

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

134



**FROM:** Transportation and Land Management Agency

**SUBMITTAL DATE:**  
March 14, 2012

**SUBJECT:** Sole Source Legal Services Agreement with Murphy & Evertz LLP for Representation in the Litigation Entitled Independent Energy Producers Association v. County of Riverside

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

1. Approve and authorize the chairman to sign the attached sole source legal services agreement with Murphy & Evertz LLP, in an amount not to exceed \$300,000, in accordance with the provisions of Board Policy A-18 permitting waiver of a request for proposals; and,
2. Approve and direct the Auditor-Controller to make the budget adjustments contained in Schedule A.

*George A. Johnson*  
\_\_\_\_\_  
George A. Johnson, Director  
Transportation and Land Management Agency

(continued on next page)

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER &  
BY *Samuel Wong* 3/14/12  
SAMUEL WONG

	Current F.Y. Total Cost:	\$ 150,000	In Current Year Budget:	No
FINANCIAL DATA	Current F.Y. Net County Cost:	\$ 150,000	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 150,000	For Fiscal Year:	2011/12 – 2012/13

SOURCE OF FUNDS: Solar Franchise Payments	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY: *Tina Grande*  
\_\_\_\_\_  
County Executive Office Signature Tina Grande

FORM APPROVED COUNTY COUNSEL  
BY: *KATH A. LIND* 03/14/12  
DATE  
KATHERINE A. LIND

Purchasing: *Mark Seiler*  
Departmental Concurrence  
Assistant Director

Dept't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley  
Nays: None  
Absent: Tavaglione  
Date: March 20, 2012  
xc: TLMA, Co.Co., E.O., Auditor(2), Purchasing

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

Prev. Agn. Ref. 16.2 of 11/08/11 | District: ALL | Agenda Number:

3.31

**BACKGROUND:**

On November 8, 2011, the Board of Supervisors adopted a comprehensive, integrated legislative solar power plant program which included Board Policy B-29 ("Policy"). The Policy provides, among other things, that certain approvals shall not be given for a solar power plant unless the Board of Supervisors first approves a franchise, a real property interest agreement or a development agreement.

On February 3, 2012, the Independent Energy Producers Association and the Large-Scale Solar Association filed the above-referenced legal action against the County and the Board concerning the Policy ("legal action"). The petition and complaint alleges, among other things, that the Policy is an invalid tax under Proposition 26 and that it was adopted in violation of the Mitigation Fee Act. Experienced legal representation is required for the pending legal action and any related matters.

County Counsel recommends that Murphy & Evertz LLP provide this representation because the firm is uniquely qualified to do so. Supervising Partner, Douglas J. Evertz, is already familiar with the Policy and the legal action because he has been providing representation in the pending case and related services pursuant to the agreement described below. He has 25 years experience specializing in both land use and taxation law and has represented over 50 public agencies in high profile litigation cases. He has represented the County of Riverside on numerous occasions, most recently in connection with the Riverside County Regional Detention Center. He is familiar with County procedures and personnel and has a proven track record with the County. These unique qualifications constitute good cause and justify a waiver of the RFP provisions of Board Policy A-18.

Working under an agreement approved by the County Purchasing Agent, Mr. Evertz has already provided some services concerning the Policy and the legal action. The \$25,000 cap set by the Purchasing Agent has now been reached, however. The \$300,000 authorized by the legal services agreement would be in addition to the \$25,000 already paid.

The cost of all legal services will be covered by franchise payments the County has already collected or by project applicants. The attached budget adjustment allows payment from the Legislative and Litigation Fund in the amount of \$150,000 for the anticipated costs that will be incurred this fiscal year. The remaining \$150,000 will be included in the budget for FY 12/13.

Schedule A

Increase Appropriations 10000-1102900000-525440	Professional Services	\$150,000
Increase Estimated Revenue 10000-1102900000-725020	Franchises	\$150,000

1 LEGAL SERVICES AGREEMENT

2  
3 The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and MURPHY & EVERTZ LLP,  
4 hereinafter called "ATTORNEYS", hereby agree as follows:

5 1. TERM OF AGREEMENT. This Agreement shall commence upon execution by both  
6 parties, and continue until completion of services or use of the funds described in this Agreement,  
7 whichever occurs first, unless sooner terminated pursuant to Section 5 or Section 13. This agreement is a  
8 continuation of the prior legal services agreement between COUNTY and ATTORNEY executed by  
9 COUNTY on January 25, 2012 and executed by ATTORNEY on December 6, 2011. It ratifies and  
10 approves the continuation of legal services which were provided in excess of the original amount  
11 authorized under the prior legal services agreement.

