

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

829A



FROM: TLMA – Transportation Department

SUBMITTAL DATE:
July 29, 2015

FORM APPROVED COUNTY COUNSEL
 BY: JAMES E. BROWN
 Departmental Conference
 DATE: 8/11/15

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. 2nd District; [\$530,000]; 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


 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	\$ 0	\$ 0	\$ 530,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 530,000	\$ 0	

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

Budget Adjustment: No
For Fiscal Year: 15/16

C.E.O. RECOMMENDATION:

APPROVE
 BY: 
 Alex Gann

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Prev. Agn. Ref.: 02/05/13, Item 3-49
 04/29/14, Item 3-22

District: 2

Agenda Number:

3-73

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. 2nd District; [\$530,000]; Local Funds 100%

DATE: July 29, 2015

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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 and been able to successfully negotiate settlement for all 20 properties needed for the projects. The acquisition of the median on Magnolia Avenue was the most complex acquisition of all the properties being acquired. The acquisition of property from Union Pacific Railroad was 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 successful 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. However, because of the complex nature of the acquisition and difficulty in reaching settlement, it was necessary to begin the process of preparation for litigation, which required the retention of expert witness testimony. This case relied heavily on expert witness testimony related to complex appraisal issues, and these costs exceeded the contract amount for professional services with BB&K. BB&K was able to successfully negotiate a fair settlement with Union Pacific using the material prepared for litigation, which was significantly less than the original demand presented to the County.

This Amendment No. 3 to the Professional Services Agreement increases the total compensation to be paid to the BB&K to \$530,000. The County negotiated a reduction of professional services costs incurred by BB&K by approximately 20% for their services to complete the settlement agreement with Union Pacific Railroad. The Professional Services Agreement shall terminate upon the final payment in the amount of \$130,000.

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 \$130,000. The total amount expended in FY 12/13, FY 13/14, and FY 14/15 was \$400,000; the total amount expended in FY 15/16 will be \$130,000.

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Contract History and Price Reasonableness

This was a unique project that involved the acquisition of about 1.8 miles of a linear strip owned by Union Pacific Railroad along this median on Magnolia Avenue. Given the complexity of the case, and the savings to the public realized through a negotiated settlement, the legal costs are appropriate.

1 E. COUNTY and ATTORNEYS desire to amend the Agreement to provide a revised amount
2 of total compensation to be paid to ATTORNEYS to Five Hundred and Thirty Thousand dollars
3 (\$530,000).

4
5 NOW, THEREFORE, the parties do hereby agree to amend that certain Agreement as follows:

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

7 1. TERM OF AGREEMENT. This Agreement shall commence upon execution, and continue
8 until December 31, 2015, or completion of the last work assignment, whichever occurs first, unless sooner
9 terminated pursuant to Section 5 or Section 13.

10
11 2. Section 4. COMPENSATION shall be amended in its entirety to read as follows:

12 4. COMPENSATION

13 4.1 The total amount of compensation paid to ATTORNEYS under the terms of this
14 Agreement shall not exceed the sum of Five Hundred and Thirty Thousand Dollars (\$530,000.00) in
15 Fiscal Years 2014/2015 and 2015/2016, unless a written amendment to this agreement is executed by both
16 parties prior to performance of any additional services. The amount of compensation paid to
17 ATTORNEYS will include reimbursable costs including, but not limited to, appraisers and experts. A
18 written amendment shall be a condition precedent to any obligation for payment by COUNTY beyond the
19 approved compensation.

20
21 3. AGREEMENT IN FULL FORCE AND EFFECT. Except as provided above, the Agreement is
22 unmodified hereby and remains in full force and effect.

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26 **[SIGNATURES ON THE NEXT PAGE]**

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

COUNTY OF RIVERSIDE

Dated: _____

By: _____

Marion Ashley, Chairman
Board of Supervisors

BEST BEST & KRIEGER LLP

Dated: July 28, 2015

By:  _____

Mark A. Easter, Esq.

APPROVED AS TO FORM

Dated: 8/6/15

By:  _____

Anna W. Wang, Deputy County Counsel

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