

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

905B



FORM APPROVED COUNTY COUNSEL  
DATE 7/29/15  
BY: GREGORY P. PRIAMOS

**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
September 1, 2015

**SUBJECT:** Approval of Professional Services Agreement for the Municipal Separate Stormwater System Permits and other related Regulatory Services, 4 years, [\$1,000,000 total]; District Funds 100%

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

1. Approve the Professional Services Agreement between the District and Burhenn & Gest LLP (Burhenn & Gest);
2. Authorize the Chairman to execute the Agreement on behalf of the District; and
3. Authorize the General Manager-Chief Engineer or his designee to execute any other documents and administer all actions necessary to complete any and all transactions.

**BACKGROUND:**

**Summary**

On August 10, 2010 (Agenda Item No. 11.1), the Board of Supervisors approved the sole source legal services agreement with Burhenn & Gest LLP to legal services for the District's Municipal Separate Stormwater System (MS4) Permits and other related regulatory services.

Continued on Page 2

AMR:blm  
P8/171649

*for*   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 150,000	\$ 100,000	\$ 1,000,000	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 150,000	\$ 100,000	\$ 1,000,000	\$ N/A	

**SOURCE OF FUNDS:** See SOURCE OF FUNDS, Page 2

<b>Budget Adjustment:</b> No
<b>For Fiscal Year:</b> 15/16 to 18/19

**C.E.O. RECOMMENDATION:**

APPROVE  
  
BY: Steven C. Horn

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

FISCAL PROCEDURES APPROVED  
JEANINE J. REY, FINANCE DIRECTOR  
8/13/15  
JEANINE J. REY Departmental Concurrence

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

Prev. Agn. Ref.: 11.1 of 8/10/10 | District: All | Agenda Number:

**11-4**

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

171649

**FORM 11: Approval of Professional Services Agreement for the Municipal Separate Stormwater System Permits and other related Regulatory Services, 4 years, [\$1,000,000 total]; District Funds 100%**

**DATE:** September 1, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

The District requires specialized legal services in order to effectively support the development and implementation of these permits. Regulatory actions can carry significant legal and fiscal liabilities for both the District and the Permittees that the District represents as Principal Permittee in the administration of the Santa Ana, Santa Margarita and Whitewater Regions MS4 Permits. Due to the nature of the legal issues, the potential significance of the liabilities and the need to move quickly to engage legal support, County Counsel supports the solicitation of outside legal services.

Burhenn & Gest has provided accurate legal representation during the permit renewal processes with the Regional Boards and particular administrative civil liability issues, and provided legal review in preparation for Regional Board workshops, hearings, and other meetings related to the MS4 Permits. Burhenn & Gest has also provided critical input on the issues of unfunded mandates and provided legal representation during the MS4 permit negotiations for Riverside and Los Angeles Counties.

Pursuant to County Board Policy H-7, on February 5, 2015, the District released Request for Qualifications to provide professional legal services in support of the District's Watershed Protection Division from February 5, 2015 through March 5, 2015. Four vendors submitted Statement of Qualifications packages. A selection committee comprised of District, and County Counsel representatives were established to review each firm's qualifications relative to the following: (i) Firm Relevant Experience, (ii) Personnel Qualifications, (iii) Record of Past Performance and (iv) Competence. Burhenn & Gest LLP was selected as the most qualified firm.

As the District enters into negotiations with the San Diego Regional Water Quality Control Board on the Santa Margarita Region MS4 Permit and the Santa Ana Region MS4 Permit, it is essential to have legal representation that is familiar with the stormwater pollution prevention program in Riverside County.

County Counsel has approved the Agreement as to legal form and the Burhenn & Gest has executed the Agreement.

**Impact on Residents and Businesses**

Costs incurred under this Agreement will be funded by current NPDES Benefit Assessment revenue and entails no new fees, taxes or bonded indebtedness.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Sufficient funding is available in the District's budget for Fiscal Year 2015-2016 and will be included in the proposed budget(s) for Fiscal Years 2016-2017 through 2018-2019.

**Source of Funds**

25180-947540-525440 Whitewater NPDES Professional/Legal Services  
25190-947560-525440 Santa Ana NPDES Professional/Legal Services  
25200-947580-525440 Santa Margarita NPDES Professional/Legal Services

**Contract History and Price Reasonableness**

Burhenn & Gest prices are competitive with other firms. Previous contracts with Burhenn & Gest have shown that they charge reasonably and within the scope of work.

