

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

937



FROM: TLMA - Transportation Department / County Counsel

SUBMITTAL DATE:
October 14, 2015

SUBJECT: Legal Services Agreement between the County of Riverside and Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Avenue 66 Grade Separation Project for a term of three years. 4th District; [\$250,000]; Coachella Valley Association of Governments (CVAG) 55%, Development Impact Fee (DIF) Funds 33%, and Measure A- Coachella Valley 12%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Legal Services Agreement between the County of Riverside and Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Avenue 66 Grade Separation Project; and
2. Authorize the Chairman of the Board to execute this agreement on behalf of the County.

Departmental Concurrence

Juan C. Perez
Director of Transportation and Land Management

Gregory P. Priamos
County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 100,000	\$ 100,000	\$ 250,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Coachella Valley Association of Governments (CVAG) 55%, Development Impact Fee (DIF) Funds 33%, and Measure A- Coachella Valley 12%	Budget Adjustment: No
	For Fiscal Year: 15/16 – 18/19

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
 Nays: None
 Absent: None
 Date: December 8, 2015
 xc: Transp., Co.Co.

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.: N/A

District: 4

Agenda Number:

3-57

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

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

FORM 11: Legal Services Agreement between the County of Riverside and Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Avenue 66 Grade Separation Project for a term of three years. 4th District; [\$250,000]; Coachella Valley Association of Governments (CVAG) 55%, Development Impact Fee (DIF) Funds 33%, and Measure A- Coachella Valley 12%

DATE: October 14, 2015

PAGE: 2 of 3

BACKGROUND:

Summary

Avenue 66 is the primary access to the community of Mecca from State Route 86 as shown on Exhibit 1. However, Avenue 66 currently does not cross the Union Pacific Railroad (UPRR) creating a gap that requires through traffic to use a circuitous route north onto Highway 111 and crossing the railroad tracks at grade on 4th Street. A substantial number of agricultural freight trucks use this crossing on a regular basis and cause backups at the railroad tracks. UPRR and State Highway 86 are important North American Free Trade Agreement (NAFTA) freight corridors to and from Mexico. Currently, up to 71 freight trains pass through the County of Riverside (County) daily on this rail line, with that number projected to increase to approximately 107 by the year 2030.

The proposed Avenue 66 Railroad Grade Separation Project would provide a grade separation of Avenue 66 and the UPRR and provide a direct east-west connection of Avenue 66 (Project) from SR86 to the community of Mecca. The 4th Street crossing will remain open to local traffic and provide access to Highway 111. The proposed Project would provide a more direct route for agricultural trucks, emergency vehicles, and through traffic, and avoid conflicts and delays with the railroad train traffic.

The Project is a viable candidate to receive funding from the Trade Corridor Improvement Fund (TCIF) Program, which would require that this Project be under construction by December 2016. This Project requires the acquisition of portions of property as shown on Exhibit 2. The project will require the partial acquisition of 11 vacant parcels, a portion of an improved commercial property, and portion of an ongoing farming operation. The County has begun property owner negotiations to acquire the necessary right-of-way for the new grade crossing and needs to have access to expert legal services quickly in the event that settlement negotiations become complex.

The focused legal assistance provided by Murphy & Evertz is necessary in order to meet funding deadlines given staffing commitments on other projects from in-house counsel. There is a potential that properties may end up in a court action in order to obtain the right-of-way and determine just compensation, in which case the court process may continue for some time after possession for construction has been obtained. The contract is for a three year term starting on September 1, 2015 and continue until September 1, 2018, or completion of the last work assignment, whichever occurs first, for a not-to-exceed amount of \$250,000.

Impact on Citizens and Businesses

The expertise of Murphy & Evertz will facilitate project completion of this important project, which will improve traffic circulation and reduce delays by providing uninterrupted and efficient access for agricultural trucks, motorists, residents, businesses, pedestrians, and emergency vehicles; increase public safety; and reduce particulate matter and greenhouse gasses from idling cars and trucks.

SUPPLEMENTAL:

Additional Fiscal Information

This work will be funded by a combination of CVAG TUMF, Developer Impact Fees, and Measure A- Coachella Valley. No net county costs will be expended. The total compensation to be paid to Murphy & Evertz is for work performed over three fiscal years.

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

FORM 11: Legal Services Agreement between the County of Riverside and Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Avenue 66 Grade Separation Project for a term of three years. 4th District; [\$250,000]; Coachella Valley Association of Governments (CVAG) 55%, Development Impact Fee (DIF) Funds 33%, and Measure A- Coachella Valley 12%

DATE: October 14, 2015

PAGE: 3 of 3

Contract History and Price Reasonableness

Murphy & Evertz is a current on-call service provider with the County of Riverside Economic Development Agency (EDA) for specialized eminent domain work. EDA has vetted this firm's qualifications, which includes a specialization in eminent domain, as well as their rates, which are comparable with market rates. The department typically utilizes the EDA on-call contract which has a cap of \$100,000; however, due to the complexity of the work, unique legal issues, and urgency to obtain rights of way in order to qualify for TCIF funds, the department and county counsel request a project specific agreement.

