

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

889



FROM: County Counsel

SUBMITTAL DATE:  
June 26, 2014

SUBJECT: Agreement with Buchanan Ingersoll & Rooney, LLP for Professional Legal Services related to J to the 5th, LLC, et, al. v. County of Riverside, et, al., MCC 1400542 and Protect Wine Country v. County of Riverside, RIC 1401719, ALL Districts [\$300,000, 100% County General Fund]

RECOMMENDED MOTION: That the Board of Supervisors:

Approve and authorize the Chairman to execute the attached legal services agreement with Buchanan Ingersoll & Rooney, LLP.

BACKGROUND:

Summary

A Petition for Writ of Mandate has been filed against the County of Riverside for the County's approval of the Wine Country Community Plan. This litigation is known as *Protect Wine Country v. County of Riverside RIC 1401719*. Additionally, a second Petition for Writ of mandate was filed against the County of Riverside for the same project. This litigation is known as *J to the 5<sup>th</sup>, LLC, et, al. v. County of Riverside, et, al. MCC 1400542*. While the administrative record is not due to be filed until August of 2014, Counsel in the *J to the 5<sup>th</sup> LLC* case has scheduled a deposition in that matter for July 17, 2014.  
(continued on next page)

  
Pamela J. Walls, County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 300,0000	\$	\$ 300,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: 100% County General Fund

Budget Adjustment:

For Fiscal Year:

C.E.O. RECOMMENDATION:

APPROVE

BY:

  
Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

☐ A-30  
☐ 4/5 Vote  
☐ Positions Added  
☐ Change Order

Prev. Agn. Ref.:

District: ALL

Agenda Number:

3-66

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11:** Agreement with Buchanan Ingersoll & Rooney, LLP for Professional Legal Services related to J to the 5th, LLC, et, al. v. County of Riverside, et, al., MCC 1400542 and Protect Wine Country v. County of Riverside, RIC 1401719  
**DATE:** June 26, 2014  
**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

Douglas Kerner of Buchanan Ingersoll and Rooney, LLP has been recommended to handle the case. Buchanan Ingersoll & Rooney, LLP, has more than thirty years of experience in litigating cases related to land use and the California Environmental Quality Act (CEQA). The firm has worked throughout Riverside County on a variety of land use matters, and has extensive experience with the Temecula Valley Wine Country. Doug Kerner has more than 20 years of experience in the areas of land use and environmental law. Additionally, Mr. Kerner is familiar with the County's procedures and personnel. The litigation team will also include Robert Parks who has 30 years of experience with complex civil litigation, and Kimberly Arouh who brings additional CEQA expertise to the team. The rates charged are consistent with those charged by other law firms that have represented the County in CEQA litigation.

Because the Board will not meet again until July 15, 2014, two days before the scheduled deposition, the matter is being brought to the Board for consideration on this agenda.

**Impact on Citizens and Businesses**

The legal services agreement is necessary because of the litigation filed against the County's approval of the Wine Country Community Plan.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The legal services agreement includes a provision that the compensation to Buchanan Ingersoll & Rooney shall not exceed \$150,000 per case, for \$300,000 total.

**Contract History and Price Reasonableness**

N/A

**ATTACHMENTS:**

Legal Services Agreement

## **LEGAL SERVICES AGREEMENT**

This Legal Services Agreement ("Agreement") is entered into as of the date written below, and is made by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (hereinafter "COUNTY"), and Buchanan Ingersoll & Rooney LLP (hereinafter "ATTORNEY"). The Parties hereto agree as follows:

1. **TERM OF AGREEMENT.** This Agreement shall commence on execution and continue through June 30, 2015, or completion of the last work assignment, whichever occurs first, unless sooner terminated pursuant to Sections 4 and 5 herein this Agreement.

2. **LEGAL SERVICES.** ATTORNEY shall represent COUNTY in *J to the 5<sup>th</sup>, LLC, et, al. v. County of Riverside, et, al. MCC 1400542* and *Protect Wine Country v. County of Riverside RIC 1401719* which is in connection with the COUNTY's certification of an environmental impact report and approval of the Wine Country Community Plan (LITIGATION). This Agreement is for litigation services only.

3. **ASSIGNMENT OF PERSONNEL.** The Supervising Attorney for this Agreement will be S. Douglas Kerner. The Supervising Attorney shall have full authority to act for ATTORNEY on all matters encompassed by this Agreement and shall be fully responsible for the quality of the work produced. Support attorneys and paralegals shall be designated by the Supervising Attorney. Any changes or substitution of the Supervising Attorney must have the express written approval of COUNTY.

