

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

455



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
January 16, 2012

**SUBJECT:** Legal Services Agreement between the County of Riverside (County) and Best, Best & Krieger, LLP for legal counsel and services for the Magnolia Grade Separation Project and the Magnolia and Neece Traffic Signal Project.

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

1. Ratify the Legal Services Agreement between the County of Riverside (County) and Best, Best & Krieger, LLP for legal counsel and services for the Magnolia Grade Separation Project and the Magnolia and Neece Traffic Signal Project, and;
2. Authorize the Chairman of the Board of Supervisors to execute the same.

Juan C. Perez  
Director of Transportation and Land Management

JCP:pr:gl  
(Continued On Attached Page)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 250,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

<b>SOURCE OF FUNDS:</b> Gas Tax (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:   
Tina Grande

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: PAMELA J. WALLS  
DATE: 1/24/12  
Departmental Concurrence

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

Prev. Agn. Ref.

District: 2/2

Agenda Number:

3-49

The Honorable Board of Supervisors

RE: Legal Services Agreement between the County of Riverside (County) and Best, Best & Krieger, LLP for legal counsel and services for the Magnolia Grade Separation Project and the Magnolia and Neece Traffic Signal Project.

January 16, 2012

Page 2 of 2

**BACKGROUND:**

The Magnolia Avenue Grade Separation Project will replace the existing Magnolia Avenue/Burlington Northern Santa Fe (BNSF) at-grade railroad crossing, in the community of Home Gardens, in order to improve safety and traffic operations by eliminating the conflicts of trains passing through the flow of vehicular traffic.

The Project will construct a new four-lane overhead bridge over the existing BNSF tracks, above the entire BNSF right-of-way. The total length of the improvements will extend from approximately 500 feet west of Lincoln Street to approximately 550 feet east of Buchanan Street. The new bridge will be striped for four lanes of traffic on Magnolia Avenue. The length and clearance of the proposed bridge structure will accommodate the existing skewed railroad crossing, as well as the two existing railroad tracks and two additional future tracks (planned separately from this project), and will also provide frontage roads. Construction is expected to start in the fall of 2013.

The Magnolia and Neece traffic signal project is currently under construction and will add a new traffic signal with a controlled pedestrian crosswalk for pedestrians and users of the library/community center in the southeast quadrant of the intersection, in the community of Home Gardens. This project will improve the overall safety and operation of the intersection.

The associated intersection improvements include pavement reconstruction, sidewalk, ramps, curbs, gutters, retaining wall fence, decorative stamped concrete, landscaping, striping and signing improvements, and installation of two left-turning lanes. The existing Magnolia Avenue median will be reconstructed to accommodate the new left-turning lanes.

Both of these projects require the acquisition of property along Magnolia Avenue. The County has obtained possession of the needed properties for project construction to proceed; however, due to complex legal issues arising from the acquisition of the properties, legal counsel and services are needed. We have been able to successfully negotiate a settlement with sixteen of the twenty property owners impacted by the projects, but we still have six outstanding.

The legal services agreement between the County and Best, Best & Krieger, LLP will provide legal counsel and services necessary and appropriate to the defense and/or settlement of litigation brought against the County by property owners associated with the Magnolia Grade Separation Project and the Magnolia and Neece Traffic Signal Project. The bulk of these services is needed for negotiating and pursuing legal action if necessary with Union Pacific Railroad. The railroad owns the median corridor through Magnolia Avenue and although the County has been negotiating with the railroad for several years, we have been unsuccessful in reaching an agreement.

This agreement has been approved by County Counsel. The Board authorized the Transportation Department to retain outside counsel for this work, given the specialized nature of the legal aspects of dealing with the railroad, at its October 4, 2011 meeting.

1 LEGAL SERVICES AGREEMENT

2 The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and BEST BEST & KRIEGER  
3 LLP 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  
8 shall provide legal counsel and services. ATTORNEYS legal representation shall include representation  
9 of County in all aspects of the Magnolia Avenue and Neece Street Intersection Signal Light Project,  
10 Magnolia Grade Separation Project and any condemnation and/or inverse condemnation actions associated  
11 with these projects (hereafter, the "Projects"), including but not limited to:

12 (a) Legal services necessary and appropriate to the defense and/or settlement of  
13 litigation brought against the County by any property owner or interested party in properties associated  
14 with the Projects arising out of the Projects. The legal services are necessary due to complex and unique  
15 legal issues arising out of these Projects requiring a heightened level of expertise.