**ATTACHMENT:**

1. Professional Services Agreement  
AMR:blm



1           2.     TERMINATION. Services performed under this Agreement may be terminated in  
2 whole or in part at any time DISTRICT deems to be in its best interest, as determined by  
3 DISTRICT. DISTRICT shall terminate services by delivering to ATTORNEY a written  
4 Termination Notice executed by DISTRICT and specifying the extent to which services are  
5 terminated and the effective termination date.  
6

7           3.     EFFECT OF TERMINATION. After receiving a Termination Notice and unless  
8 otherwise directed by DISTRICT, ATTORNEY shall: (1) take all steps necessary to stop services  
9 on the date and to the extent specified in the Termination Notice; (2) complete services not  
10 terminated by the Termination Notice; (3) submit final billing for terminated services within thirty  
11 (30) days from the effective termination date; and (4) promptly submit a brief closing report  
12 advising DISTRICT of the status of the matters being handled.  
13

14           4.     CLOSING REPORT UPON TERMINATION. ATTORNEY shall deliver a Closing  
15 Report to DISTRICT immediately after termination of services under Section 2 or Section 5 which  
16 shall include, but not be limited to:

17                   (a) A brief description of the status of all matters or projects that had been  
18 assigned to ATTORNEY.

19                   (b) A discussion of DISTRICT's exposure and applicable law.  
20

21           ATTORNEY shall give DISTRICT copies or originals, as appropriate, of all files and  
22 attorney work product for all matters on which it has been working. This includes any computerized  
23 index, computer programs and document retrieval system created or used for these matters.  
24

25           5.     PROFESSIONAL CONFLICT OF INTEREST. ATTORNEY represents and  
26 warrants that no DISTRICT employee whose position in DISTRICT enables him/her to influence  
27 the award of this Agreement or any competing agreement, and no spouse or economic dependent of  
28

1 such employee is or shall be employed in any capacity by ATTORNEY, or shall have any direct or  
2 indirect financial interest in this Agreement.

3  
4 Anyone who is a former employee of DISTRICT at the time of execution of this  
5 Agreement or who subsequently becomes affiliated with ATTORNEY in any capacity (employee,  
6 associate or partner) shall not (i) participate in the services provided by ATTORNEY to DISTRICT;  
7 or (ii) become a partner, shareholder or otherwise share in the profits of ATTORNEY for a period of  
8 one year from the date the former DISTRICT employee left DISTRICT employment.

9  
10 It is possible that some of ATTORNEY'S present or future clients will have disputes  
11 with DISTRICT during the time that ATTORNEY is representing DISTRICT. DISTRICT and  
12 ATTORNEY agrees that should the situation arise where a new or existing client engages  
13 ATTORNEY in any matter in a position adverse to DISTRICT or in which DISTRICT'S interest  
14 may be adversely affected, that ATTORNEY will so advise DISTRICT and upon receipt of such  
15 notice DISTRICT may determine that the conflict may be waived or may determine that it is in the  
16 DISTRICT'S best interest to terminate the services of ATTORNEY. Should DISTRICT determine  
17 that it is best to terminate the services of ATTORNEY; DISTRICT will notify ATTORNEY of such  
18 decision. ATTORNEY may then submit any outstanding invoices for payment up to the date of  
19 termination as determined by the notice from DISTRICT.  
20

21 6. ATTORNEY'S SERVICES AND RESPONSIBILITIES. Upon appointment,  
22 ATTORNEY shall provide DISTRICT with the names of other professionals (partners, associates,  
23 law clerks, paralegal, etc.) who will assist in the provision of services under this Agreement and the  
24 functions to be performed by each professional shall also be provided. ATTORNEY'S Supervising  
25 Attorney will be fully responsible for the quality of the work product. DISTRICT also requests no  
26 more than two (2) attorneys in the firm handle its files. Within a law firm, research and minor work  
27 should be performed by the lowest level of personnel (e.g., junior attorneys, paralegal) capable of  
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1 performing a given task. Responsibility for the quality of work product remains with  
2 ATTORNEY'S Supervising Attorney. DISTRICT retains the right to approve or disapprove any and  
3 all ATTORNEY assignments.

4 (a) Key ATTORNEY Personnel.

5 (1) ATTORNEY agrees that David Burhenn will be the supervising  
6 attorney assigned to perform the work on Attachment "A" and the  
7 terms of this Agreement. Any changes or substitution of the  
8 assigned attorney must have the express written approval of the  
9 General Manager-Chief Engineer of DISTRICT or his designee.