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 level of personnel 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. **PROFESSIONAL CONFLICT OF INTEREST.** ATTORNEY represents and warrants 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 ATTORNEY, or shall have any direct or indirect financial interest in this Agreement.

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

Nothing contained herein this Agreement shall constitute consent by COUNTY to waive an actual or potential conflict of interest. ATTORNEY remains responsible to comply with all rules and regulations related to the Rules of Professional Conduct. COUNTY will not consent to waive any actual or potential conflict of interest related to ATTORNEY's representation of COUNTY in the LITIGATION. Any costs, including attorney fees, associated with a conflict of

interest in the representation of the COUNTY by ATTORNEY shall be the exclusive responsibility of ATTORNEY. ATTORNEY shall not charge COUNTY for their services in defending such a conflict of interest claim. Should COUNTY determine that it is best to terminate the services of ATTORNEY; COUNTY will notify ATTORNEY in writing of such decision. ATTORNEY may then submit any outstanding invoices for payment up to the date of termination as determined by the notice from COUNTY.

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

After receiving a Termination Notice, and unless otherwise directed by COUNTY, ATTORNEY shall: (i) take all steps necessary to stop services on the date and to the extent specified in the Termination Notice; and (ii) submit billing for all services performed to date of Termination Notice within thirty (30) days from the effective termination date.

ATTORNEY shall promptly submit a brief report advising of the status of all matters, including any unresolved matters being handled by ATTORNEY for COUNTY. ATTORNEY shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all matters on which it has been working. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

6. COMPENSATION. The total amount of compensation paid to ATTORNEY under the terms of this agreement shall not exceed one hundred fifty thousand dollars (\$150,000) per case for a total of \$300,000. This amount may be amended by the parties to this Agreement, provided a written amendment 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. ATTORNEY shall notify the COUNTY immediately in writing when ATTORNEY has expended seventy-five percent (75%) of the total compensation. ATTORNEY shall not charge COUNTY for time incurred in traveling within the COUNTY OF RIVERSIDE.

COUNTY shall pay ATTORNEY at the following hourly rates for services rendered:

<u>Partner/Associate</u>	
Senior Partner	\$350.00
Junior Partner	\$325.00
Associate	\$245.00
Paralegal	\$105.00

7. EXPENSES. COUNTY shall reimburse ATTORNEY 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 the ATTORNEY's hourly rate.

Reimbursable ordinary expenses shall include but not be limited to: (i) postage; (ii) courier service; (iii) in-house photocopies of documents; (iv) long distance phone calls outside of the County of Riverside; provided however, that no single expenditure shall exceed \$500 without the prior consent of the COUNTY.

Reimbursable extraordinary expenses shall include charges for which ATTORNEY has obtained prior approval of the COUNTY, and shall include, but not be limited to: (i) retaining consultants; (ii) travel outside the County of Riverside; (iii) investigative services; (iv) and 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 the 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; or (iv) mileage or travel expenses within the County of Riverside.

8. PAYMENT. ATTORNEY 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:

Office of County Counsel  
ATTN: Aaron Gettis  
3960 Orange Street, Suite 500  
Riverside, CA 92501

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 attorney and/or paralegal; (ii) a listing of each activity as a line item in a time reporting format acceptable to COUNTY with a detailed description of specific activities for each attorney and/or paralegal; (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.

ATTORNEY 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. ATTORNEY shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between COUNTY and ATTORNEY.

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

9. UNAVAILABILITY OF FUNDS. When funds are not appropriated or otherwise made available in any Fiscal Year, this Agreement shall be terminated by COUNTY upon immediate notice to ATTORNEY. ATTORNEY shall be reimbursed for services performed and covered under the terms of this Agreement.

10. SUPERVISION OF AGREEMENT. The COUNTY COUNSEL or his /her designee shall have authority to act for COUNTY on all matters encompassed by this Agreement.

11. CONFIDENTIALITY. ATTORNEY shall maintain the confidentiality of all information that it may acquire, arising out of or connected with, its provision of services under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEY shall inform all personnel providing services hereunder of the confidentiality provisions of this Agreement. These confidentiality obligations shall survive the termination or expiration of this Agreement.

12. COMMUNICATIONS WITH COUNTY. ATTORNEY 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. ATTORNEY warrants that they shall not disclose or use in any manner whatsoever any of the information from COUNTY and its officers, employees and agents in connection with said relationships or proceedings. ATTORNEY understands that the Office of County Counsel is the empowered legal representative of COUNTY and its officers and employees and ATTORNEY shall not without specific direction from the Office of County Counsel communicate with, advise or represent the COUNTY'S legislative body or appointive bodies.

