. (The *City of Riverside* case is now before the California Supreme Court.) Additionally, Mr. Dunn successfully represented the City of Lake Forest in closing numerous medical marijuana dispensaries (one of such cases is also before the California Supreme Court).

Furthermore, as the Chair of the California League of Cities Committee on Medical Marijuana, he has written several appellate amicus briefs, on behalf of the League and California State Association of Counties, in cases challenging Los Angeles's ordinance regulating marijuana dispensaries and other high profile marijuana cases.

The Board of Supervisors approved a total amount of \$118,500. The Executive Office has the appropriations to pay for the \$9,000 this fiscal year. The budget adjustment (Attachment B) is in the amount of \$91,000 for legal costs associated with the contract with BB&K. The remaining \$18,500 will be addressed at a later date. All legal payments will be reviewed and approved by County Counsel prior to payment by the Executive Office.

Attachment A

**AGREEMENT WITH BEST, BEST & KRIEGER, LLP
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into as of the date written below, and is made by and between THE COUNTY OF RIVERSIDE, on behalf of the Code Enforcement Department (hereinafter referred to as "COUNTY") and BEST, BEST & KRIEGER, LLP (hereinafter referred to as "ATTORNEYS"). The Parties hereto agree as follows:

1. TERM. This AGREEMENT shall commence upon execution and, unless terminated pursuant to Section 6, shall continue through the end of COUNTY Fiscal Year 2012/2013, or completion of the last work assignment, whichever occurs first.

2. LEGAL SERVICES. ATTORNEYS shall assist COUNTY in the prosecution of illegal marijuana dispensaries. This AGREEMENT is for general consultation litigation services and appellate legal.

3. ASSIGNMENT OF PERSONNEL. The Supervising Attorney for this AGREEMENT shall be Jeffrey Dunn. The Supervising Attorney shall have full authority to act for ATTORNEYS on all matters encompassed by this AGREEMENT and shall be fully responsible for the quality of the work produced.

Upon execution of this AGREEMENT, the Supervising Attorney shall provide to COUNTY the names of other professionals (senior partners, junior partners, associates, paralegals, etc.) who will assist in the provision of services under this AGREEMENT. The Supervising Attorney shall also specify the functions to be performed by each professional and shall ensure that services are performed by the lowest level of personnel (e.g., junior attorneys, associates and paralegals) qualified to perform the service. Any change in personnel assignments shall be made only upon telephonic or written notice to, and written consent by, COUNTY. COUNTY retains the right to approve or disapprove any and all attorney assignments.

4. PRIOR APPROVALS. ATTORNEYS shall obtain the prior written approval of COUNTY before: (i) retaining any consultant; or (ii) commencing travel on behalf of COUNTY outside the County of Riverside.

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

It is possible that some of ATTORNEYS' present or future clients will have disputes with COUNTY during the time that ATTORNEYS are representing the COUNTY. Should a situation arise where a client engages ATTORNEYS in any matter adverse to COUNTY, or in which COUNTY'S interest may be adversely affected, ATTORNEYS will notify COUNTY in writing. Upon receipt of such notice, COUNTY may determine that the conflict can be waived or may determine that it is in the COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY determine that it is in COUNTY'S best interest to terminate the services of

ATTORNEYS, COUNTY will notify ATTORNEYS in writing. ATTORNEYS may then submit any outstanding invoices for payment up to the date of termination .

6. TERMINATION. Services performed under this AGREEMENT may be terminated by COUNTY, in whole or in part, at any time COUNTY deems termination to be in its best interest. COUNTY shall terminate services by delivering to ATTORNEYS a written Termination Notice executed by COUNTY and specifying the extent to which services are terminated and the effective termination date.

7. EFFECT OF TERMINATION. After receiving a Termination Notice, and unless otherwise directed by COUNTY, ATTORNEYS shall: (i) take all steps necessary to stop services on the date and to the extent specified in the Termination Notice; (ii) complete services not terminated by the Termination Notice; and (iii) submit final billing for terminated services within thirty (30) days from the effective termination date.

8. CLOSING REPORT UPON TERMINATION. ATTORNEYS shall deliver a Closing Report to COUNTY immediately after termination of services under Section 6 which shall include, but not be limited to: (i) a brief description of the status of all matters for which services have been provided; and (ii) a discussion of COUNTY's exposure and applicable law, if appropriate.

ATTORNEYS shall give COUNTY copies or originals, as appropriate, of all files and attorney work product relating to all matters for which services have been provided. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

9. COMPENSATION. The total amount of compensation paid to ATTORNEYS under the terms of this AGREEMENT shall not exceed One Hundred Thousand Dollars (\$100,000), unless a written amendment to this AGREEMENT is executed by both parties prior to performance of any additional services. A written amendment shall be a condition precedent to any obligation for payment by COUNTY beyond the approved compensation. ATTORNEYS shall notify COUNTY immediately in writing when ATTORNEYS have expended seventy-five percent (75%) of the total compensation.

10. FEES. The billing rate for all personnel providing services under this AGREEMENT shall be as set forth in Exhibit B, consisting of one (1) page, which is attached hereto and incorporated herein by this reference.