16 3. KEY ATTORNEYS. ATTORNEYS agree that Mark A. Easter and Kendall H. MacVey,  
17 Partners, will be the supervising attorneys assigned to perform the work under this Agreement. Support  
18 attorneys and paralegals shall be designated by the ATTORNEYS' lead. Any changes or substitution of  
19 the assigned attorney must have the express written approval of the Assistant County Executive  
20 Officer/Economic Development Agency ("EDA").

21 4. COMPENSATION. COUNTY shall pay ATTORNEY at the following hourly rates for  
22 services rendered:

Partner/Associate	Hourly Rates
Partner	\$295.00
Senior Associates	\$250.00
Junior Associates	\$220.00
Paralegals	\$160.00

1           4.1     The total amount of compensation paid to ATTORNEY under the terms of this  
2 Agreement shall not exceed the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in Fiscal  
3 Years 2011/2012 and 2012/2013, unless a written amendment to this agreement is executed by both  
4 parties prior to performance of any additional services. The amount of compensation paid to  
5 ATTORNEYS will include reimbursable costs including, but not limited to, fees to be paid to appraisers  
6 and other experts. ATTORNEYS shall notify the COUNTY immediately in writing when ATTORNEYS  
7 have expended seventy-five percent (75%) of the total payment by COUNTY beyond the approved  
8 compensation. A written amendment shall be a condition precedent to any obligation for payment by  
9 COUNTY beyond the approved compensation.

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

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

17           6.1     Reimbursable ordinary expenses shall include those expenses incurred on  
18 COUNTY'S behalf, to include but not limited to: (i) postage; (ii) courier service; (iii) title reports; (iv) in-  
19 house photocopies of documents; (v) long distance telephone calls; and (vi) travel outside of Riverside  
20 County. No single expense shall exceed exceeding Five Hundred Dollars (\$500.00) without the prior  
21 consent of the COUNTY.

22           6.2     Reimbursable extraordinary expenses shall include charges for which  
23 ATTORNEYS have obtained prior approval of COUNTY, and shall include: (i) consultants; (ii) travel  
24 outside the County of Riverside; (iii) investigative services; and (iv) any expense item exceeding Five  
25 Hundred Dollars (\$500.00).

26           6.3     Non-reimbursable expenses shall include, but not be limited to: (i) staff time or  
27 overtime for performing secretarial, clerical, or word processing functions; (ii) charges for the time spent  
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1 to provide necessary information for COUNTY'S audits or billing inquiries; (iii) charges for work  
2 performed which had not been authorized by COUNTY; (iv) mileage or travel expenses from the regular  
3 office of ATTORNEYS to the County of Riverside.

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

7 Patricia Romo, Deputy Director  
8 Transportation Land Management  
9 County of Riverside  
4080 Lemon Street  
Riverside, CA 92501

10 Anna W. Wang, Deputy County Counsel  
11 County of Riverside, Office of County Counsel  
3960 Orange St., Suite 500  
12 Riverside, CA 92501

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

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

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

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

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

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

11 Patricia Romo, Deputy Director	Kendall H. MacVey, Esq.
12 County of Riverside	Mark A. Easter, Esq.
13 Transportation and Land Management	Best Best & Krieger, LLP
14 4080 Lemon Street	3390 University Ave., 5 <sup>th</sup> Floor
15 Riverside, CA 92501	Riverside, CA 92501

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

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

1           a.     Workers' Compensation:

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

8           b.     Commercial General Liability:

9           Commercial General Liability insurance coverage (covering claims which may arise from or out of  
10 ATTORNEYS performance of its obligations hereunder) which includes, but is not limited to: premises  
11 liability, contractual liability, products and completed operations liability, personal and advertising injury,  
12 and cross liability coverage. Policy shall name the County of Riverside, its Agencies, Districts, Special  
13 Districts and Departments, their respective directors, officers, Board of Supervisors, employees, elected or  
14 appointed officials, agents or representatives as Additional Insured's. Policy's limit of liability shall not be  
15 less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit. If such insurance  
16 contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2)  
17 times the occurrence limit.