12 2. ATTORNEY SERVICES AND RESPONSIBILITIES. Upon appointment, ATTORNEYS  
13 shall provide legal counsel and services concerning COUNTY'S comprehensive, integrated legislative  
14 solar power plant program, including, but not limited to, the following: (i) litigation services; (ii) public  
15 record request services; and (iii) advisory services concerning program implementation. Attorneys shall  
16 also provide legal counsel and services concerning the motion for order affirming application of  
17 jurisdictional waiver filed with the California Energy Commission in the Ridgecrest Solar Power Project  
18 proceeding. ATTORNEYS shall provide such additional related services as County Counsel or the  
19 Director of COUNTY'S Transportation & Land Management Agency shall request.

20 3. KEY ATTORNEY. ATTORNEYS agree that Douglas J. Evertz, Senior Partner, will be  
21 the supervising attorney assigned to perform the work under this Agreement. Support attorneys and  
22 paralegals shall be designated by ATTORNEYS' supervising attorney, if needed. Any changes or  
23 substitution of the assigned attorneys must have the express written approval of the Director of the  
24 Transportation & Land Management Agency.

25 4. COMPENSATION. COUNTY shall pay ATTORNEYS at the following hourly rates for  
26 services rendered:

<u>Partner/Associate</u>	<u>Rates</u>
Senior Partner	\$340.00

Junior Partner	\$300.00
Associate	\$275.00
Paralegal	\$140.00

The total amount of compensation paid to ATTORNEYS under the terms of this Agreement shall not exceed the sum of THREE HUNDRED THOUSAND dollars (\$300,000) unless a written amendment to this Agreement is executed by both parties prior to performance of any additional services. The THREE HUNDRED THOUSAND dollars authorized by this Agreement is in addition to the TWENTY-FIVE THOUSAND dollars paid under the prior legal services agreement referenced in paragraph 1. COUNTY and ATTORNEYS 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 or completion of services. ATTORNEYS shall notify COUNTY immediately in writing when ATTORNEYS have expended seventy-five percent (75%) of the pre-approved compensation as stated in this Agreement.

5. UNAVAILABILITY OF FUNDS. When funds are not appropriated or otherwise made available in any fiscal year, this Agreement shall be terminated by COUNTY upon immediate notice to ATTORNEYS. ATTORNEYS shall be reimbursed for the reasonable value of any non-recurring costs incurred and covered under the terms of this Agreement.

6. EXPENSES. COUNTY shall reimburse ATTORNEYS for their actual out-of-pocket expenses, but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in ATTORNEYS' hourly rate.

6.1 Reimbursable ordinary expenses are those expenses incurred on COUNTY'S behalf, and shall include, but not be limited to: (i) postage; (ii) courier service; (iii) in-house document reproduction; and (iv) long distance phone calls. No single expense shall exceed \$500 without the prior consent of COUNTY.

6.2 Reimbursable extraordinary expenses are those expenses for which ATTORNEYS have obtained prior approval of COUNTY, and shall include, but not be limited to: (i) consultants; (ii) travel outside Riverside County; (iii) investigative services; and (iv) any expense item exceeding \$500.00.

6.3 Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for the time spent to provide

1 necessary information for COUNTY'S audits or billing inquiries; (iii) mileage or travel expenses from the  
2 regular office of ATTORNEYS to Riverside County; and (iv) charges for work performed which had not  
3 been authorized by COUNTY.

4 7. PAYMENT. ATTORNEYS shall submit their billing statement monthly, in arrears, no  
5 later than the last day of the month following the month(s) for which services were rendered. The original  
6 billing statement(s) and one copy shall be submitted to:

7 Tiffany N. North  
8 Office of County Counsel  
9 3960 Orange Street Suite 500  
10 Riverside, CA 92501

11 The original of each billing statement shall have the declaration of ATTORNEYS' supervising attorney  
12 and shall be itemized to include (i) staffing level(s), hourly rates and specific activities for each attorney  
13 and/or paralegal; (ii) listing of each activity as a line item in a time reporting format acceptable to  
14 COUNTY with a detailed description of specific activities for each attorney and/or paralegal; (iii) total  
15 current period fees and total cumulative fees billed for each staffing level; and (iv) current period  
16 expenses and total cumulative expenses billed in itemized categories, including all invoices for  
17 disbursements paid to others.

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

23 Payments shall be made by COUNTY within thirty (30) days of receipt of itemized billing  
24 statements from ATTORNEYS. COUNTY shall not pay interest or finance charges on any outstanding  
25 balance(s).

26 8. LICENSES. ATTORNEYS, their employees, agents, contractors and subcontractors shall  
27 maintain professional licenses required by the laws of the State of California at all times while performing  
28 services under this agreement. ATTORNEY shall perform all services and duties in conformance to and

1 consistent with the standards generally recognized as being employed by attorneys in the State of  
2 California.

3 9. NOTICES. Any and all notices and required reports shall be written and hand-delivered or  
4 mailed by first class, postage prepaid, addressed to COUNTY or ATTORNEYS at the following addresses  
5 below, or at any other address COUNTY or ATTORNEYS shall provide in writing to each  
6 other:

7 Ed Cooper  
8 Transportation & Land Management Agency  
9 4080 Lemon Street  
Riverside, CA 92501

Douglas J. Evertz  
Murphy & Evertz, LLP  
650 Town Center Drive, Suite 550  
Costa Mesa, CA 92626

10 10. LITIGATION. ATTORNEYS shall comply with COUNTY'S Litigation Management and  
11 Budget Guidelines attached hereto as Exhibits A through E and incorporated herein by this reference.  
12 These guidelines may be updated from time to time. ATTORNEYS agree to comply with any superseding  
13 updates which are also incorporated herein by reference. The incorporation of such superseding updates  
14 shall not, however, change or alter any other portion of this Agreement in any way whatsoever.

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

19 a. Workers' Compensation:

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

25 b. Commercial General Liability:

26 Commercial General Liability insurance coverage, including but not limited to, premises liability,  
27 contractual liability, products and completed operations liability, personal and advertising injury, and  
28 cross liability coverage, covering claims which may arise from or out of ATTORNEYS' performance of

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

4           5)     If during the term of this Agreement or any extension thereof, there is a material  
5 change in the scope of services; or, there is a material change in the equipment to be used in the  
6 performance of the scope of services which will add additional exposures (such as the use of  
7 aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof,  
8 exceeds five (5) years, COUNTY reserves the right to adjust the types of insurance required under  
9 this Agreement and the monetary limits of liability for the insurance coverage's currently required  
10 herein, if in COUNTY'S Risk Manager's reasonable judgment, the amount or type of insurance  
11 carried by ATTORNEYS has become inadequate.

12           6)     The insurance requirements contained in this Agreement may be met with a  
13 program(s) of self-insurance acceptable to COUNTY.

14           7)     ATTORNEYS shall pass down the insurance obligations contained herein to all  
15 tiers of subcontractors working under this Agreement.

16           8)     ATTORNEYS agree to notify COUNTY of any claim by a third party or any  
17 incident or event that may give rise to a claim arising from the performance of this Agreement.

18       12.    INDEMNITY AND HOLD HARMLESS.   ATTORNEYS shall indemnify and hold  
19 harmless COUNTY, its Agencies, Districts, Special Districts and Departments, their respective directors,  
20 officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (the  
21 "Indemnified Parties") from any liability whatsoever, including but not limited to, property damage,  
22 bodily injury, or death, based or asserted upon any services of ATTORNEYS, their officers, employees,  
23 subcontractors, agents or representatives arising out of or in any way relating to this Agreement; and  
24 ATTORNEYS shall defend at their sole expense and pay all costs and fees, including but not limited to,  
25 attorney fees, cost of investigation, defense and settlements or awards, on behalf of the Indemnified  
26 Parties in any claim or action based upon such liability.

27           With respect to any action or claim subject to indemnification herein by ATTORNEYS,  
28 ATTORNEYS shall, at their sole cost, have the right to use counsel of their choice and shall have the right



1 to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided,  
2 however, that any such adjustment, settlement or compromise in no manner whatsoever limits or  
3 circumscribes ATTORNEYS' indemnification to the Indemnified Parties as set forth herein.

4 ATTORNEYS' obligation hereunder shall be satisfied when ATTORNEYS have provided  
5 COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim  
6 involved.

7 The specified insurance limits required in this Agreement shall in no way limit or circumscribe  
8 ATTORNEYS' obligations to indemnify and hold harmless the Indemnified Parties herein from third  
9 party claims.

10 13. TERMINATION. Services performed under this Agreement may be terminated, in whole  
11 or in part, at any time COUNTY believes it to be in its best interest, as determined by the Board of  
12 Supervisors upon recommendation of the Director of COUNTY's Transportation & Land Management  
13 Agency. COUNTY shall terminate services by delivering to ATTORNEYS a written termination notice  
14 executed by COUNTY specifying the extent to which services are terminated and the effective date.

