

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

155



FROM: TLMA – Transportation Department

SUBMITTAL DATE:
October 8, 2014

SUBJECT: Amendment No. 2 to the Professional Services Agreement between the County of Riverside and Best Best & Krieger, LLP for the Magnolia Avenue Grade Separation Project and the Magnolia Avenue and Neece Street Traffic Signal Project. District 2/District 2; [\$900,000]; Local Funds 100%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Amendment No. 2 to the Professional Services Agreement between the County of Riverside and Best Best & Krieger, LLP for the Magnolia Avenue Grade Separation Project and the Magnolia Avenue and Neece Street Traffic Signal Project; and
2. Authorize the Chairman of the Board of Supervisors to execute the same.

BACKGROUND:

Summary

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 and improve

Patricia Romo
Assistant Director of Transportation
for Juan C. Perez
Director of Transportation and Land Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (Per Exec. Office)
COST	\$ 400,000	\$ 100,000	\$ 900,000	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 900,000	\$	

SOURCE OF FUNDS: Gas Tax (100%)
There are no General Funds used in this project.

Budget Adjustment: no
For Fiscal Year: 14/15, 15/16

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY: GREGORY P. PRIAMOS
DATE: 10/23/14

FORM APPROVED COUNTY COUNSEL
BY: ANNA W. WANG
DATE: 10/9/14

Departmental Concurrence

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

Prev. Agn. Ref.: 2/5/13, Item 3-49
4/29/14, Item 3-22

District: 2/2

Agenda Number:---

3-37

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Amendment No. 2 to the Professional Services Agreement between the County of Riverside and Best Best & Krieger, LLP for the Magnolia Avenue Grade Separation Project and the Magnolia Avenue and Neece Street Traffic Signal Project. District 2/District 2; [\$900,000]; Local Funds 100%

DATE: October 8, 2014

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

safety and traffic operations by eliminating the conflict of trains passing through the flow of vehicular traffic. Construction started in April 2014 and is expected to be completed in early 2016.

The Magnolia Avenue and Neece Street Traffic Signal Project was completed in the summer of 2013 and has improved the safety and operation of the intersection in the community of Home Gardens.

Both of these projects required the acquisition of property along Magnolia Avenue. The County of Riverside (County) has obtained possession of the needed properties for the projects and has been able to successfully negotiate a settlement with 18 of the 20 properties acquired. The acquisition of the median on Magnolia Avenue is the most complex acquisition of all the properties being acquired. The acquisition of property from Union Pacific Railroad is a complex and unique transaction requiring the services of expert counsel.

On February 5, 2013, the Board of Supervisors approved Agenda Item 3-49, the Professional Services Agreement between the County and Best Best & Krieger, LLP (BB&K) for legal counsel and services in the amount of \$250,000 for the Magnolia Avenue Grade Separation Project and the Magnolia Avenue and Neece Street Traffic Signal Project.

On April 29, 2014, the Board of Supervisors approved Agenda Item 3-22, Amendment No. 1 to the Professional Services Agreement between the County and BB&K to increase the contract amount to \$400,000 for legal counsel and services for the Magnolia Avenue Grade Separation Project and the Magnolia Avenue and Neece Street Traffic Signal Project.

The County has been unsuccessful in reaching a resolution with Union Pacific Railroad for the property within the median area on Magnolia Avenue that is needed for both the Magnolia Grade Separation Project and the Magnolia and Neece Street Traffic Signal Project. In anticipation of litigation with Union Pacific Railroad, additional professional services will be required from BB&K for legal counsel and defense. This case relies heavily on expert witness testimony related to complex appraisal issues and these costs will be included in the professional services agreement with BB&K.

This Amendment No. 2 to the Professional Services Agreement increases the total compensation to be paid to the attorneys to \$900,000 and extends the term of the agreement to December 31, 2016, or completion of the work assignment, whichever occurs first. It is expected that this amended contract amount and revised contract term will provide the needed additional services to conclude legal action with Union Pacific Railroad.

County Counsel has approved the Agreement as to form.

