

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

806



FROM: Executive Office

SUBMITTAL DATE:
January 22, 2010

SUBJECT: Legal Services Agreement with Burhenn & Gest LLP

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize the attached Legal Services Agreement between the County and Burhenn & Gest LLP, for specialized legal consultation related to the County's NPDES Program; and
2. Authorize the Chairperson to execute five (five) copies of the agreement; and
3. Direct the Clerk of the Board to return three (3) copies of the Agreement to the Executive Office for transmittal.

BACKGROUND: The County's NPDES Program is in need of additional technical expertise to evaluate an administrative enforcement action from the San Diego Regional Water Quality Control Board. The Board has issued a complaint against the County and highly specialized outside counsel is necessary to assist the County in its defense.

Alex Gann

Alex Gann, Principal Management Analyst

**FINANCIAL
DATA**

Current F.Y. Total Cost: \$ 75,000
Current F.Y. Net County Cost: \$ 75,000
Annual Net County Cost: \$

In Current Year Budget: Yes
Budget Adjustment: No
For Fiscal Year: 09/10

SOURCE OF FUNDS: CEO NPDES Fund/Litigation & Legislation Fund

Positions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY: *Gary M. Christmas*
Gary M. Christmas

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: February 9, 2010
xc: EO

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

District: All

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.12

FORM APPROVED, COUNTY COUNSEL
BY: PAMELA J. WALLS
DATE: 1/28/10
Departmental Concurrence

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

The County of Riverside was issued a Draft Administrative Civil Liability in May 2009 for alleged issues of non-compliance with the County's Municipal Separate Storm Sewer System (MS4) Permit. In discussing the issue with County management and County Counsel, it was determined that staff should obtain outside legal counsel with expertise in NPDES or water quality law. Given that the Regional Board had set an aggressive meeting schedule for the draft ACL, the County approached the firm of Burhenn & Gest LLP, to enter into an agreement to represent the County, due to their vast experience in the field. The firm has experience with the issues at hand and has worked for large municipalities such as Los Angeles County. In addition, Burhenn & Gest LLP, has litigated successfully on behalf of municipalities and has provided significant work on protecting the interests of local government agencies as it relates to unfunded mandates and expertise on Total Maximum Daily Load issues and their financial ramifications.

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1. SCOPE OF SERVICES. ATTORNEY shall provide legal counsel and services in connection with defending the County in response to an Administrative Civil Liability complaint ("ACL") received by the County from the Regional Water Quality Control Board, San Diego Region. Such work shall be done in accordance with the written guidelines referenced below, attached hereto and incorporated by reference herein.

3. KEY ATTORNEY. ATTORNEY agrees that David Burhenn will be the lead attorney assigned to perform the work under the Scope of Services and Terms of Agreement. Any changes or substitution of the assigned attorney must have the express written approval of the County Executive Officer or his designee. In addition to Mr. Burhenn, Howard Gest may also provide services under this Agreement.

Howard Gest	\$350.00
David Burhenn	\$350.00
Associates	\$250.00
Paralegals	\$ 95.00

1 of 21

2-9-10 3.12

COUNTY and ATTORNEY will monitor work requirements and efforts such that the limits of compensation are not reached before the last month of the term of the Agreement.

5. UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS. When funds are not appropriated or otherwise made available in a subsequent Fiscal Year, this Agreement shall be cancelled and ATTORNEY shall be reimbursed for the reasonable value of any non-recurring costs incurred and covered under the terms of this Agreement.

6. EXPENSES. Reimbursable expenses shall include billings for costs and expenses incurred on COUNTY's behalf, including: attorney service courier, photocopies of documents, filing fees, and travel. There are no other reimbursable expenses, unless previously agreed to. No single expense shall exceed \$500.00 without the prior consent of the County Executive Officer or his designee.