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

Reimbursable ordinary expenses shall include, but not be limited to: (i) postage; (ii) courier service; (iii) title reports and (iii) in-house document reproduction, provided, however, that if an amount charged in any one month will exceed \$500.00, prior approval of COUNTY shall be obtained.

Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have obtained prior approval of COUNTY. Such expenses shall include, but not be limited to:

(i) consultants; (ii) travel outside the County of Riverside; (iii) investigative services and (iv) any expense item exceeding Five Hundred Dollars (\$500.00).

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

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

Patti F. Smith
Deputy County Counsel
Riverside County Office of County Counsel
3960 Orange Street, 5th Floor
Riverside, CA 92501
(951) 955-6342

The Supervising Attorney shall certify that the work referenced in each billing statement was performed and each billing statement shall be itemized to include: (i) staffing level(s), hourly rates and specific activities for each professional; (ii) a listing of each activity as a line item in a time reporting format acceptable to COUNTY with a description of specific activities for each professional; (iii) total current period fees and total cumulative fees billed for each staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized categories, including all invoices for disbursements paid to others.

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 by COUNTY and ATTORNEYS.

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

13. SUPERVISION OF AGREEMENT. The COUNTY Code Enforcement Director, or his/her designee, shall have full authority to act for COUNTY on all matters encompassed by this AGREEMENT.

14. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information that it may acquire, arising out of or connected with, its provision of services under this AGREEMENT. The maintenance of confidentiality shall be in accordance with all applicable Federal, State and local laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all personnel

providing services of the confidentiality provisions of this AGREEMENT. These confidentiality obligations shall survive the termination or expiration of this AGREEMENT.

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

16. INSURANCE. Without limiting or diminishing ATTORNEYS' obligation to indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this AGREEMENT.

A. Workers' Compensation:

Statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California, if ATTORNEYS have employees as defined by the State. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of 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 obligations hereunder. Policy shall name COUNTY, its Board of Supervisors, Agencies, Districts, Special Districts, and Departments and their respective elected or appointed officials, directors, officers, employees, agents or representatives as Additional Insureds. The policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this AGREEMENT or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this AGREEMENT, then ATTORNEYS shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate

limit, it shall apply separately to this AGREEMENT or be no less than two (2) times the occurrence limit. Policy shall name COUNTY, its Board of Supervisors, its Agencies, Districts, Special Districts, and Departments and their respective elected or appointed officials directors, officers, employees, agents or representatives as Additional Insureds.

D. Professional Liability:

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

E. General Insurance Provisions - All lines:

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

2) ATTORNEYS' insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of COUNTY'S Risk Manager before the commencement of operations under this AGREEMENT. Upon notification of self-insured retention unacceptable to COUNTY, and at the election of COUNTY'S Risk Manager, ATTORNEYS' carriers shall either: 1) reduce or eliminate such self-insured retention as respects this AGREEMENT with COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) ATTORNEYS shall cause ATTORNEYS' insurance carrier(s) to furnish COUNTY with either: 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by COUNTY'S Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s)

and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this AGREEMENT shall terminate forthwith, unless COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and that the insurance required herein is in full force and effect. ATTORNEYS shall not commence services until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

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

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

6) ATTORNEYS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this AGREEMENT.

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

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

17. INDEMNIFICATION. ATTORNEYS shall indemnify and hold harmless COUNTY, its Board of Supervisors, Agencies, Districts, Special Districts and Departments and their respective elected and appointed officials, directors, officers, employees, agents and representatives (hereinafter referred to as "Indemnified Parties") from any liability whatsoever including but not limited to, property damage, bodily injury, or death, based or asserted upon any services of ATTORNEYS, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to

this AGREEMENT. ATTORNEYS shall defend, at its sole expense, and pay all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, on behalf of the Indemnified Parties in any claim or action based upon such liability.

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

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

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

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

If to COUNTY:

Patti F. Smith
Deputy County Counsel
Riverside County Office of County Counsel
3960 Orange Street, 5th Floor
Riverside, CA 92501

If to ATTORNEYS:

Jeffrey V. Dunn
Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, California 92614

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

20. COMPLETE AGREEMENT. This AGREEMENT shall constitute the complete and exclusive statement of understanding between COUNTY and ATTORNEYS which supersedes

all previous written or oral agreements, and all prior communications between COUNTY and ATTORNEYS relating to the subject matter of this AGREEMENT.

Dated: _____

COUNTY OF RIVERSIDE
Transportation and Land Management Agency

ATTEST:

By: _____
Juan C. Perez, Director

Dated: _____

ATTORNEYS
BEST, BEST & KREIGER, LLP

By: _____
Jeffrey V. Dunn, Partner

Approved:

Karin Watts-Bazan for

By: 
Patti F. Smith, Deputy County Counsel

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EXHIBIT A

Fee Schedule

PERSONNEL	SPECIAL PROJECT RATES
Senior Partner	\$295
Junior Partner	\$290
Associate	\$285
Paralegal	\$140

Attachment B*

Decrease appropriations:

10000-1109000000-581000	Appropriation for contingency	\$91,000
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Increase appropriations:

10000-1102900000-525020	Legal Services	\$91,000
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* Budget Adjustment FY 12/13