ATTACHMENTS

Project Vicinity Map- Exhibit 1

Right of Way Map- Exhibit 2

Legal Services Agreement with Exhibits A, B, C, D, and Attachment C- Budget Guidelines

Exhibit 1

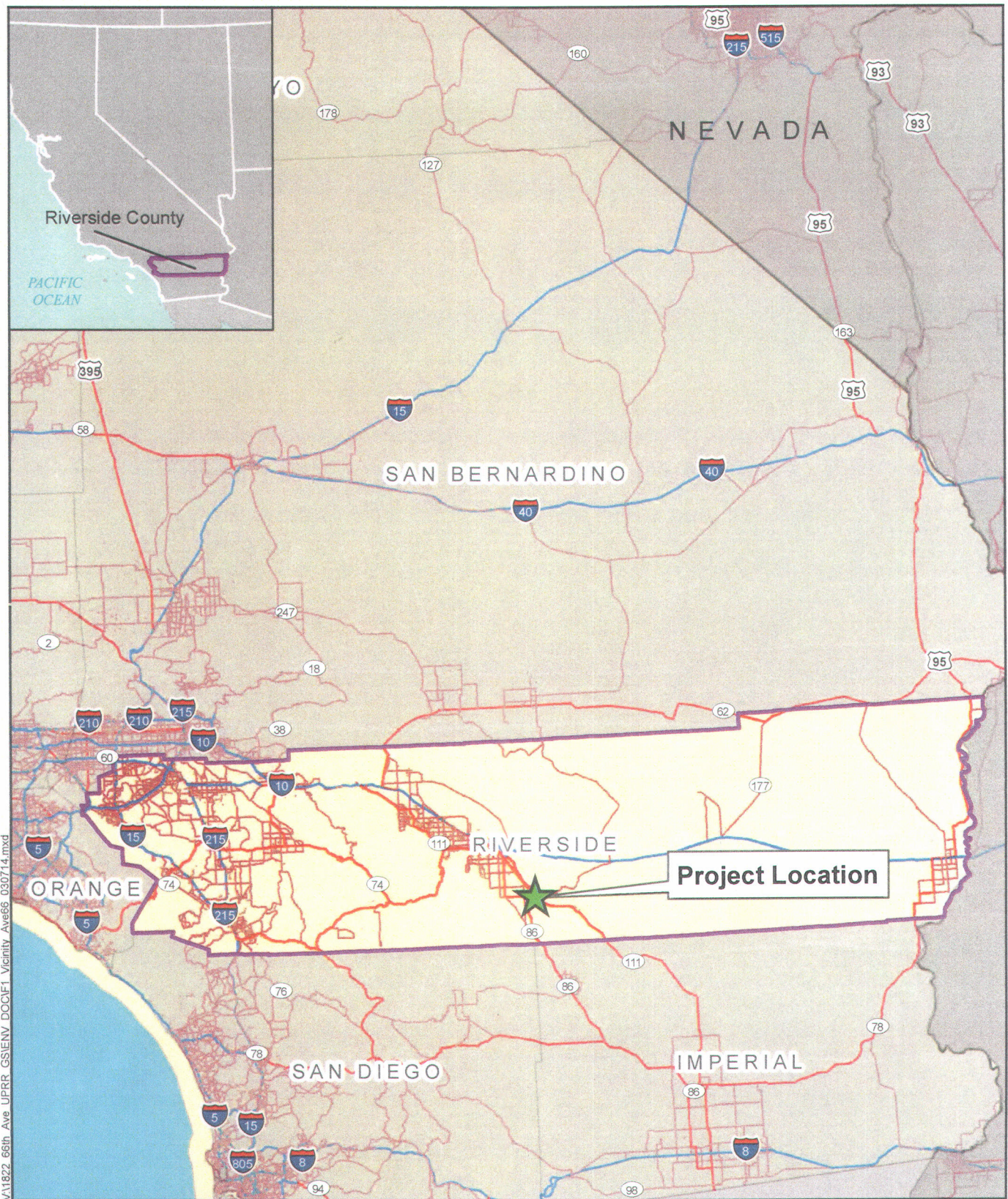


FIGURE 1

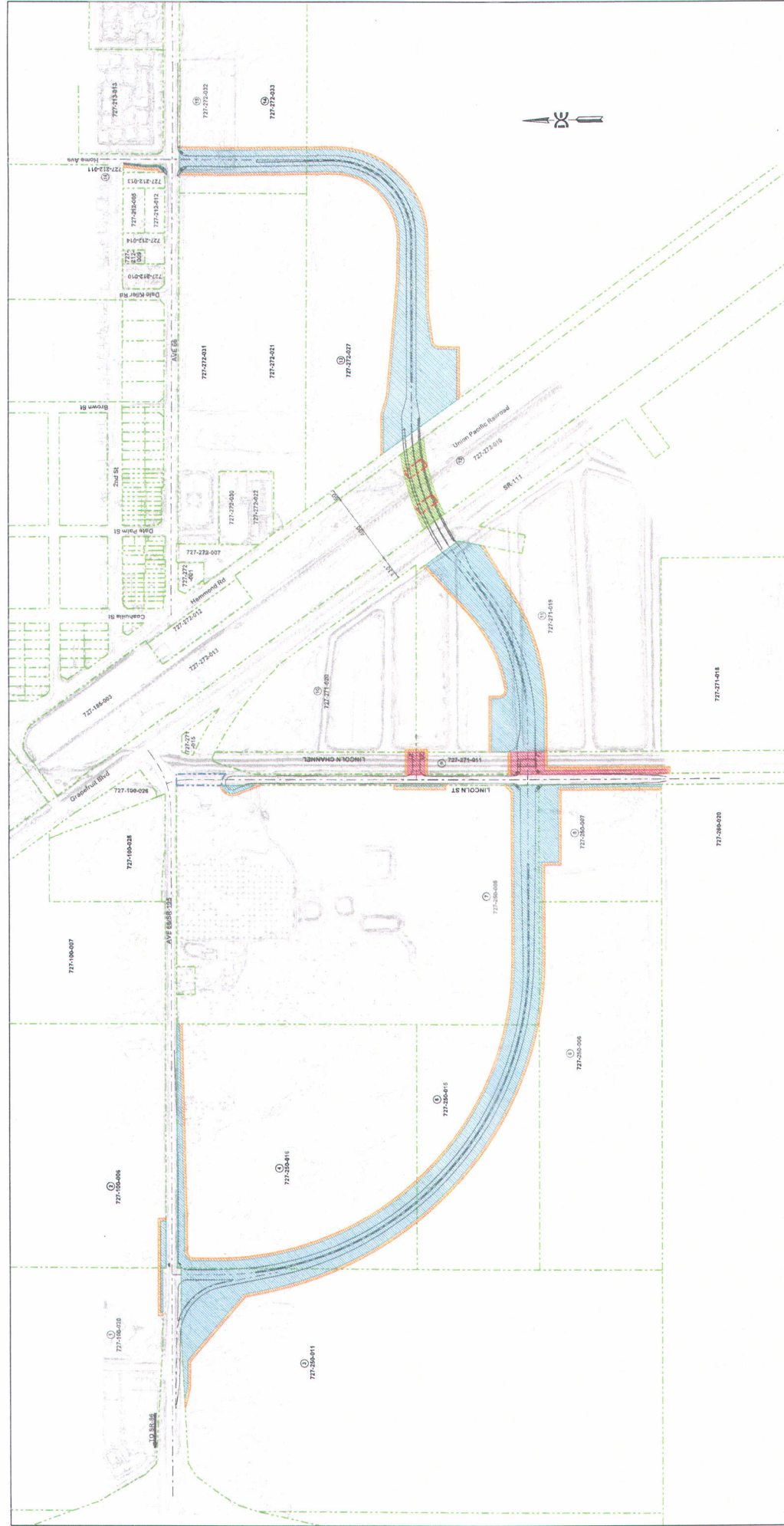
Project Vicinity

Federal Project # PNRSCML 5956 (221)

Avenue 66 Grade Separation Project

Community of Mecca, Riverside County, California

Exhibit 2



LEGEND:

- EXISTING RIGHT OF WAY/PROPERTY LINE
- PROPOSED IMPROVEMENTS
- RIGHT OF WAY ACQUISITION
- TEMPORARY CONSTRUCTION EASEMENT
- PAVED EASEMENT
- ROAD EASEMENT
- FOOTING EASEMENT
- VACATION



DE DOKKEN ENGINEERING
110 BLUE SAVANNE ROAD, SUITE 200
FOLSOM, CA 95630
(916) 858-0842

PROJECT
AVE 66 GRADE SEPARATION PROJECT

RIGHT OF WAY MAP

NO SCALE

JUNE 2015

LEGAL SERVICES AGREEMENT

The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and MURPHY & EVERTZ Attorneys at Law hereinafter called "ATTORNEYS", hereby agree as follows:

1. TERMS OF AGREEMENT. This Agreement shall be effective as of September 1, 2015, and continue until September 1, 2018, or completion of the last work assignment, whichever occurs first, unless sooner terminated pursuant to Section 5, or Section 13.