7. PAYMENT. ATTORNEY shall submit its billing statement at least quarterly, but no more than monthly, in arrears. (This requirement shall not apply to invoices not submitted prior to the execution of this Agreement.) Original statements/invoices shall be submitted by mail or hand delivered directly to Alex Gann, Deputy County Executive Officer, at 4080 Lemon Street, Fourth Floor, Riverside, CA 92501, and shall be itemized to include (i) staffing levels, hourly rates and specific activities for each attorney and/or paralegal; (ii) listing of each activity as a line item in a time reporting format acceptable to COUNTY with a detailed description of specific activities for each attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized categories.

It is the expectation of COUNTY that it will not be billed for ordinary overhead expenses, including but not limited to: ordinary word processing, copying, calendaring or other support staff work, time to prepare and review billings, Westlaw/LEXIS and local travel.

ATTORNEY shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. ATTORNEY shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between COUNTY and ATTORNEY.

1 Payments shall be made by COUNTY within thirty (30) days of receipt of billing from
2 ATTORNEY. All inquiries regarding payments and/or status of statements/invoices should be made
3 directly to Alex Gann, (951) 955-1110.

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

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

9 County of Riverside Executive Office
10 Attn: Alex Gann
11 Deputy County Executive Officer
12 4080 Lemon Street, 4th Floor
13 Riverside, CA 92501

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

14 10. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to
15 indemnify or hold COUNTY harmless, ATTORNEY shall procure and maintain or cause to be
16 maintained, at its sole cost and expense, the following insurance coverage during the term of this
17 Agreement:

18 a. Workers' Compensation:

19 If ATTORNEY has employees as defined by the State of California, ATTORNEY shall
20 maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State
21 of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with
22 limits not less than \$1,000,000.00 per person per accident. Policy shall be endorsed to waive subrogation
23 in favor of COUNTY and, if applicable, to provide a Borrowed Servant/Alternate Employer endorsement.

24 b. Vehicle Liability:

25 If vehicles or mobile equipment are used in the performance of the obligations under this
26 Agreement, ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles so
27 used in an amount not less than \$1,000,000.00 per occurrence combined single limit. If such insurance
28 contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2)
times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special

1 Districts and Departments, their respective directors, officers, Board of Supervisors, employees, elected or
2 appointed officials, agents or representatives as Additional Insured's.

3 c. Professional Liability:

4 ATTORNEY shall maintain Professional Liability Insurance providing coverage for
5 ATTORNEY'S performance of work included within this Agreement, with a limit of liability of not less
6 than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. If ATTORNEY's Professional
7 Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall
8 continue through the term of this Agreement and ATTORNEY shall purchase at his sole expense either 1)
9 an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a
10 new insurer with a date retroactive to the date of, or prior to, the inception of this Agreement; or 3)
11 demonstrate through Certificates of Insurance that ATTORNEY has maintained continuous coverage with
12 the same or original insurer. Coverage provided under items 1), 2) or 3) will continue for a period of five
13 (5) years beyond the termination of this Agreement.

14 d. General Insurance Provisions – All Lines:

15 1) Any insurance carrier providing insurance coverage hereunder shall be
16 admitted to the State of California and have an A.M. BEST rating of not less than an A:VIII (A:8) unless
17 such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager
18 waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for
19 one policy term.

20 2) ATTORNEY's insurance carrier(s) must declare its insurance self-insured
21 retentions. If such self-insured retentions exceed \$500,000.00 per occurrence such retentions shall have
22 the prior written consent of the County Risk Manager before the commencement of operations under this
23 Agreement. Upon notification of self-insured retentions which are deemed unacceptable to the COUNTY,
24 at the election of the County's Risk Manager, ATTORNEY's carriers shall either (1) reduce or eliminate
25 such self-insured retentions with respect to this Agreement with COUNTY or (2) procure a bond which
26 guarantees payment of losses and related investigations, claims administration, defense costs and
27 expenses.
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1 3) ATTORNEY shall cause their insurance carrier(s) to furnish COUNTY with
2 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements
3 effecting coverage as required herein and, 2) if requested to do so orally or in writing by the County Risk
4 Manager, provide original certified copies of policies including all Endorsements and all attachments
5 thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of
6 insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice be given
7 to COUNTY prior to any material modification, cancellation, expiration, or reduction in coverage of such
8 insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this
9 Agreement shall terminate forthwith, unless COUNTY receives, prior to such effective date, another
10 properly executed original Certificate of Insurance and original copies of endorsements or certified
11 original policies, including all endorsements and attachments thereto, evidencing coverage set forth herein
12 and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance
13 carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of
14 Insurance.

15 ATTORNEY shall provide COUNTY promptly following execution of this Agreement with
16 original Certificate(s) of Insurance and certified original copies of endorsements and, if requested,
17 certified original policies of insurance including all endorsements and any and all other attachments as
18 required in this Section.

19 4) It is understood and agreed by the parties hereto that ATTORNEY's
20 insurance shall be construed as primary insurance and COUNTY's insurance and/or deductibles and/or
21 self-insured retentions or self-insured programs shall not be construed as contributory.

22 5) If during the term of this Agreement or any extension thereof, there is a
23 material change in the scope of services; or, there is a material change in the equipment to be used in the
24 performance of the scope of work which will add additional exposures (such as the use of aircraft,
25 watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof, exceeds five (5)
26 years, the County reserves the right to adjust the types of insurance required under this Agreement and the
27 monetary limits of liability for the insurance coverage currently required herein, if in the County Risk
28

1 Manager's reasonable judgment the amount or type of insurance carried by the ATTORNEY has become
2 inadequate.

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

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

7 11. INDEMNITY AND HOLD HARMLESS. ATTORNEY shall indemnify and hold
8 harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
9 respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and
10 representatives (the "Indemnified Parties") from any liability whatsoever, including but not limited to,
11 property damage, bodily injury, or death, based or asserted upon any services of ATTORNEY, its officers,
12 employees, subcontractors, agents or representatives arising out of or in any way relating to this
13 Agreement and ATTORNEY shall defend at its sole expense and pay all costs and fees, including but not
14 limited to, attorney fees, cost of investigation, defense and settlements or awards, on behalf of the
15 Indemnified Parties in any claim or action based upon such liability brought by a third party.

16 With respect to any action or claim subject to indemnification herein by ATTORNEY,
17 ATTORNEY shall, at their sole cost, have the right to use counsel of their choice and shall have the right
18 to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY provided,
19 however, that any such adjustment, settlement or compromise in no manner whatsoever limits or
20 circumscribes ATTORNEY's indemnification to the Indemnified Parties as set forth herein.

21 ATTORNEY's obligation hereunder shall be satisfied when ATTORNEY has provided COUNTY
22 the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

23 The specified insurance limits required in this Agreement shall in no way limit or circumscribe
24 ATTORNEY's obligations to indemnify and hold harmless the Indemnified Parties herein from third party
25 claims.

26 12. TERMINATION. This Agreement may be terminated by either ATTORNEY or
27 COUNTY upon a ten (10) day written notice to the other party. After receiving a termination notice,
28 ATTORNEY shall take all steps necessary to stop services on the date and to the extent specified in the

1 termination notice and submit a billing for all services performed to date of notice of termination and any
2 services to be completed as set forth in the notice of termination within thirty (30) days from effective
3 termination date. ATTORNEY shall promptly submit a brief report advising of the status of all matters,
4 including any unresolved matters being handled by ATTORNEY for COUNTY. ATTORNEY shall give
5 COUNTY copies or originals, as appropriate of all files and attorney work product for all matters on
6 which it has been working. This includes any computerized index, computer programs and document
7 retrieval system created or used for these matters.

8 13. ASSIGNMENT. Neither this Agreement nor any part thereof shall be assigned by
9 ATTORNEY without the prior written consent of COUNTY.

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

15 15. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEY represents and warrants that
16 no County employee whose position in County enables him/her to influence the award of this Agreement
17 or any competing agreement, and no spouse or economic dependent of such employee is or shall be
18 employed in any capacity by ATTORNEY, or shall have any direct or indirect financial interest in this
19 Agreement.