10 (2) Support attorneys and paralegals shall be designated by David  
11 Burhenn and shall be comprised of the following individual: Only  
12 Howard Gest is expected to assist on this matter at this time;  
13 however, other attorneys or support staff may work on this matter as  
14 agreed upon on an as-needed basis.  
15

16 Any change in staffing shall be made only upon telephonic or written notice, and  
17 written consent by DISTRICT, which may be made by facsimile transmission, which consent, shall  
18 not be unreasonably withheld.  
19

20 7. LEGAL REPRESENTATION. ATTORNEY shall provide DISTRICT with the  
21 necessary representation by staff qualified to perform the legal tasks at the least costly billing  
22 category. ATTORNEY'S legal representation shall include, but not be limited to:  
23

- 24 (a) Review of all applicable files and correspondence and claims, if any, and  
25 provision of an assessment of potential liability.  
26 (b) All legal research and review of all documents and other evidentiary materials.  
27  
28

1 (c) Secretarial and clerical support services necessary to perform the legal  
2 representation in a professional manner.

3 ATTORNEY shall meet with DISTRICT as DISTRICT requires and provide all  
4 information and reports, including an estimate of fees for each aspect of representation as identified  
5 in the outlines, deemed necessary by DISTRICT to keep it informed.  
6

7 8. PRIOR APPROVALS. ATTORNEY shall obtain the prior written approval of  
8 DISTRICT before: (i) retaining any consultant; (ii) undertaking research of more than four (4) hours  
9 on any particular issue; (iii) commencing travel on behalf of DISTRICT outside the Counties of Los  
10 Angeles, Riverside, San Bernardino, or Orange.

11 In addition, ATTORNEY shall: (i) assist DISTRICT in evaluation and negotiations,  
12 and shall obtain authority from DISTRICT before making any settlement proposal on behalf of  
13 DISTRICT; (ii) immediately notify DISTRICT verbally and in writing when a proposal of  
14 settlement is received; and (iii) keep and preserve all backup documentation to support all entries  
15 included in its billings for a period of four (4) years after termination or completion of the matters  
16 for which ATTORNEY has been retained.  
17

18 19 9. SETTLEMENT EVALUATION. If applicable, ATTORNEY shall provide  
20 DISTRICT with an initial evaluation on settlement potential involving DISTRICT or any  
21 subordinate program that will serve as the basis for developing the legal position and strategy of  
22 DISTRICT and for controlling costs. ATTORNEY shall provide status reports upon request of  
23 DISTRICT.  
24

25 10. AGREEMENT AMOUNT. The total amount paid to ATTORNEY under the terms  
26 of this Agreement shall not exceed the sum of one million dollars (\$1,000,000) over the entire term  
27 of this Agreement unless a written Amendment to this Agreement is executed by both parties prior  
28 to performance of additional services. Since these services are generally required throughout the

1 term of the contract, DISTRICT and ATTORNEY will monitor work requirements and efforts such  
2 that the limits of compensation are not reached before the last month of the term of the Agreement.

3 11. SUPERVISION OF AGREEMENT. This Agreement shall be supervised on behalf  
4 of the County of Riverside Office of County Counsel by Aaron Gettis, Deputy County Counsel.  
5 Once services have begun, Mr. Gettis may designate in writing a DISTRICT management  
6 representative who may jointly supervise this Agreement on behalf of DISTRICT. Stuart  
7 McKibbin, Chief of Watershed Protection Division, shall be such designee. Approval of proposed  
8 settlement recommendations is subject to approval by the Board of Supervisors, as legislative body  
9 of DISTRICT.  
10

11 12. FEES. DISTRICT shall pay ATTORNEY for services actual satisfactorily  
12 performed, products provided and expenses incurred in accordance with the fee rate schedule set  
13 forth on Attachment "B" attached hereto and made a part hereof.  
14

15 13. EXPENSES. DISTRICT shall reimburse ATTORNEYS for their actual out-of-  
16 pocket expenses but without any additional costs for having advanced the funds or for expenses  
17 generally considered as overhead already reflected in ATTORNEY'S hourly rate.  
18