2. ATTORNEY SERVICES AND RESPONSIBILITIES. Upon appointment, ATTORNEY shall provide legal counsel and services. ATTORNEYS legal representation shall include representation of County in all aspects of the Avenue 66 Grade Separation Project and any condemnation and/or inverse condemnation actions associated with these projects (hereafter, the "Project"), including but not limited to:

a. Legal services necessary and appropriate to the defense and/or settlement of litigation brought against the County by any property owner or interested party in properties associated with the Projects arising out of the Projects. The legal services are necessary due to complex and unique legal issues arising out of these Projects requiring heightened level of expertise.

3. KEY ATTORNEYS. ATTORNEYS agree that Doug Evertz, and Jennifer R. McClure, Partners, will be the supervising attorneys assigned to perform the work under this Agreement. Support attorneys and paralegals shall be designated by the ATTORNEYS' lead. Any changes or substitution of the assigned attorney must have the express written approval of the Assistant County Executive Officer/Economic development Agency ("EDA").

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

<u>Partner/Associate</u>	<u>Hourly Rates</u>
Senior Partner	\$340.00
Junior Partner	\$300.00
All Associates	\$275.00

Paralegals

\$160.00

4.1 The total amount of compensation paid to ATTORNEY under the terms of this Agreement shall not exceed the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), unless a written amendment to this agreement is executed by both parties prior to performance of any additional services. The amount of compensation paid to ATTORNEYS will include reimbursable costs including, but not limited to, fees to be paid to appraisers and other experts. ATTORNEYS shall notify the COUNTY immediately in writing when ATTORNEYS have expended eighty percent (80%) of the total payment by COUNTY beyond the approved compensation. A written amendment shall be a condition precedent to any obligation for payment by COUNTY beyond the approved compensation.

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 the ATTORNEYS' hourly rate.

6.1. Reimbursable ordinary expenses shall include those expenses incurred on COUNTY'S behalf, to include but not limited to: (i) postage; (ii) courier service; (iii) title reports; (iv) in-house photocopies of documents; (v) long distance telephone calls; (vi) travel outside of Riverside County. No single expense shall exceed Five Hundred Dollars (\$500.00) without prior consent of the COUNTY.

6.2. Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have obtained prior approval of COUNTY, and shall include: (i) consultants; (ii) travel outside the County of Riverside; (iii) investigative services; and (iv) any expense items exceeding Five Hundred Dollars (\$500.00).

1 6.3. Non-reimbursable expenses shall include, but not limited to: (i) staff time
2 or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for the
3 time spent to provide necessary information for COUNTY'S audits or billing inquiries; (iii)
4 charges for work performed which had not been authorized by COUNTY; (iv) mileage or travel
5 expenses from the regular office of ATTORNEYS to the County of Riverside.

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

9
10 Stephi Villanueva
11 Supervising Real Property Agent
12 Economic Development Agency
13 Real Estate Division
14 3403 10th Street, Suite 400
15 Riverside, CA 92501

16 With a copy submitted to:

17 Patricia Romo, Assistant Director
18 Transportation Land Management
19 County of Riverside
20 4080 Lemon Street, 8th Floor
21 Riverside, CA 92501

22 Raymond M. Mistica, Deputy County Counsel
23 County of Riverside, Office of County Counsel
24 3960 Orange St., Suite 500
25 Riverside, CA 92501

26 The original of each billing shall have the declaration of ATTORNEYS' Supervising
27 Attorney and shall be itemized to include: (i) staffing level(s), hourly rates and specific activities
28 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 and total cumulative

1 fees billed for each staffing level; and (iv) current period expenses and total cumulative
2 expenses billed in itemized categories, including all invoices for disbursements paid to others.

3 It is the expectation of the COUNTY that it will not be billed for ordinary overhead
4 expenses, including: (i) ordinary work processing; (i) time to prepare and review billings; and (iii)
5 local travel.

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

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

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

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

21
22 Patricia Romo, Assistant Director
23 County of Riverside
24 Transportation and Land Management
25 4080 Lemon Street, 8th Floor
26 Riverside, CA 92501

Doug Evertz, Esq.
MURPHY & EVERTZ Attorneys at Law
650 Town Center Drive
Suite 550
Costa Mesa, CA 92626

1 10. LITIGATION. The County of Riverside's Litigation Management Guidelines are
2 attached hereto as Exhibit A and includes Exhibits B (Case Evaluation Plan), C (Case Status
3 Report), and D (Attorney Pre-Trial Status Report Guideline); together they become an integral
4 part of this contract. The Litigation Management Guidelines may be updated from time to time.
5 Attachment C, Budget Guidelines becomes an integral part of this contract and Litigation
6 Guidelines. ATTORNEYS agree that any superseding update shall become an integral part of
7 this contract, and will not change nor alter any other portion of this contract in anyway
8 whatsoever.

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

13 a. Workers' