

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



FROM: County Counsel

SUBMITTAL DATE:
July 23, 2014

SUBJECT: Settlement Agreement between the County of Riverside and Kary Kielhofer, Judith Woolverton Kielhofer and the JWK Trust of 2010 related to Friends of Riverside's Hills v. County of Riverside, RIC 1100822. 3rd District/3rd District [\$0]


RECOMMENDED MOTION: That the Board of Supervisors:

Approve and authorize the Chairman to execute the attached settlement agreement between the County of Riverside and Kary Kielhofer, Judith Woolverton Kielhofer and the JWK Trust of 2010 for the reimbursement of Court awarded fees and costs associated with *Friends of Riverside's Hills v. County of Riverside*, RIC 1100822.

BACKGROUND:

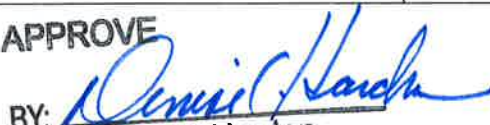
Summary

On January 21, 2011, the Friends of Riverside's Hills filed a Petition for Writ of Mandate against the County of Riverside for the land use approval involving General Plan Amendment No. 1055, Change of Zone No. 7723, Parcel Map No. 35683 and associated mitigated negative declaration. The Riverside County Superior Court granted the Petition and awarded attorney fees and costs in the amount of \$106,368.56. (continued on next page)


Michelle Clack, Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS:				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
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: _____ District: 3rd Agenda Number: _____

3-5

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Settlement Agreement between the County of Riverside and Kary Kielhofer, Judith Woolverton Kielhofer and the JWK Trust of 2010 related to Friends of Riverside's Hills v. County of Riverside, RIC 1100822.

DATE: July 23, 2014

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The County satisfied the Court's order by paying the firm of Johnson & Sedlack the total awarded amount. Additionally, Mr. and Mrs. Kielhofer have an outstanding balance of \$35,700 for work performed by the County's Planning Department and the Office of County Counsel on their project and related litigation. The Kielhofers wish to satisfy their indemnification obligation and reimburse the County the combined total amount of \$142,068.56, plus interest at the rate of 1%. The attached settlement agreement sets forth the reimbursement payment schedule for a five (5) year term.

Impact on Citizens and Businesses

The settlement agreement will ensure the County of Riverside is reimbursed for the payment made to satisfy the Court awarded fees and costs associated with the private development project and related litigation.

SUPPLEMENTAL:

Additional Fiscal Information

At the conclusion of the 5 year term, the County will be reimbursed the full amount of \$145,709.05 which includes the Court awarded fees and costs, payment for work performed by the County and interest as shown on Exhibit A.

Contract History and Price Reasonableness

N/A

ATTACHMENT:

- A. Settlement Agreement

1 This Settlement Agreement (“Agreement”) made and entered into this _____, 2014 by
2 and between COUNTY OF RIVERSIDE, a political subdivision of the State of California (“COUNTY”),
3 and Kary Kielhofer, Judith Woolverton Kielhofer and the JWK Trust of 2010, the Real Party in Interest in
4 Riverside County Superior Court Case No. RIC1100822 (“RPI”), relating to the RPI’s indemnification of
5 the COUNTY. COUNTY and RPI are collectively referred herein as “the parties.”
6

7 **WITNESSETH:**
8

9 **WHEREAS**, pursuant to Condition of Approval 10 EVERY 3 for Parcel Map No. 35683, the RPI
10 has an obligation to defend, indemnify and hold harmless the COUNTY, its agents, officers, or employees
11 from any claim, action or proceeding against the COUNTY, its agents, officers, or employees to attack,
12 set aside, void or annul an approval of the COUNTY, its advisory agencies, appeal boards, or legislative
13 body concerning General Plan Amendment No. 1055, Change of Zone No. 7723, Parcel Map No. 35683
14 and the associated Mitigated Negative Declaration (collectively “PROJECT”); and,

