

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

968A



FROM: Transportation Department and County Counsel


SUBMITTAL DATE:
December 6, 2012


SUBJECT: Agreement with Best, Best & Krieger, LLP, for Professional Services concerning the Cajalco Road Widening and Safety Enhancement Project.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Professional Services Agreement between the County of Riverside and Best, Best & Krieger, LLP; and,
2. Authorize the Chairman of the Board to execute the same.

Departmental Concurrence


KARIN WATTS-BAZAN, Principal Deputy
County Counsel for
PAMALA J. WALLS, County Counsel


Juan C. Perez, Director
Transportation & Land Management

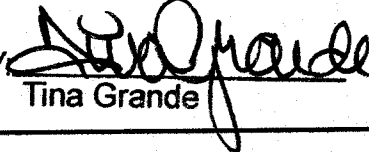
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FINANCIAL DATA	Current F.Y. Total Cost:	\$ 50,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: Federal STP (100%) Project No. C00551 There are no General Funds used on this project.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

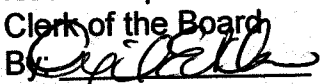
BY 
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Tavaglione 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: December 18, 2012
xc: Transp., Co.Co.

Kecia Harper-Ihem
Clerk of the Board
BY 
Deputy

Prev. Agn. Ref. | **District:** 1/1 | **Agenda Number:**

3.55

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

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

The Honorable Board of Supervisors

RE: Agreement with Best, Best & Krieger, LLP, for Professional Services concerning the
Cajalco Road Widening and Safety Enhancement Project.

December 6, 2012

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BACKGROUND: The Transportation Department is preparing environmental documentation and preliminary engineering to support improvements to Cajalco Road between Temescal Canyon Road on the west and Interstate 215 on the east. The proposed project would widen the roadway to four lanes between Harvill Avenue and Temescal Canyon Road, and to six lanes between I-125 and Harvill Avenue. The project will improve east-west mobility, provide increased capacity, and improve traffic flow and safety. The total length of the project is approximately 16 miles.

Cajalco Road between La Sierra Avenue and Harley John Road is bordered by conserved lands, including the Lake Mathews Multiple Species Habitat Conservation Plan (LM MSHCP), a Habitat Conservation Plan under the jurisdiction of the Metropolitan Water District (MWD). Provision for the widening of Cajalco Road must be made through amendment to the LM MSHCP. Counsel support is needed for this effort, which includes coordination with MWD, preparation of agreements and review of the Cajalco Road Environmental Impact Statement/Environmental Impact Report.

The Agreement between the County and Best, Best & Krieger, LLP for Legal Services, outlines the tasks to be performed in a not to exceed amount of \$50,000.

LEGAL SERVICES AGREEMENT

This Agreement is entered into as of the date written below, and is made by and between the COUNTY OF RIVERSIDE, on behalf of the Transportation and Land Management Agency, hereinafter "COUNTY", and Best, Best & Krieger, LLP hereinafter "ATTORNEYS". The Parties hereto agree as follows:

1. TERM OF AGREEMENT. This Agreement shall commence upon execution, and continue until completion of the last work assignment unless sooner terminated pursuant to Section 5, or Section 9.

2. LEGAL SERVICES. ATTORNEY shall provide legal counsel and services. ATTORNEYS legal representation shall include representation of County in all aspects of the Cajalco Road Widening Project as it relates to the Lake Mathews Multiple Species Habitat Conservation Plan, including but not limited to:

(a) Review of the law and legal guidance in regard to the Lake Mathews Multiple Species Habitat Conservation Plan and any related Plan agreements including the Audubon settlement agreement and the Department of Fish and Game ecological reserve agreement;

(b) Review of the law and legal guidance in the area of environmental regulations including California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance including draft EIR/EIS document review; and

(c) Participation in meetings with the Metropolitan Water District, Wildlife Agencies and others as necessary.

3. ASSIGNMENT OF PERSONNEL. The Supervising Attorney for this Agreement will be Michelle Ouellette. The Supervising Attorney shall have full authority to act for ATTORNEY on all matters encompassed by this Agreement and shall be fully responsible for the quality of the work produced. Support attorneys and paralegals shall be designated by the Supervising Attorney. Any changes or substitution of the Supervising Attorney must have the express written approval of COUNTY.