18           c.     Vehicle Liability:

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

27           d.     Professional Liability:

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

12 e. General Insurance Provisions – All Lines:

- 13 1) Any insurance carrier providing insurance coverage hereunder shall be  
14 admitted to the State of California and have an A.M. BEST rating of not less  
15 than an A:VIII (A:8) unless such requirements are waived, in writing, by the  
16 County Risk Manager. If the County's Risk Manager waives a requirement  
17 for a particular insurer such waiver is only valid for the specific insurer and  
18 only for one policy term.
- 19 2) ATTORNEYS' insurance carrier(s) must declare its insurance self-insured  
20 retentions. If such self-insured retentions exceed \$500,000.00 per  
21 occurrence, such retentions shall have the prior written consent of the  
22 County Risk Manager before the commencement of operations under this  
23 Agreement. Upon notification of self-insured retentions which are deemed  
24 unacceptable to the COUNTY, at the election of the County's Risk Manager,  
25 ATTORNEYS' carriers shall either 1) reduce or eliminate such self-insured  
26 retentions with respect to this Agreement with COUNTY; or 2) procure a  
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1 bond which guarantees payment of losses and related investigations, claims  
2 administration, defense costs and expenses.

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

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

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

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

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

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

20 12. INDEMNITY AND HOLD HARMLESS. ATTORNEYS shall indemnify and hold  
21 harmless the County of Riverside from any liability whatsoever, including but not limited to: property  
22 damage, bodily injury, or death, based or asserted upon any services of ATTORNEYS, its officers,  
23 employees, subcontractors, agents or representatives arising out of or in any way relating to the  
24 ATTORNEYS' errors and omissions and ATTORNEYS shall defend at its sole expense and pay all costs  
25 and fees, including but not limited to: attorney fees, cost of investigation, defense and settlements or  
26 awards, on behalf of the 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 right  
3 to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided,  
4 however, that any such adjustment, settlement or compromise in no manner whatsoever limits or  
5 circumscribes ATTORNEYS' indemnification to the Indemnified Parties as set forth herein.

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

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

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

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

26 14. SUPERVISION OF AGREEMENT. The Assistant County Executive Officer/EDA shall  
27 designate an individual in his office to act in his stead. The Assistant County Executive Officer/EDA, or  
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1 his designee, shall have authority to act for COUNTY on all daily operational matters under this  
2 Agreement and shall review and approve all ATTORNEYS' invoices, reports, whether written or verbal,  
3 and any change in ATTORNEYS' Supervising Attorney.

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

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

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

19 Anyone who is a former employee of COUNTY at the time of execution of this Agreement or who  
20 subsequently becomes affiliated with ATTORNEYS in any capacity (employee, associate or partner) shall  
21 not: (i) participate in the services provided by ATTORNEYS to County; or (ii) become a partner,  
22 shareholder or otherwise share in the profits of ATTORNEYS for a period of one (1) year from the date  
23 the former County employee left County employment.

24 It is possible that some of the ATTORNEYS' present or future clients will have disputes with  
25 COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and  
26 ATTORNEYS agree that should the situation arise where a new or existing client engages ATTORNEYS  
27 in any matter in a position adverse to COUNTY or in which COUNTY'S interest may be adversely  
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1 affected, that ATTORNEYS will so advise COUNTY, and upon receipt of such notice COUNTY may  
2 determine that the conflict may be waived, or may determine that it is in the COUNTY'S best interest to  
3 terminate the services of ATTORNEYS. Should COUNTY determine that it is best to terminate the  
4 services of ATTORNEYS, COUNTY will notify ATTORNEYS of such decision. ATTORNEYS may  
5 then submit any outstanding invoices for payment up to the date of termination as determined by the  
6 notice from COUNTY.