15 **WHEREAS**, on January 21, 2011, Petitioner, Friends of Riverside’s Hills, filed a Petition for Writ
16 of Mandate against the COUNTY and RPI to, among others, set aside the PROJECT and comply with the
17 requirements of the California Environmental Quality Act. Such Petition is known as *Friends of*
18 *Riverside’s Hills v. County of Riverside, et.al.*, Riverside County Superior Court Case No. RIC1100822
19 (“LITIGATION”); and,

20 **WHEREAS**, on August 1, 2013, the Court granted the Petition for Writ of Mandate; and,

21 **WHEREAS**, on October 31, 2013, the Court awarded attorney fees and costs in the amount of
22 \$106,368.56; and,

23 **WHEREAS**, on February 11, 2014, the COUNTY satisfied the Court’s order by paying the firm
24 of Johnson & Sedlack the total amount of \$106, 368.56; and,

25 **WHEREAS**, the RPI has an outstanding balance of \$35,700 for work performed on the PROJECT
26 by the COUNTY’s Planning Department and Office of County Counsel; and,

27 **WHEREAS**, the RPI acknowledges and wishes to satisfy its indemnification obligation to
28 reimburse the COUNTY the combined total amount of \$142,068.56, plus interest; and,

1 **WHEREAS**, this Agreement is reached in pre-litigation in order to resolve a pending dispute
2 between the parties and establishes specific terms concerning RPI's indemnification obligation pursuant
3 to Condition of Approval 10 EVERY 3 for Parcel Map No. 35683.

4 **NOW, THEREFORE**, it is mutually agreed between COUNTY and RPI as follows:

5 1. RPI's Obligations.

- 6 a. RPI shall pay COUNTY the combined sum total of \$142,068.56, plus interest calculated
7 at 1.00 percent;
- 8 b. RPI is allowed to pay the combined sum total plus interest in equal monthly installments
9 over a sixty (60) month period commencing on September 1, 2014;
- 10 c. Each installment shall be in the amount of \$2428.48, inclusive of interest, and shall be due
11 on the 1st of each month for a total of sixty months (60) months so that the combined sum
12 total plus interest is paid in full to COUNTY on or before the 60th month.
- 13 d. The payment schedule is shown on Exhibit A, attached hereto and incorporated herein by
14 this reference.
- 15 e. Each monthly installment shall be made payable to the "County of Riverside" and shall be
16 sent to the following address:

17 County of Riverside
18 Executive Office
19 4080 Lemon Street, 4th Floor, Mail Stop #1020
 Riverside, CA 92504

20 2. COUNTY's Obligation.

- 21 a. COUNTY shall not bring or file a lawsuit or action against the RPI to enforce RPI's
22 indemnification obligation pursuant to Condition of Approval 10 Every 3 for Parcel Map
23 No. 35683 so long as the RPI completes the terms and conditions set forth herein.
- 24 b. COUNTY agrees to accept the settlement amount described herein and agrees that such
25 payment once received completely shall fully and forever discharge and release all claims
26 known and unknown and causes of action, whether now known or now unknown, which
27

1 the parties have against each other, as it relates to the RPI's indemnification obligation for
2 the PROJECT.