19 Reimbursable ordinary expenses shall include, but not be limited to: (i) Postage; (ii)  
20 Messenger service; (iii) Document reproduction by outside vendor; and (iv) In-house document  
21 reproduction, provided, however, no single expense shall exceed one thousand five hundred dollars  
22 (\$1,500) without the prior consent of the General Manager-Chief Engineer of DISTRICT or his  
23 designee.  
24

25 Reimbursable extraordinary expenses shall include charges of which ATTORNEY  
26 has obtained prior approval of DISTRICT. Such expenses shall include, but not be limited to:  
27 (i) consultants; (ii) travel outside the Counties of Los Angeles, Riverside, San Bernardino and  
28



1 Orange; (iii) investigative services and (iv) any expense item exceeding five hundred dollars  
2 (\$500.00).

3 Non-reimbursable expenses shall include, but not be limited to: (i) staff time or  
4 overtime for performing secretarial, clerical, or word processing functions; (ii) charges for time  
5 spent to provide necessary information for DISTRICT audits or billing inquiries; (iii) charges for  
6 work performed which had not been authorized by DISTRICT, which work shall be a gratuitous  
7 effort by ATTORNEY; and (iv) mileage or travel expenses from the regular office of ATTORNEY  
8 to DISTRICT and/or County Counsel offices.  
9

10 14. BILLINGS AND PAYMENTS. ATTORNEY shall submit its billing statement to  
11 DISTRICT (Attention: Business Office-Accounts Payable) and to the County of Riverside Office of  
12 County Counsel (Attention: Aaron Gettis, Deputy County Counsel) at least quarterly, but no more  
13 than monthly, in arrears, following satisfactory performance of services. Payments shall be made by  
14 DISTRICT within thirty (30) days after receipt of billing from ATTORNEY. All billings shall be  
15 itemized to include (i) staffing levels, hourly rates and specific activities for each attorney and/or  
16 paralegal; (ii) listing of each activity as a line item in a time reporting format acceptable to  
17 DISTRICT with a detailed description of specific activities for each attorney and/or paralegal; (iii)  
18 total current period fees and total cumulative fees billed for each staffing level; and (iv) current  
19 period expenses and total cumulative expenses billed in itemized categories. Payments shall be  
20 made on a progressive basis.  
21  
22

23 It is the expectation of DISTRICT that it will not be billed for ordinary overhead  
24 expenses, including (i) ordinary word processing; (ii) time to prepare and review billings; and (iii)  
25 local travel.  
26

27 ATTORNEY shall have and maintain all backup documentation to support all entries  
28 included in the monthly billing statement. Such documentation shall be in a form subject to audit

1 and in accordance with generally accepted accounting principles. ATTORNEY shall make such  
2 documentation available to auditors upon request and at such reasonable times and locations as may  
3 be agreed to between DISTRICT and ATTORNEY.

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

11       16.     COMMUNICATIONS WITH DISTRICT. ATTORNEY recognizes that their  
12 relationship with DISTRICT and its agents, employees, officers and/or representatives is subject to  
13 the attorney-client privilege and that any information acquired during the term of this Agreement  
14 from or through DISTRICT is confidential and privileged. ATTORNEY warrants that they shall not  
15 disclose or use in any manner whatsoever any of the information from DISTRICT and its officers,  
16 employees and agents in connection with said relationships or proceedings. ATTORNEY  
17 understands that the County Counsel is the empowered legal representative of County of Riverside  
18 and its officers and employees and ATTORNEY shall not without specific direction from the Office  
19 of County Counsel communicate with, advise or represent DISTRICT legislative body.

20       17.     REQUIRED INSURANCE. ATTORNEY shall not commence operations until  
21 DISTRICT has been furnished with original certificate(s) of insurance and original certified copies  
22 of endorsements and if requested, certified original policies of insurance including all endorsements  
23 and any and all other attachments as required in this Section.

1 Without limiting or diminishing the ATTORNEY'S obligation to indemnify or hold the COUNTY  
2 harmless, ATTORNEY shall procure and maintain or cause to be maintained, at its sole cost and  
3 expense, the following insurance coverage's during the term of this Agreement.