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

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

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

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

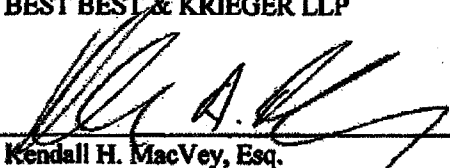
3 COUNTY OF RIVERSIDE

4  
5 Dated: \_\_\_\_\_

6 By: \_\_\_\_\_  
7 John Tavaglione, Chairman  
8 Board of Supervisors

9 BEST BEST & KRIEGER LLP

10 Dated: December 6, 2012

11 By:  \_\_\_\_\_  
12 Kendall H. MacVey, Esq.  
13 Mark A. Easter, Esq.

14 APPROVED AS TO FORM  
15 Pamela Walls, County Counsel

16 Dated: Jan. 23, 2013

17 By:  \_\_\_\_\_  
18 Anna W. Wang, Deputy County Counsel

19 ATTACHMENTS:  
20 Exhibit A: Litigation Management Guidelines  
21 Exhibit B, C, and D  
22 Attachment C - Budget Guidelines  
23  
24  
25  
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1 IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to  
2 execute this agreement on the date noted below.

3 COUNTY OF RIVERSIDE

4  
5 Dated: \_\_\_\_\_

6 By: \_\_\_\_\_  
7 John Tavaglione, Chairman  
8 Board of Supervisors

9 BEST BEST & KRIEGER LLP

10 Dated: \_\_\_\_\_

11 By: \_\_\_\_\_  
12 Kendall H. MacVey, Esq.  
13 Mark A. Easter, Esq.

14 APPROVED AS TO FORM  
15 Pamela Walls, County Counsel

16 Dated: \_\_\_\_\_

17 By: \_\_\_\_\_  
18 Anna W. Wang, Deputy County Counsel

19 ATTACHMENTS:  
20 Exhibit A: Litigation Management Guidelines  
21 Exhibit B, C, and D  
22 Attachment C – Budget Guidelines  
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## 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; and
    - 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 (photos, 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

1. FIRM NAME:  
  
CASE NAME:  
  
COURT CASE #:  
COUNTY FILE #:  
  
INCIDENT DATE:  
CLAIM DATE:  
COMPLAINT FILED DATE:  
  
TYPE OF CASE:  
  
CASE/MATTER DESCRIPTION AND FACTS:  
  
OPPOSING ATTORNEY'S NAME (if applicable):
2. INVESTIGATION NEEDED:
3. INJURIES OR DAMAGES CLAIMED (list punitive damages separately):
4. SPECIAL DAMAGES:

MEDICAL	\$
LOSS OF EARNINGS	\$
OTHER (specify)	\$
5. CLAIMANT'S CONTENTION:
6. AFFIRMATIVE DEFENSES:
7. INITIAL DISCOVERY (designate expert/parties):
  - a. Depositions to be taken (list names).
  - b. Interrogatories to be sent (list names).
  - c. Records/Documents to be produced (list names).
8. RESEARCH REQUIRED (general description of issues and extent): Specifically identify any research requiring original effort as opposed to research that has generally been done previously by your FIRM.

INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

9. MONETARY EVALUATION OF CASE:  
Potential Liability/Exposure: \$  
Verdict Range: \$  
Settlement Value: \$
10. RECOMMENDED CASE STRATEGY:
11. STAFFING/HOURLY RATE (list names, titles, hourly rate, and estimated number of hours for each partner, associate and/or paralegal).
12. CONSULTANT AND/OR EXPERT WITNESS (list names, specialty, hourly rate, and estimated number of hours for each consultant and/or expert).
13. INITIAL COST ESTIMATE (projected budget, including attorney fees and expenses for handling each case to/through each of the stages as provided in the Attachment C for our (estimated) Budget Guidelines. Trial costs **should not** be included until MSC and/or Trial date has been set. Please base your best estimate on past experience with similar case(s).
14. Estimated final disposition date.

Approved by: \_\_\_\_\_  
(Firm's Supervising Attorney)

Date: \_\_\_\_\_

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).

(Exhibit D continued)

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.)?