- 3 3. Conditioned on Performance. This settlement is expressly conditioned upon the parties'
4 performance of the terms contained in this Agreement.
- 5 4. Release. The parties understand and agree that once the obligations of this Agreement have
6 been satisfied, the releases set forth in this Agreement extend to all claims of every nature and
7 kind, whether known or unknown or suspected or unsuspected.
- 8 5. Entire Agreement. The parties to this Agreement understand that this Agreement sets forth the
9 entire Agreement between them with regard to the subject matter described herein. All
10 agreements, covenants, representations and warranties, express or implied, written or oral, of
11 the parties with regard to the subject matter hereof are contained herein. No other agreements,
12 covenants, representations and warranties, express or implied, oral or written, have been made
13 between the parties with respect to the subject matter of this Agreement. All prior and
14 contemporaneous conversations, negotiations, covenants and warranties with respect to the
15 subject matter hereof are waived, merged herein and superseded hereby. This is an integrated
16 agreement
- 17 6. Review of Agreement. All parties to this Agreement represent and declare that they have
18 consulted with and been represented by legal counsel, or had the opportunity to seek advice
19 from a legal counsel as to the contents herein, and that in executing this Agreement they have
20 relied solely upon their own judgment, belief and knowledge, and any advice and
21 recommendations of their own independently selected counsel. The parties further represent
22 and declare that each has carefully read this Agreement and knows the contents thereof, and
23 that the parties have freely assented to the terms of this Agreement, which has not involved
24 coercion, undue influence or economic pressure.
- 25 7. Attorney's Fees and Costs to Enforce the Agreement. The parties to this Agreement agree that
26 should any party hereto retain counsel for the purposes of enforcing or preventing the breach
27 of any provision contained hereof, or because of any provision hereof, or because of any
28 failure of any representation or warranty contained herein, including but not limited to the

1 institution of an action or proceeding to enforce any provision hereof, or for damages by
2 reason of any alleged breach of provisions hereof, or for a declaration of rights or obligations
3 hereunder, or for any other judicial determination (including arbitration), the prevailing party
4 (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be
5 granted, to reimbursement from the losing party for all costs and expenses incurred thereby,
6 including, but not limited to, reasonable attorney's fees and costs of such prevailing party.

7 8. Fees and Costs in Preparing the Agreement. COUNTY and RPI shall bear their own costs and
8 fees associated with the preparation and administration of this Agreement.

9 9. Notices. For all purposes herein, notices shall be effective when personally delivered,
10 delivered by commercial overnight delivery service, or sent by certified or registered mail,
11 return receipt requested, to the appropriate address set forth below:

12 COUNTY:

RPI:

13
14 Office of County Counsel
15 Attn: Shellie Clack
16 3960 Orange Street, Suite 500
Riverside, CA 92501

Kary and Judith Kielhofer
688 West Riverview Circle
Reno, NV 89509

17
18 10. Counterparts. This Agreement may be executed in counterparts, each counterpart being
19 executed by less than all of the parties hereto, and shall be equally effective as if the single
20 original has been signed by all parties; but all such counterparts shall be deemed to constitute a
21 single agreement. A fax signature shall have the same force and effect as an original.

22 11. Complete Agreement/Governing Law. This Agreement represents the complete understanding
23 between the parties with respect to matters set forth herein. This Agreement shall be construed
24 in accordance with the laws of the State of California.

25 12. Successors and Assigns. The obligations specific herein shall be made, and are binding on the
26 successors in interest of the RPI, whether the succession is by agreement, by operation of law
27 or by any other means.
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13. Amendment and Waiver. No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by all parties.

14. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Captions and Headings. The captions and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

16. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

17. Effective Date. The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.

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1 **IN WITNESS WHEREOF**, the parties hereto have duly caused this Agreement to be
2 executed by their authorized representatives on the date hereinabove first written.
3

4
5 COUNTY:
6 County of Riverside,
7 a political subdivision of the State of California

RPI:
 Kary Kielhofer
 Judith Woolverton Kielhofer
 The JWK Trust of 2010

8
9 By: _____
 Chairman of the Board

 By: _____
 Kary Kielhofer

10
11
12 ATTEST: Kecia Harper-Ihem
13 Clerk of the Board

 By: _____
 Judith Woolverton Kielhofer

14 By: _____

 By: _____
 Judith Woolverton Kielhofer
 Trustee of the JWK Trust of 2010

15 Date: _____

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25
26 FORM APPROVED COUNTY COUNSEL

27 BY: Michelle Clack 7/23/14
 MICHELLE CLACK DATE

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IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed by their authorized representatives on the date hereinabove first written.