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

25 It is possible that some of ATTORNEY's present or future clients will have disputes with County
26 during the time that ATTORNEY is representing the County. COUNTY and ATTORNEY agree that
27 should the situation arise where a new or existing client engages ATTORNEY in any matter in a position
28 adverse to COUNTY or in which COUNTY's interest may be adversely affected, that ATTORNEY will

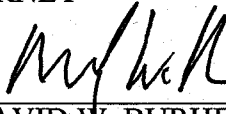
1 so advise COUNTY, and upon receipt of such notice, COUNTY may determine that the conflict may be
2 waived or may determine that it is in COUNTY's best interest to terminate the services of ATTORNEY.
3 Should COUNTY determine that it is best to terminate the services of ATTORNEY, COUNTY will notify
4 ATTORNEY of such decision. ATTORNEY may then submit any outstanding invoices for payment up
5 to the date of termination as determined by the notice from COUNTY.

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

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

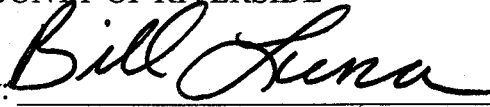
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18 Dated: January 28, 2010

ATTORNEY


19 By: 
DAVID W. BURHENN
BURHENN & GEST LLP

20
21 Dated: 2-23-10

COUNTY OF RIVERSIDE

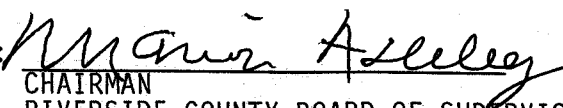
22 By: 
BILL LUNA
County Executive Officer


24 APPROVED AS TO FORM:

25 By: 
26 PAMELA J. WALLS
County Counsel

Dated: 1/28/10

27 DATED: 2-9-10

28 By: 
CHAIRMAN
RIVERSIDE COUNTY BOARD OF SUPERVISORS
MARION ASHLEY

ATTEST:
KECIA HARPER-IHEM, Clerk
By: 

1 ATTACHMENTS:

2 Exhibit A - Litigation Guidelines

3 Exhibit B - Initial Case Evaluation and Plan Guideline

4 Exhibit C - Case Status Report Guideline

5 Exhibit D - Attorney Pre-Trial Status Report Guideline

1 Exhibit A

2 County of Riverside

3 Litigation Management Guidelines

4 Claims Philosophy

5 The County's claims philosophy is to identify, on a timely basis, those claims for which
6 there is liability and to make settlement offers promptly. The County of Riverside will
7 generally not settle claims on a nuisance value basis as a matter of policy. The County of
8 Riverside, hereinafter referred to as County, policy is to defend all claims where there is no
9 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.

10 I. LITIGATION COUNSEL

- 11 A. Selection. Litigation counsel for each case shall be selected by the Economic
12 Development Agency, hereinafter referred to as Agency, with assistance from the
13 Office of County Counsel, where appropriate. The selection shall be based on the
14 nature and complexity of the case, the experience and ability of the attorney, as
15 well as other relevant factors.
- 16 B. Terms. Upon appointment in any litigation, counsel shall provide the following to
17 the County:
- 18 1. The names of other professionals (partners, associates, law clerks,
19 paralegals, etc.) who will assist in the defense of the case. The functions to
20 be performed by each professional shall also be provided. We request no
21 junior attorney be assigned our files. A junior attorney may be utilized for
22 research, minor discovery and court appearances with the senior attorney
23 being fully responsible for the quality of the work product. The County
24 retains the right to approve or disapprove of any and all attorney
25 assignments.

26 II. CASE ANALYSIS, STRATEGY AND BUDGET

- 27 A. Development of an effective and strategically sound legal approach is the
28 responsibility of counsel and includes the following:
- 29 1. Identifying and developing all liability issues.
 - 30 2. Bringing viable third-party actions and/or cross actions against co-
31 defendants.
 - 32 3. Developing the defense of contributory or comparative negligence.
 - 33 4. Raising causation issues to ascertain whether there is a nexus between the
34 County's alleged act(s) and the actual damages sustained.
 - 35 5. Critically analyzing the basis for all claims alleged or damages claimed.