4 A. Workers' Compensation:

5 If ATTORNEY has employees as defined by the State of California, ATTORNEY  
6 shall maintain statutory Workers' Compensation Insurance (Coverage A) as  
7 prescribed by the laws of the State of California. Policy shall include Employers'  
8 Liability (Coverage B) including Occupational Disease with limits not less than  
9 \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation  
10 in favor of DISTRICT and, if applicable, to provide a Borrowed Servant/Alternate  
11 Employer Endorsement.  
12

13 B. Commercial General Liability:

14 Commercial General Liability insurance coverage, including but not limited to,  
15 premises liability, unmodified contractual liability, products and completed  
16 operations liability, personal and advertising injury, and cross liability coverage,  
17 covering claims which may arise from or out of CONSULTANT'S performance of  
18 its obligations hereunder. Policy shall name the Riverside County Flood Control  
19 and Water Conservation District, the County of Riverside, its agencies, districts,  
20 special districts, and departments, their respective directors, officers, Board of  
21 Supervisors, employees, elected or appointed officials, agents or representatives as  
22 additional insureds. Policy's limit of liability shall not be less than \$1,000,000 per  
23 occurrence combined single limit. If such insurance contains a general aggregate  
24 limit, it shall apply separately to this Agreement or be no less than two (2) times the  
25 occurrence limit.  
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1 C. Vehicle Liability:

2 If ATTORNEY'S vehicles or mobile equipment are used in the performance of the  
3 obligations under this Agreement, then ATTORNEY shall maintain liability  
4 insurance for all owned, non-owned or hired vehicles so used in an amount not less  
5 than \$1,000,000 per occurrence combined single limit. If such insurance contains a  
6 general aggregate limit, it shall apply separately to this Agreement or be no less than  
7 two (2) times the occurrence limit. Policy shall name the Riverside County Flood  
8 Control and Water Conservation District, the County of Riverside, its agencies,  
9 districts, special districts and departments, their respective directors, officers, Board  
10 of Supervisors, employees, elected or appointed officials, agents or representatives  
11 as additional insureds.  
12

13  
14 D. Professional Liability:

15 ATTORNEY shall maintain Professional Liability Insurance providing coverage for  
16 ATTORNEY'S performance of work included within this Agreement, with a limit of  
17 liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual  
18 aggregate. If ATTORNEY'S Professional Liability Insurance is written on a claims  
19 made basis rather than an occurrence basis, such insurance shall continue through  
20 the term of this Agreement and ATTORNEY shall purchase at his sole expense  
21 either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2)  
22 Prior Dates Coverage from a new insurer with a retroactive date back to the date of  
23 or prior to, the inception of this Agreement; or 3) demonstrate through Certificates  
24 of Insurance that ATTORNEY has maintained continuous coverage with the same or  
25 original insurer. Coverage provided under items: 1), 2) or 3) will continue as long as  
26 the law allows.  
27  
28

1 E. General Insurance Provisions – All Lines:

- 2 i. Any insurance carrier providing insurance coverage hereunder shall be  
3 admitted to the State of California and have an A.M. BEST rating of not less  
4 than an A: VIII (A: 8) unless such requirements are waived, in writing, by  
5 the County Risk Manager. If the County Risk Manager waives a  
6 requirement for a particular insurer such waiver is only valid for that specific  
7 insurer and only for one policy term.
- 8
- 9 ii. ATTORNEY must declare its insurance self-insured retention for each  
10 coverage required herein. If any such self-insured retention exceeds  
11 \$500,000 per occurrence each such retention shall have the prior written  
12 consent of the County Risk Manager before the commencement of  
13 operations under this Agreement. Upon notification of self-insured retention  
14 deemed unacceptable to the DISTRICT, and at the election of the County  
15 Risk Manager, ATTORNEY'S carriers shall either: 1) reduce or eliminate  
16 such self-insured retention with respect to this Agreement with DISTRICT,  
17 or 2) procure a bond which guarantees payment of losses and related  
18 investigations, claims administration, and defense costs and expenses.
- 19
- 20
- 21 iii. ATTORNEY shall cause their insurance carrier(s) to furnish DISTRICT  
22 with 1) a properly executed original Certificate(s) of Insurance and certified  
23 original copies of Endorsements effecting coverage as required herein; and  
24 2) if requested to do so orally or in writing by the County Risk Manager,  
25 provide original certified copies of policies including all Endorsements and  
26 all attachments thereto, showing such insurance is in full force and effect.  
27  
28 Further, said Certificate(s) and policies of insurance shall contain the