COUNTY:
County of Riverside,
a political subdivision of the State of California

RPI:
Kary Kielhofer
Judith Woolverton Kielhofer
The JWK Trust of 2010

By: _____
Chairman of the Board

By: 
Kary Kielhofer

ATTEST: Kecia Harper-Ihem
Clerk of the Board

By: 
Judith Woolverton Kielhofer

By: _____

By: 
Judith Woolverton Kielhofer
Trustee of the JWK Trust of 2010

Date: _____

RIC1100822 Settlement Payment Schedule

Amount Paid Johnson & Sedlack	\$106,368.56
County Costs	\$35,700.00
Combined Sum Total Amount:	\$142,068.56
Interest Rate (%):	1.00%
Number of Years:	5
Number of Payments Per Year:	12
Start Date (optional):	01-Aug-2014

Scheduled Payment Amount:	\$2,428.48
Total No. Payments:	60
Total Payment Amount:	\$145,709.05
Total Interest Paid:	\$3,640.49
Date of Last Payment:	01-Aug-2019

Payment No.	Date	Start Balance	Payment Amount	Capital Paid	Interest Paid	Remaining Balance
1	09/01/14	\$142,068.56	\$2,428.48	\$2,310.09	\$118.39	\$139,758.47
2	10/01/14	\$139,758.47	\$2,428.48	\$2,312.02	\$116.47	\$137,446.45
3	11/01/14	\$137,446.45	\$2,428.48	\$2,313.95	\$114.54	\$135,132.50
4	12/01/14	\$135,132.50	\$2,428.48	\$2,315.87	\$112.61	\$132,816.63
5	01/01/15	\$132,816.63	\$2,428.48	\$2,317.80	\$110.68	\$130,498.83
6	02/01/15	\$130,498.83	\$2,428.48	\$2,319.74	\$108.75	\$128,179.09
7	03/01/15	\$128,179.09	\$2,428.48	\$2,321.67	\$106.82	\$125,857.42
8	04/01/15	\$125,857.42	\$2,428.48	\$2,323.60	\$104.88	\$123,533.82
9	05/01/15	\$123,533.82	\$2,428.48	\$2,325.54	\$102.94	\$121,208.28
10	06/01/15	\$121,208.28	\$2,428.48	\$2,327.48	\$101.01	\$118,880.80
11	07/01/15	\$118,880.80	\$2,428.48	\$2,329.42	\$99.07	\$116,551.39
12	08/01/15	\$116,551.39	\$2,428.48	\$2,331.36	\$97.13	\$114,220.03
13	09/01/15	\$114,220.03	\$2,428.48	\$2,333.30	\$95.18	\$111,886.73
14	10/01/15	\$111,886.73	\$2,428.48	\$2,335.25	\$93.24	\$109,551.48
15	11/01/15	\$109,551.48	\$2,428.48	\$2,337.19	\$91.29	\$107,214.29
16	12/01/15	\$107,214.29	\$2,428.48	\$2,339.14	\$89.35	\$104,875.15
17	01/01/16	\$104,875.15	\$2,428.48	\$2,341.09	\$87.40	\$102,534.06
18	02/01/16	\$102,534.06	\$2,428.48	\$2,343.04	\$85.45	\$100,191.02
19	03/01/16	\$100,191.02	\$2,428.48	\$2,344.99	\$83.49	\$97,846.03
20	04/01/16	\$97,846.03	\$2,428.48	\$2,346.95	\$81.54	\$95,499.09
21	05/01/16	\$95,499.09	\$2,428.48	\$2,348.90	\$79.58	\$93,150.19
22	06/01/16	\$93,150.19	\$2,428.48	\$2,350.86	\$77.63	\$90,799.33
23	07/01/16	\$90,799.33	\$2,428.48	\$2,352.82	\$75.67	\$88,446.51