1 B. Within thirty (30) days following receipt of a case, counsel shall prepare and send
2 to County Counsel, a Case Evaluation Plan (see Exhibit B) and as follows:

- 3 1. Analysis. (a comprehensive written analysis of the case). This analysis
4 shall provide an initial evaluation of the case, including a brief synopsis of
5 the facts of the case, damages and exposures in the case, and identification
6 of the strengths and weaknesses of the case. Counsel shall also provide an
7 initial impression of liability and identify the pertinent statutes and/or case
8 law that may affect the outcome of the litigation.
- 9 2. Investigation. We require investigations be done timely. This includes but
10 is not limited to:
 - 11 a. Identification of and taking statements of witnesses.
 - 12 b. Accident reconstruction (including photographs, diagrams,
13 measurements, etc.).
 - 14 c. Production of documents.
 - 15 d. Purchase order/contracts/lease agreements.
 - 16 e. Internal statements, memos, and correspondence
 - 17 f. Inspections, etc.
 - 18 g. Blue prints, if applicable.

19 Counsel shall identify any additional information or documentation that is needed
20 to disprove the plaintiff's claims or to establish defenses in the action. Where it is
21 believed further investigation is necessary, please discuss this with Agency prior to
22 it being initiated.

- 23 3. Strategy. Counsel shall define the strategy to be used in each lawsuit,
24 including, but not limited to:
 - 25 a. The anticipated course of action to be taken and prospect for success
26 (i.e. motion to dismiss, motion for summary judgment, negotiated
27 settlement, trial, etc.).
 - 28 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.

29 C. Budget. Defense counsel will also provide an estimate of the anticipated cost of
30 each significant aspect of the litigation, pursuant to the attached Budget Guidelines
31 Attachment C. These guidelines may change from time to time and you should
32 always familiarize yourself with all changes.

33 III. COMMUNICATION

34 A. Correspondence and pleadings. Copies of all pertinent correspondence,
35 investigations, and summaries of depositions, interrogatories and pertinent
36 pleadings shall be promptly provided by defense counsel to County Counsel and
37 the excess and/or reinsurance carrier when the case meets the excess reporting
38

criteria. Defense 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 defense 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 County employee's deposition being taken, defense counsel will meet with the county 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, defense 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 County 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 County Counsel 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 Riverside County, 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 County, the attorney firm must remit a reimbursement payment to the County of Riverside, 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.

///

- 1 6. Out of town travel – you must obtain prior authorization for any out of town
2 travel. We ask that you do not fly first class or business class nor stay in a
3 hotel whose rates are expensive or above the average daily rate of \$159.00,
4 or \$239.00 in high cost cities such as San Francisco, New York,
5 Washington D.C., etc (averages may vary by locale). We do not reimburse
6 alcoholic beverage consumption. Food consumption should be reasonable
7 and not excessive. Meals must be itemized as to food, beverages and tips.
8 Itemization of all travel expenses by each person incurring those expenses
9 must be made. This includes airfare, hotel, food, ground travel and any
10 other major costs. Arrangements must be made to use a local court reporter
11 or any other local service you believe is necessary as we will not authorize
12 travel expenses for these services. Car rentals should be compact to mid-
13 size vehicles and not in the luxury class.

8 C. Use of Appropriate Personnel

9 Within a law firm, research and minor discovery work should be performed by the
10 lowest level of personnel (e.g. junior attorneys, paralegals) capable of performing a
11 given task. Responsibility for the quality of the work product remains with the
12 assigned trial attorney.

12 D. Multiple Attorney Conferences/Attendance

- 13 1. We will not pay for attendance by more than one representative of a law
14 firm at meetings, court appearances, conferences, etc. without our prior
15 approval.
16 2. Attorney office conference time must be itemized and is subject to review
17 and may be disallowed.

16 E. Research

- 17 1. We will not pay for extensive research of relatively routine matters which
18 should otherwise be within the knowledge of experienced practitioners.
19 2. We will only pay for review and revision of prior research; we will not pay
20 each time as if previous research was conducted de novo.