1 covenant of the insurance carrier(s) that thirty (30) days written notice shall  
2 be given to DISTRICT prior to any material modification, cancellation,  
3 expiration or reduction in coverage of such insurance. If ATTORNEY  
4 insurance carrier(s) policies does not meet the minimum notice requirement  
5 found herein, ATTORNEY shall cause ATTORNEY'S insurance carrier(s)  
6 to furnish a 30 day Notice of Cancellation Endorsement. In the event of a  
7 material modification, cancellation, expiration or reduction in coverage, this  
8 Agreement shall terminate forthwith, unless DISTRICT receives, prior to  
9 such effective date, another properly executed original Certificate of  
10 Insurance and original copies of Endorsements or certified original policies,  
11 including all endorsements and attachments thereto, evidencing coverages  
12 set forth herein and the insurance required herein is in full force and effect.  
13 ATTORNEY shall not commence operations until DISTRICT has been  
14 furnished with original Certificate(s) of Insurance and certified original  
15 copies of Endorsements and if requested, certified original policies of  
16 insurance including all endorsements and any and all other attachments as  
17 required in this Section. An individual authorized by the insurance carrier to  
18 do so on its behalf shall sign the original endorsements for each policy and  
19 the Certificate of Insurance.

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24 iv. It is understood and agreed by the parties hereto that ATTORNEY'S  
25 insurance shall be construed as primary insurance, and DISTRICT'S  
26 insurance and/or deductibles and/or self-insured retentions or self-insured  
27 programs shall not be construed as contributory.  
28

- 1 v. If, during the term of this Agreement or any extension thereof, there is a  
2 material change in the scope of services or there is a material change in the  
3 equipment to be used in the performance of the scope of work which will  
4 add additional exposures (such as the use of aircraft, watercraft, cranes, etc.);  
5 or the term of this Agreement, including any extensions thereof, exceeds five  
6 (5) years, DISTRICT reserves the right to adjust the types of insurance  
7 required under this Agreement and the monetary limits of liability for the  
8 insurance coverages currently required herein, if, in the County Risk  
9 Manager's reasonable judgment, the amount or type of insurance carried by  
10 ATTORNEY has become inadequate.
- 11
- 12
- 13 iv. ATTORNEY shall pass down the insurance obligations contained herein to  
14 all tiers of subcontractors working under this Agreement.
- 15
- 16 vii. The insurance requirements contained in this Agreement may be met with a  
17 program(s) of self-insurance acceptable to DISTRICT.
- 18
- 19 viii. ATTORNEY agrees to notify DISTRICT of any claim by a third party or any  
20 incident or event that may give rise to a claim arising from the performance  
21 of this Agreement.

22 18. INDEMNIFICATION. ATTORNEY shall indemnify and hold harmless DISTRICT  
23 and County of Riverside (including its officers, Board of Supervisors, elected and appointed  
24 officials, employees, agents and representatives) from any liability whatsoever, based or asserted  
25 upon any services of ATTORNEY, its officers, employees, subcontractors, agents or representatives  
26 arising out of or in any way relating to this Agreement, including but not limited to property  
27 damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from  
28

1 the performance of ATTORNEY, its officers, agents, employees, subcontractors, agents or  
2 representatives from this Agreement.

3           ATTORNEY shall defend, at its sole expense, all costs and fees including, but not  
4 limited, to attorney fees, cost of investigation, defense and settlements or awards, DISTRICT and  
5 County of Riverside (including its officers, Board of Supervisors, elected and appointed officials,  
6 employees, agents and representatives) in any claim or action based upon such alleged acts or  
7 omissions.

9           With respect to any action or claim subject to indemnification herein by  
10 ATTORNEY, ATTORNEY shall, at their sole cost, have the right to use counsel of their own  
11 choice and shall have the right to adjust, settle, or compromise any such action or claim without the  
12 prior consent of DISTRICT; provided, however, that any such adjustment, settlement or  
13 compromise in no manner whatsoever limits or circumscribes ATTORNEY'S indemnification to  
14 DISTRICT as set forth herein.

16           ATTORNEY'S obligation hereunder shall be satisfied when ATTORNEY has  
17 provided to DISTRICT the appropriate form of dismissal relieving DISTRICT from any liability for  
18 the action or claim involved.

20           The specified insurance limits required in this Agreement shall in no way limit or  
21 circumscribe ATTORNEY'S obligations to indemnify and hold harmless the DISTRICT herein from  
22 third party claims.