24	08/01/16	\$88,446.51	\$2,428.48	\$2,354.78	\$73.71	\$86,091.73
25	09/01/16	\$86,091.73	\$2,428.48	\$2,356.74	\$71.74	\$83,734.99
26	10/01/16	\$83,734.99	\$2,428.48	\$2,358.70	\$69.78	\$81,376.28
27	11/01/16	\$81,376.28	\$2,428.48	\$2,360.67	\$67.81	\$79,015.61
28	12/01/16	\$79,015.61	\$2,428.48	\$2,362.64	\$65.85	\$76,652.98
29	01/01/17	\$76,652.98	\$2,428.48	\$2,364.61	\$63.88	\$74,288.37
30	02/01/17	\$74,288.37	\$2,428.48	\$2,366.58	\$61.91	\$71,921.79
31	03/01/17	\$71,921.79	\$2,428.48	\$2,368.55	\$59.93	\$69,553.24
32	04/01/17	\$69,553.24	\$2,428.48	\$2,370.52	\$57.96	\$67,182.72
33	05/01/17	\$67,182.72	\$2,428.48	\$2,372.50	\$55.99	\$64,810.22
34	06/01/17	\$64,810.22	\$2,428.48	\$2,374.48	\$54.01	\$62,435.75
35	07/01/17	\$62,435.75	\$2,428.48	\$2,376.45	\$52.03	\$60,059.29
36	08/01/17	\$60,059.29	\$2,428.48	\$2,378.43	\$50.05	\$57,680.86
37	09/01/17	\$57,680.86	\$2,428.48	\$2,380.42	\$48.07	\$55,300.44
38	10/01/17	\$55,300.44	\$2,428.48	\$2,382.40	\$46.08	\$52,918.04
39	11/01/17	\$52,918.04	\$2,428.48	\$2,384.39	\$44.10	\$50,533.65
40	12/01/17	\$50,533.65	\$2,428.48	\$2,386.37	\$42.11	\$48,147.28
41	01/01/18	\$48,147.28	\$2,428.48	\$2,388.36	\$40.12	\$45,758.92
42	02/01/18	\$45,758.92	\$2,428.48	\$2,390.35	\$38.13	\$43,368.57
43	03/01/18	\$43,368.57	\$2,428.48	\$2,392.34	\$36.14	\$40,976.23
44	04/01/18	\$40,976.23	\$2,428.48	\$2,394.34	\$34.15	\$38,581.89
45	05/01/18	\$38,581.89	\$2,428.48	\$2,396.33	\$32.15	\$36,185.56
46	06/01/18	\$36,185.56	\$2,428.48	\$2,398.33	\$30.15	\$33,787.23
47	07/01/18	\$33,787.23	\$2,428.48	\$2,400.33	\$28.16	\$31,386.90
48	08/01/18	\$31,386.90	\$2,428.48	\$2,402.33	\$26.16	\$28,984.57
49	09/01/18	\$28,984.57	\$2,428.48	\$2,404.33	\$24.15	\$26,580.24
50	10/01/18	\$26,580.24	\$2,428.48	\$2,406.33	\$22.15	\$24,173.91
51	11/01/18	\$24,173.91	\$2,428.48	\$2,408.34	\$20.14	\$21,765.57
52	12/01/18	\$21,765.57	\$2,428.48	\$2,410.35	\$18.14	\$19,355.22
53	01/01/19	\$19,355.22	\$2,428.48	\$2,412.35	\$16.13	\$16,942.87
54	02/01/19	\$16,942.87	\$2,428.48	\$2,414.37	\$14.12	\$14,528.50
55	03/01/19	\$14,528.50	\$2,428.48	\$2,416.38	\$12.11	\$12,112.12
56	04/01/19	\$12,112.12	\$2,428.48	\$2,418.39	\$10.09	\$9,693.73
57	05/01/19	\$9,693.73	\$2,428.48	\$2,420.41	\$8.08	\$7,273.33
58	06/01/19	\$7,273.33	\$2,428.48	\$2,422.42	\$6.06	\$4,850.90
59	07/01/19	\$4,850.90	\$2,428.48	\$2,424.44	\$4.04	\$2,426.46
60	08/01/19	\$2,426.46	\$2,428.48	\$2,426.46	\$2.02	\$0.00