20 F. Copy Service

21 We prefer to use one copy service wherever possible so that we can participate in
22 volume discounts. We may establish and provide a panel of copy service vendors
23 for your reference. Until you receive this panel, please continue using your current
24 copy service making the effort to negotiate volume discounts. We want to utilize
25 one court reporter whenever possible for the same reason - volume discount.
26 Please provide us names and telephone numbers of court reporters you use by area
27 (i.e., Riverside, Indio, Blythe, etc).

25 G. Audit

26 Attorneys shall have and maintain all backup documentation to support all entries
27 included in the monthly billing statement. Such documentation shall be in a form
28 subject to audit and in accordance with generally accepted accounting principles.
Attorneys shall make such documentation available to auditors upon request and at

1 such reasonable times and locations as may be agreed to between County and
2 Attorneys.

3 The County of Riverside retains the right to have legal billings audited.

4 VII. TRIALS AND REPORTING

- 5 A. Within ten (10) to thirty (30) days prior to trial, defense counsel will meet with
6 County employees who will be called as witnesses.
7 B. Within thirty (30) days of the conclusion of all trials, a brief summary trial report
8 should be directed to the County Counsel outlining the trial results.

9 VIII. FINAL REPORTS

- 10 A. At the conclusion of the case, a short summary report should be directed to the
11 County Counsel . Original closing papers and the final billing should be attached.
12 B. Within ninety (90) days following the termination of each lawsuit, the County
13 Counsel will review the file to determine compliance with the County's guidelines
14 and the strategy and budget developed by defense counsel for the case. If
15 appropriate, a meeting will be arranged to discuss perceived problems and/or ways
16 to improve defense of the County's claims.

17 IX. Electronic Communication/Data Storage/Presentation

- 18 A. The County of Riverside strongly suggests all attorneys handling County files have
19 the ability to communicate individually via electronic mail (E-Mail).
20 B. The County of Riverside Superior Courts has equipment that is available for
21 presenting evidence electronically (photo's, text, animation, etc.) via the use of an
22 Elmo and a computer. The Courts also have a large screen which is used to project
23 the electronic evidence and information onto so that all jurors can easily view the
24 evidence presented. The County of Riverside believes that jurors will retain 80%-
25 90% of what they hear if they see it simultaneously. In addition, the management
26 and storage of data on CD-ROM is beneficial to the success of the presentations of
27 most of our cases. Therefore, the County of Riverside strongly suggests all
28 attorneys handling cases on behalf of the County 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.

1 Exhibit B

2 INITIAL CASE EVALUATION AND PLAN GUIDELINE

3 To be completed by Firm's Supervising Attorney

4
5 1. FIRM NAME:

6 CASE NAME:

7 COURT CASE #:
8 COUNTY FILE #:

9 INCIDENT DATE:
10 CLAIM DATE:
11 COMPLAINT FILED DATE:

12 TYPE OF CASE:

13 CASE/MATTER DESCRIPTION AND FACTS:

14 OPPOSING ATTORNEY'S NAME (if applicable):

15 2. INVESTIGATION NEEDED:

16 3. INJURIES OR DAMAGES CLAIMED (list punitive damages separately):

17 4. SPECIAL DAMAGES: MEDICAL \$
18 LOSS OF EARNINGS \$
19 OTHER (specify) \$

20 5. PLAINTIFF'S CONTENTION:

21 6. AFFIRMATIVE DEFENSES:

22 7. INITIAL DISCOVERY (designate expert/parties):

- 23 a. Depositions to be taken (list names).
24 b. Interrogatories to be sent (list names).
25 c. Records/Documents to be produced (list names).

26 8. RESEARCH REQUIRED (general description of issues and extent): Specifically identify any
27 research requiring original effort as opposed to research that has generally been done previously
28 by your FIRM.