23           19.    NOTICES. Any and all notices sent, or required to be sent, to the parties of this  
24 agreement will be mailed by first class mail, postage prepaid, to the following addresses:

26           Riverside County Flood Control  
27           and Water Conservation District  
28           1995 Market Street  
              Riverside, CA 95201  
              Attn: Water Quality Compliance Section

              Burhenn & Gest, LLP  
              624 South Grand Avenue  
              Suite 2200  
              Los Angeles, CA 90017  
              Attn: David W. Burhenn



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With a copy to:  
County of Riverside  
Office of County Counsel  
Aaron Gettis, Deputy County Counsel  
3960 Orange Street Fifth Floor  
Riverside, CA 92501

20. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable without the written consent of DISTRICT. Any attempt by ATTORNEY to assign or subcontract services relating to this Agreement without the consent of DISTRICT 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 DISTRICT.

21. LITIGATION MANAGEMENT GUIDELINES. The Litigation Management Guidelines are attached hereto as Exhibit A and includes Exhibits B (Initial Case Evaluation and Plan), C (Case Status Report), and D (Pre-Trial Status Report), and together they become an integral part of this Agreement. The Litigation Management Guidelines may be updated from time to time. ATTORNEY agrees that each superseding update shall become an integral part of this Agreement and will not change nor alter any other portion of this Agreement in any way whatsoever.

22. COST ESTIMATES AND BUDGET GUIDELINES. The Cost Estimates and Budget Guidelines are attached hereto as Attachment C which becomes an integral part of this Agreement.

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

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ATTACHMENTS:

- Attachment A – Scope of Service
- Attachment B – Fee Schedule
- Attachment C – Cost Estimates and Budget Guidelines

EXHIBITS:

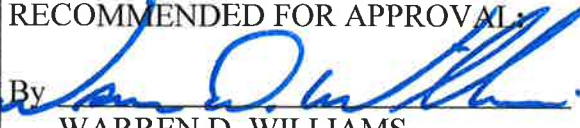
- Exhibit A - Litigation Guidelines
- Exhibit B - Initial Case Evaluation and Plan Guideline
- Exhibit C - Case Status Report Guideline
- Exhibit D - Attorney Pre-Trial Status Report Guideline

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

\_\_\_\_\_  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By   
WARREN D. WILLIAMS  
General Manager-Chief Engineer


By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By   
NEAL KIPNIS  
Deputy County Counsel

By \_\_\_\_\_  
Deputy

(SEAL)

Legal Services Agreement FY 2015/16 to 2018/19  
w/Burhenn & Gest LLP  
07/22/15  
AMR:blm

**BURHENN & GEST LLP**

By   
DAVID W. BURHENN  
Partner

(ATTACH NOTARY WITH CAPACITY STATEMENT)

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Legal Services Agreement FY 2015/16 to 2018/19  
w/Burhenn & Gest LLP  
07/22/15  
AMR:blm

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )  
On 7/28/15 before me, Laura P. Forrest, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared David W. Burhenn  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Laura P. Forrest  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

## **SCOPE OF SERVICES**

Firm shall provide "on-call" legal counsel and services in connection with the District's various (MS4) permits and provide other regulatory services related to the District's watershed protection programs. Such legal counsel and services may include, but are not limited to, the following:

1. Review and develop strategies for MS4 permits, regulatory actions, policies, and laws related to the following statutes and regulations: the Federal Clean Water Act, Porter-Cologne Water Quality Control Act, and other state and federal statutes that may pertain to water quality, stormwater, and the environment.
2. Prepare for and participate in testimony at workshops, hearings, presentations, and other similar meetings or engagements related to the MS4 Permits or applicable regulations. Preparation may include creating applicable submittals, graphics, PowerPoint presentations, questionnaires, or other similar materials. Participation may include formal presentations and/or participation in question and answer formats as a legal expert in the field of stormwater and water quality.
3. Provide legal services and develop strategies related to Total Maximum Daily Loads (TMDLs), unfunded mandates, water conservation, water rights, and other similar issues/topics on behalf of the District.
4. Provide legal services regarding administrative civil liability issues, including potential legislative and judicial representation related to stormwater regulations. Possess the ability to defend the District against potential state and federal authorities, and enforcement actions against the District.