Impact on Residents and Businesses

The project improvements along Magnolia Avenue will improve the safety and operation of the road for vehicles, trains, and pedestrians.

SUPPLEMENTAL:

Additional Fiscal Information

This amendment would increase the Professional Services Agreement by \$500,000. It is expected that \$400,000 would be expended in FY 14/15 and \$100,000 would be expended in FY 15/16.

Contract History and Price Reasonableness

This is a unique situation. It involves the acquisition of a property owned by Union Pacific Railroad that lies in the median of a divided roadway. Based on the complexity of the case, and the savings to the taxpayer should the County prevail in court, the cost to defend the County is reasonable.

1 **SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES WITH**
2 **BEST BEST & KRIEGER LLP**

3
4 THIS SECOND AMENDMENT is entered into as of _____, 2014, and is made by and
5 between THE COUNTY OF RIVERSIDE, (hereinafter referred to as "County") and BEST BEST &
6 KRIEGER LLP (herein after referred to as "ATTORNEYS").

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8 **RECITALS**

9
10 A. COUNTY and ATTORNEYS are parties to that certain Legal Services Agreement
11 approved by the Board of Supervisors on _____ 2014, for Legal Services ("Agreement").

12
13 B. The Agreement increases the total amount of compensation to be paid to the
14 ATTORNEYS to an additional Five Hundred Thousand Dollars (\$500,000.00) for the Fiscal Year of
15 (2014/2015) and (2015/2016) and amends the prior Agreement in this matter to reflect this monetary
16 increase.

17
18 C. COUNTY and ATTORNEYS desire to amend the Agreement to provide a revised amount
19 of total compensation to be paid to ATTORNEYS and to extend the term of the agreement to December
20 31, 2016, and to allow any unused funding within a single fiscal year to be carried over into the next fiscal
21 year.

22
23 NOW, THEREFORE, the parties do hereby agree to amend that certain Agreement as follows:

24 1. Section 1. TERM OF AGREEMENT shall be amended in its entirety to read as follows:
25
26

1 1. TERM OF AGREEMENT. This Agreement shall commence upon execution, and continue
2 until December 31, 2016, or completion of the last work assignment, whichever occurs first, unless sooner
3 terminated pursuant to Section 5 or Section 13.

4
5 2. Section 4. COMPENSATION shall be amended in its entirety to read as follows:

6 4. COMPENSATION

7 4.1 The total amount of compensation paid to ATTORNEYS under the terms of this
8 Agreement shall not exceed the sum of Nine Hundred Thousand Dollars (\$900,000.00) in Fiscal Years
9 2014/2015 and 2015/2016, unless a written amendment to this agreement is executed by both parties prior
10 to performance of any additional services. The amount of compensation paid to ATTORNEYS will
11 include reimbursable costs including, but not limited to, appraisers and experts. ATTORNEYS shall
12 notify the COUNTY immediately in writing when ATTORNEYS have expended seventy-five (75%) of
13 the total payment by COUNTY beyond the approved compensation. A written amendment shall be a
14 condition precedent to any obligation for payment by COUNTY beyond the approved compensation.

15
16 3. AGREEMENT IN FULL FORCE AND EFFECT. Except as provided above, the Agreement is
17 unmodified hereby and remains in full force and effect.

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19
20
21 **[SIGNATURES ON THE NEXT PAGE]**

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

3
4 COUNTY OF RIVERSIDE

5
6 Dated: _____

By: _____

7 Jeff Stone, Chairman
8 Board of Supervisors

9
10 BEST BEST & KRIEGER LLP

11
12 Dated: 10/20/14

By: 

13 Kendall H. MacVey, Esq.
14 Mark A. Easter, Esq.

15
16 APPROVED AS TO FORM

17
18 Dated: 10/22/14

By: 

19 Anna W. Wang, Deputy County Counsel

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23 AWW/nlr
24 100714
25 G:\Litigation\AWW\AWW) COR v. Union Pacific - RIC1119817RIC 1201623\Second Amended Legal Services Agreement_092414.docx