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

14. LITIGATION. The County of Riverside's Litigation Management Guidelines ("Guidelines") are attached hereto as Exhibit A and are incorporated herein by this reference and made an integral part of this Agreement. The Guidelines may be updated from time to time. ATTORNEY agree that any superseding update shall become an integral part of this Agreement and will not change nor alter any other portion of this Agreement in anyway whatsoever.

The Guidelines contain required reporting forms to be completed and submitted to COUNTY by the ATTORNEY on each case. The required reporting forms are listed and included herewith. The *Budget Guideline* is attached to the Guidelines as Exhibit 1; the *Case Evaluation and Plan* is attached to the Guidelines as Exhibit 2; the *Case Status Report* is attached to the Guidelines as Exhibit 3; and the *Attorney Pre-Trial Status Report* is attached to the Guidelines as Exhibit 4. The ATTORNEY agrees that these forms shall be completed properly for each assigned case and will be submitted to COUNTY on a timely basis as described in the Guidelines and when requested by COUNTY. ATTORNEY shall submit a comprehensive Pre-Trial Status Report to COUNTY no later than sixty (60) days prior to commencement of trial, which shall contain the essential components as outlined in Exhibit 4. Additionally, ATTORNEY shall meet with COUNTY no later than forty-five (45) days prior to trial to discuss the strengths, weaknesses and defense strategy of the case.

15. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to indemnify or hold COUNTY harmless, ATTORNEY shall procure and maintain or cause to be maintained, at their sole cost and expense, the following insurance coverage during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation. If ATTORNEY have employees as defined by the State of California, ATTORNEY shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000.00 per person per accident. The policy shall be endorsed to waive subrogation in favor of COUNTY.

B. Commercial General Liability. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEY performance of its obligations hereunder. Policy shall name COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000.00 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 ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000.00 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 as Additional Insured.

D. Professional Liability. ATTORNEY shall maintain Professional Liability Insurance providing coverage for ATTORNEY' performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. If ATTORNEY' 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 and ATTORNEY shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a date retroactive to the date of or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEY have maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue as long as the law allows.

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 an A:VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.

2) ATTORNEY must declare its insurance self-insured retention for each coverage required herein. If such self-insured retention(s) exceed \$500,000.00 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of services under this Agreement. Upon notification of self-insured retentions which are deemed unacceptable to the COUNTY, at the election of the County's Risk Manager, ATTORNEY' carriers shall either

1) reduce or eliminate such self-insured retentions with respect to this Agreement with COUNTY or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

3) ATTORNEY shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly executed original Certificate(s) of insurance and certified copies of endorsements effecting coverage as required herein and, 2) if requested to do so orally or in writing by the County 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 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 coverage's set forth herein and the insurance required herein is in full force and effect. *ATTORNEY shall not commence operations until COUNTY has been furnished with 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 by the parties hereto and ATTORNEY' insurance shall be construed as primary insurance and COUNTY'S insurance and/or deductibles and/or self-insured retentions 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 work; 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 coverage's currently required herein, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the ATTORNEY has become inadequate.

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

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

8) ATTORNEY agrees 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.

16. INDEMNIFICATION. ATTORNEY shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective



directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of ATTORNEY, its officers employees, subcontractors, agents or representatives, arising out of or in any way relating to this Agreement, including but not limited to, property damage, bodily injury, or death, or any other element of any kind or nature whatsoever arising from the performance of ATTORNEY, its officers, employees, subcontractors, agents or representatives. ATTORNEY shall defend at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such services and performance.

With respect to any action or claim subject to indemnification herein by ATTORNEY, ATTORNEY shall, at their sole cost, have the right to use counsel of their 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 ATTORNEY's indemnification to Indemnitees as set forth herein.

ATTORNEY's obligation hereunder shall be satisfied when ATTORNEY has provided 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 ATTORNEY's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

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

IF TO COUNTY:  
Office of County Counsel  
Attn: Aaron Gettis  
3960 Orange Street, Suite 500  
Riverside, CA 92501

IF TO ATTORNEY:  
Buchanan Ingersoll & Rooney  
Attn: Doug Kerner  
600 West Broadway, Suite 1100  
San Diego, CA 92101-3387

18. 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 ATTORNEY to assign or subcontract services relating to this Agreement without the consent of COUNTY shall constitute a material breach of this Agreement. However, ATTORNEY may retain consultants and experts as ATTORNEY deem appropriate after receiving the written approval of COUNTY.

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

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

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement

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

COUNTY:

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:  
Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_

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

ATTORNEY:

Buchanan Ingersoll & Rooney

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

ATTACHMENTS:

Exhibit A: Litigation Management Guidelines



**Exhibit A**

**County of Riverside's Litigation Management Guidelines**