Upon execution of this Agreement, the Supervising Attorney shall provide to COUNTY the names of other professionals (senior partners, junior partners, associates, paralegals, etc.) who will assist in the provision of services under this Agreement. The Supervising Attorney shall also specify the functions to be performed by each professional and shall ensure that services are performed by the level of personnel qualified to perform the service. Any change in personnel assignments shall be made only upon telephonic or written notice to, and written consent by, COUNTY. COUNTY retains the right to approve or disapprove any and all attorney assignments.

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

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

It is possible that some of the ATTORNEYS' present or future clients will have disputes with COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and ATTORNEYS agree that should the situation arise where a new or existing client engages ATTORNEYS in any matter adverse to COUNTY, or in which COUNTY'S interest may be adversely affected, ATTORNEYS will advise COUNTY in writing. Upon receipt of such notice, COUNTY may determine that the conflict can be waived or may determine that it is in the COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY determine that it is best to terminate the services of ATTORNEYS, COUNTY will notify ATTORNEYS in writing of such decision. ATTORNEYS may then submit any outstanding invoices for payment up to the date of termination as determined by the notice from COUNTY.

5. TERMINATION. Services performed under this Agreement may be terminated by COUNTY in whole or in part, at any time that COUNTY determines to be in its best interest. COUNTY shall terminate services by delivering to ATTORNEYS a written Termination Notice executed by COUNTY and specifying the extent to which services are terminated and the effective termination date.

After receiving a Termination Notice, and unless otherwise directed by COUNTY, ATTORNEYS shall: (i) take all steps necessary to stop services on the date and to the extent specified in the Termination Notice; and (ii) submit billing for all services performed to date of Termination Notice within thirty (30) days from the effective termination date.

ATTORNEY shall promptly submit a brief report advising of the status of all matters, including any unresolved matters being handled by ATTORNEYS for COUNTY. ATTORNEYS shall give COUNTY copies or originals, as appropriate of all files and attorney work product for all matters on which it has been working. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

6. COMPENSATION. The total amount of compensation paid to ATTORNEYS under the terms of this Agreement shall not exceed \$50,000.00. This amount may be amended by the parties to this Agreement, provided a written amendment is executed by both parties prior to performance of any additional services. A written amendment shall be a condition precedent to any obligation for payment by COUNTY beyond the approved compensation. ATTORNEYS shall notify the COUNTY immediately in writing when ATTORNEYS have expended seventy-five percent (75%) of the total compensation.

COUNTY shall pay ATTORNEY at the following hourly rates for services rendered:

<u>Partner/Associate</u>	<u>Litigation/Special Project Rates</u>	<u>Transactional/ General Advice Rates</u>
Partner/Of Counsel	\$295	\$295
Associate	\$285	\$285
Paralegal	\$140	\$140

7. 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 the ATTORNEYS' hourly rate.

Reimbursable ordinary expenses shall include but not be limited to: (i) postage; (ii) courier service; (iii) title reports; (iv) in-house photocopies of documents; (v) long distance phone calls; and (vi) travel outside of Riverside County; provided however, that no single expenditure shall exceed \$500 without the prior consent of the COUNTY.

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

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

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

Original to:

Riverside County Transportation Department
Attention: Scott Staley
3525 14th Street
Riverside, CA 92501
(951) 955-2092

Copy to:

Karin Watts-Bazan
Principal Deputy County Counsel
Office of the County Counsel
3960 Orange Street, Fifth Floor
Riverside, CA 92501
(951)955-6300

The Supervising Attorney shall certify that the work referenced in each billing statement was performed and each billing statement shall be itemized to include (i) staffing level(s), hourly rates and specific activities for each attorney and/or paralegal; (ii) a 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 billed for each staffing level and total cumulative fees billed; and (iv) current period expenses and total cumulative expenses billed in itemized categories, including all invoices for disbursements paid to others.

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 COUNTY and ATTORNEYS.

COUNTY shall make payment(s) for services rendered under this Agreement monthly in arrears based on itemized billing statement(s) submitted by ATTORNEYS. Payments shall be made by COUNTY within thirty (30) days of receipt of billing statements from ATTORNEYS. COUNTY shall not pay interest or finance charges on any outstanding balance(s).