## Fee Schedule

### Burhenn & Gest LLP

<b>NAME</b>	<b>TITLE</b>	<b>HOURLY RATE</b>
David W. Burhenn	Partner	\$365
Howard Gest	Partner	\$365
Susan L. Goodkin	Associate	\$275
Alfrado Osborne III	Legal Assistant	\$105

ATTACHMENT C

COST ESTIMATES AND BUDGET GUIDELINES

Case Name:	Date of this Evaluation:		
Attorney(s):	Case No.:		
Type of Litigation Expense	Attorney Hours	Actual To Date	Anticipated Projected Expenses
Case Assessment, Development and Administration			
Facts Investigation/Development			
Analysis/Strategy			
Experts/Consultants			
Document/File Management			
Budgeting			
Settlement			
Other Case Activity			
Total Hours and Expenses	0	\$0.00	\$0.00
Pre-Trial Pleadings and Motions			
Pleadings			
Preliminary Injunctions/Provisional Remedies			
Court Mandated Conferencés			
Dispositive Motions			
Other Written Motions and Submissions			
Class Action Certification and Notice			
Total Hours and Expenses	0	\$0.00	\$0.00
Discovery			
Written Discovery			
Document Production			
Depositions			
Expert Discovery			
Discovery Motions			
Other Discovery			
Total Hours and Expenses	0	\$0.00	\$0.00
Trial Preparation and Trial			
Fact Witnesses			
Expert Witnesses			
Written Motions and Submissions			
Other Trial Preparation			



Trial and Hearing Attendance			
Post-Trial Motions and Submissions			
Enforcement			
Total Hours and Expenses	0	\$0.00	\$0.00
Appeal			
Appellate Motions and Submissions			
Appellate Briefs			
Oral Argument			
Total Hours and Expenses	0	\$0.00	\$0.00
Expenses (Itemize)			
Copying, Printing, Facsimile			
Messenger, Postage			
Travel, Meals, Telephone			
Subpoena Fees, Witness Fees			
Online Research			
Total Hours and Expenses	0	\$0.00	\$0.00
Grand Total	0	\$0.00	\$0.00

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICTLitigation Management GuidelinesClaims Philosophy

The District's claims philosophy is to identify, on a timely basis, those claims for which there is liability and to make settlement offers promptly. The District will generally not settle claims on a nuisance value basis as a matter of policy. The District, hereinafter referred to as District, 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 District or Office of County Counsel, where appropriate. 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 District:
  1. The names of other professionals (partners, associates, law clerks, paralegals, etc.) who will assist in 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 District 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 District's alleged act(s) and the actual damages sustained.

5. Critically analyzing the basis for all claims alleged or damages claimed.
- B. Within ninety (90) days following receipt of a case, counsel shall prepare and send to District, 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. Accident reconstruction (including photographs, diagrams, measurements, etc.).
    - c. Production of documents.
    - d. Purchase order/contracts/lease agreements.
    - e. Internal statements, memos, and correspondence.
    - f. Inspections, etc.
    - g. 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 County Counsel prior to it being initiated.
  3. Strategy. Counsel shall define the strategy to be used in defending 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 defending 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. Litigation 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 litigation counsel to County Counsel and the excess and/or reinsurance carrier when the case meets the excess reporting criteria. Litigation 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 Litigation counsel to County Counsel and to the excess carrier when the case meets excess reporting requirements to allow them to attend the hearing. It is required that within 10 days of any District employee's deposition being taken, litigation counsel will meet with the District 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, Litigation 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.

### 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 District 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 District 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 District, 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 District, the attorney firm must remit a reimbursement payment to the District 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 District and Attorneys.

The District retains the right to have legal billings audited.

VII. TRIALS AND REPORTING

- A. Within ten (10) to thirty (30) days prior to trial, Litigation counsel will meet with District 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 District's guidelines and the strategy and budget developed by litigation counsel for the case. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve litigation of the District's claims.

IX. Electronic Communication/Data Storage/Presentation

- A. The District strongly suggests all attorneys handling District 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 (photo's, 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 District 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 District strongly suggests all attorneys handling cases on behalf of the District 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 GUIDELINETo be completed by Firm's Supervising Attorney

1. FIRM NAME:  
  
CASE NAME:  
  
COURT CASE #:  
DISTRICT 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. PLAINTIFF'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.



CASE STATUS REPORT GUIDELINETo be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:

DISTRICT 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 DISTRICT'S EXPOSURE/LIABILITY:

8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to strategy):

9. SIGNIFICANT EVENTS:

Trial 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: \_\_\_\_\_  
(Firm's Supervising Attorney)

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

## EXHIBIT D

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO:  
CASE NAME:  
FROM:

DISTRICT 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. Dependents, 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 CLAIMIV. 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).

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 District, co-defendant and/or third party defendant (discuss each separately).
- F. If the District, 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 District'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 District 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 District 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.)?