9. MONETARY EVALUATION OF CASE:

Potential Liability/Exposure: \$
Verdict Range: \$
Settlement Value: \$

///

///

1 10. RECOMMENDED CASE STRATEGY:

2 11. STAFFING/HOURLY RATE (list names, titles, hourly rate, and estimated number of hours for
3 each partner, associate and/or paralegal).

4 12. CONSULTANT AND/OR EXPERT WITNESS (list names, specialty, hourly rate, and estimated
5 number of hours for each consultant and/or expert).

6 13. INITIAL COST ESTIMATE (projected budget, including attorney fees and expenses for handling
7 each case to/through each of the stages as provided in the Attachment C for our (estimated)
8 Budget Guidelines. Trial costs **should not** be included until MSC and/or Trial date has been set.
9 Please base your best estimate on past experience with similar case(s).

10 14. Estimated final disposition date.

11 APPROVED:

12 By: _____
13 (Firm's Supervising Attorney)

Dated: _____

Exhibit C

CASE STATUS REPORT GUIDELINE

To be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:

COUNTY 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 COUNTY'S EXPOSURE/LIABILITY:

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

9. SIGNIFICANT EVENTS:

Trail 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)

Dated: _____

Exhibit D

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO:

FROM:

DATE:

CASE NAME:

COUNTY FILE NO.:

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 CLAIM

IV. 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.

///

- 1 E. Other Insurance Coverage - type of policy, policy number, claim number, carrier name,
2 address and phone number, name of claims person, type of other insurance clause (excess,
3 escape, etc), limits, deductible, known coverage defenses and/or reservation of rights
(attach copy if available).

4 V. WITNESSES

- 5 A. Name, address, age and occupation.
6 B. Event they perceived.
7 C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general
credibility, memory and particular tendencies as a witness.

8 VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

- 9 A. Plaintiff's theories.
10 B. Defense theories.
11 C. Co-defendants and/or third-party defendant theories.
12 D. Strengths and weaknesses of subsections A, B, and C above.
13 E. Chance of defense verdict for County, co-defendant and/or third party defendant (discuss
14 each separately).
15 F. If the County, co-defendant and/or third-party defendant settle, the probability of success
16 of the non-settling defendant(s) in obtaining indemnity against the settling defendant
(discuss each separately).
17 G. Causation issues, i.e., was the County's alleged negligence a cause in fact of the damages
claimed.
18 H. Probable damages (compensatory) if case is lost.
19 I. Punitive damage exposure? Will Plaintiff's attorney's fees be recoverable?
20 J. Probability of contributory negligence finding (i.e., defense verdict) or probable percentage
21 of comparative negligence (i.e., plaintiff's percentage of fault).
22 K. Probable apportionment of fault among defendants (assign percentages).
23 L. Net exposure (state a dollar amount) to County after all apportionment and based on
probable damages.
24 M. Settlement value and basis for evaluation.
25 N. Should case be tried? Explain risks.
26 O. Brief summary of probable outcome as to both liability and damage issues, indicating
whether you consider this a case of liability and why.

27 ///

28 ///

1 VII. SETTLEMENT DISCUSSIONS

2 A. What is the demand?

- 3 (a) Original amount and date.
4 (b) Present amount and date.

5 B. What, if anything, has the County offered? If a definite offer has not been made, but an
6 indicator or range has been discussed, so state, listing each indicator or range figure
7 discussed.

8 C. What, in your opinion, can the case be settled for at this time?

9 D. Do you recommend that we settle? Why?

10 VIII. FUTURE HANDLING

11 A. In your opinion, is the investigation of this case complete?

12 B. If not complete, what further investigation do you suggest and what would it cost?

13 C. What further discovery is needed; what would it cost to conclude the discovery and when
14 do you expect discovery to be completed?

15 D. Experts - explain need, their field, the number, probable testimony, cost of each, and
16 whether plaintiff has experts (if so, who and how effective is he/she?).

17 IX. LEGAL EXPENSES

18 A. What are the total legal expenses to date?

19 B. If the is case is tried, what would be the approximate cost of defense through trial
20 excluding IX.A. above (include the expense described in VIII.D.)?
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