15 13.1 After receiving a termination notice, and unless otherwise directed by COUNTY,  
16 ATTORNEYS shall take all steps necessary to stop services on the date and to the extent specified in the  
17 termination notice, and submit billing for all services performed before the date of the termination notice,  
18 and any services to be completed as set forth in the termination notice, within thirty (30) days from  
19 effective termination date. ATTORNEYS shall promptly submit a brief report advising of the status of all  
20 matters, including any unresolved matters being handled by ATTORNEYS for COUNTY. ATTORNEYS  
21 shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all  
22 matters on which they have been working. This includes any computerized index, computer programs and  
23 document retrieval system created or used for these matters.

24 14. SUPERVISION OF AGREEMENT. County Counsel and the Director of COUNTY'S  
25 Transportation & Land Management Agency, or his designee, shall have authority to act for COUNTY  
26 with respect to all services provided by ATTORNEYS under this Agreement.

27 15. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is  
28 assignable without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or

1 subcontract services relating to this Agreement without the consent of COUNTY shall constitute a  
2 material breach of this Agreement. However, ATTORNEYS may retain consultants and experts as  
3 ATTORNEYS deem appropriate after receiving the written approval of COUNTY.

4 16. NON-DISCRIMINATION. In the performance of the terms of this Agreement,  
5 ATTORNEYS shall not engage in nor permit others they may employ to engage in discrimination in the  
6 employment of persons because of the race, color, national origin or ancestry, religion, physical handicap,  
7 disability as defined by the Americans with Disabilities Act (ADA), medical condition, marital status or  
8 sex of such persons, in accordance with the provision of California Labor Code Section 1735.

9 17. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEYS represent and warrant that  
10 no COUNTY employee whose position enables him/her to influence the award of this Agreement or any  
11 competing agreement, and no spouse or economic dependent of such employee is or shall be employed in  
12 any capacity by ATTORNEYS, or shall have any direct or indirect financial interest in this Agreement.

13 Anyone who is a former employee of COUNTY at the time of execution of this Agreement  
14 or who subsequently becomes affiliated with ATTORNEYS in any capacity (employee, associate or  
15 partner) shall not (i) participate in the services provided by ATTORNEYS to COUNTY; or (ii) become a  
16 partner, shareholder or otherwise share in the profits of ATTORNEYS for a period of one year from the  
17 date the former COUNTY employee left COUNTY employment.

18 It is possible that some of the ATTORNEYS' present or future clients will have disputes  
19 with COUNTY during the time that ATTORNEYS are representing COUNTY. COUNTY and  
20 ATTORNEYS agree that should the situation arise where a new or existing client engages ATTORNEYS  
21 in any matter in a position adverse to COUNTY, or in which the interest of COUNTY may be adversely  
22 affected, that ATTORNEYS will so advise COUNTY and upon receipt of such notice COUNTY may  
23 determine that the conflict may be waived or may determine that it is in the best interest of COUNTY to  
24 terminate the services of ATTORNEYS in accordance with this Agreement.

25 18. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information  
26 which it may acquire arising out of or connected with activities under this Agreement in accordance with  
27 all applicable Federal, State and COUNTY laws, regulations, ordinances and directives relating to  
28 confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all of their

1 principals, employees and agents providing services hereunder of the confidentiality provisions of this  
2 Agreement. These confidentiality obligations shall survive the termination or expiration of this  
3 Agreement.

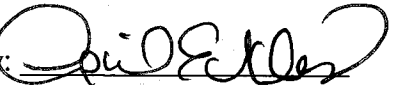
4 19. COMMUNICATIONS WITH COUNTY. ATTORNEYS recognize that their relationship  
5 with COUNTY and its officers, officials, employees, agents and representatives is subject to the attorney-  
6 client privilege and that any information acquired during the term of this Agreement from or through  
7 COUNTY is confidential and privileged. ATTORNEYS warrant that they shall not disclose or use in any  
8 manner whatsoever any of the information from COUNTY and its officers, officials, employees, agents  
9 and representatives in connection with said relationships or proceedings. ATTORNEYS understand that  
10 the County Counsel is the empowered legal representative of COUNTY and its officers, officials,  
11 employees, agents and representatives, and ATTORNEYS shall not without specific direction from the  
12 County Counsel communicate with, advise or represent the COUNTY'S legislative body.

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

17 Dated: MAR 20 2012

COUNTY OF RIVERSIDE  
By:   
Chairman, Board of Supervisors  
JOHN TAVAGLIONE

21 ATTEST:  
22 Kecia Harper-Ihem, Clerk of the Board

23 By:   
24 Deputy

25 Dated: MAR 20 2012

26 ATTORNEYS  
27 MURPHY & EVERTZ LLP  
By:   
28 Douglas J. Evertz

FORM APPROVED COUNTY COUNSEL  
BY: Katherine A. Lind 03/20/12  
KATHERINE A. LIND DATE