9. 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 services performed and covered under the terms of this Agreement.

10. SUPERVISION OF AGREEMENT. The COUNTY Transportation Director, or his/her designee shall have authority to act for COUNTY on all matters encompassed by this Agreement.

11. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information that it may acquire, arising out of or connected with, its provision of services under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all personnel providing services hereunder of the confidentiality provisions of this Agreement. These confidentiality obligations shall survive the termination or expiration of this Agreement.

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

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

14. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be maintained, at their sole cost and expense, the following insurance coverage during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If ATTORNEYS have employees as defined by the State of California, ATTORNEYS shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000.00 per person per accident. The policy shall be endorsed to waive subrogation in favor of COUNTY.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEYS performance of its obligations hereunder. Policy shall name COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000.00 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then ATTORNEYS shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000.00 per occurrence combined single limit. If such insurance 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 COUNTY as Additional Insured.

D. Professional Liability:

ATTORNEYS shall maintain Professional Liability Insurance providing coverage for ATTORNEYS' performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. If ATTORNEYS' Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ATTORNEYS shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a date retroactive to the date of or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEYS have maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue as long as the law allows.

E. General Insurance Provisions – All Lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A:VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
- 2) ATTORNEYS must declare its insurance self-insured retention for each coverage required herein. If such self-insured retention(s) exceed \$500,000.00 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of services under this Agreement. Upon notification of self-insured retentions which are deemed unacceptable to the COUNTY, at the election of the County's Risk Manager, ATTORNEYS' carriers shall either 1) reduce or eliminate such self-insured retentions with respect to this Agreement with

COUNTY or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

- 3) ATTORNEYS shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly executed original Certificate(s) of insurance and certified copies of endorsements effecting coverage as required herein and, 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice be given to COUNTY prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *ATTORNEYS shall not commence operations until COUNTY has been furnished with original Certificate(s) of Insurance and certified original copies of endorsements and, if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*
- 4) It is understood and agreed by the parties hereto and ATTORNEYS' insurance shall be construed as primary insurance and COUNTY'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- 5) If during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the ATTORNEYS has become inadequate.
- 6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.
- 7) The ATTORNEYS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 8) ATTORNEYS agree to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

15. INDEMNIFICATION. ATTORNEYS shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of ATTORNEYS, its officers employees, subcontractors, agents or representatives, arising out of or in any way relating to this Agreement, including but not limited to, property damage, bodily injury, or death, or any other element of any kind or nature whatsoever arising from the negligent performance of ATTORNEYS, its officers, employees, subcontractors, agents or representatives. ATTORNEYS shall defend at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such services and performance.

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

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

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

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

Office of County Counsel
3960 Orange Street, Fifth Floor
Riverside, CA 92501

Michelle Ouellette
Best, Best & Krieger, LLP
3390 University Avenue, 5th Floor
P. O. Box 1028
Riverside, CA 92502-1028

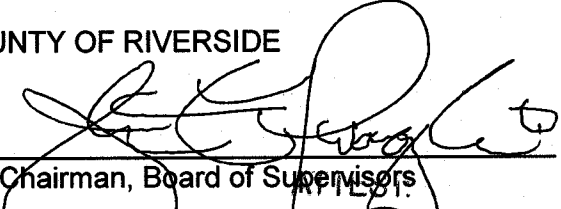

18. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or subcontract services relating to this Agreement without the consent of COUNTY shall constitute a material breach of this Agreement. However, ATTORNEYS may retain consultants and experts as ATTORNEYS deem appropriate after receiving the written approval of COUNTY.

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

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

COUNTY OF RIVERSIDE

Dated: 12-18-12

By: 
Chairman, Board of Supervisors
JOHN TAVAGLIONE
By: 
CECILIA HARPER JHEM, Clerk
DEPUTY

ATTORNEYS
Best Best & Krieger LLP

Dated: 12/4/12

By: 

APPROVED AS TO FORM
Pamela Walls, County Counsel

Dated: 12/4/12


By: Principal Deputy County Counsel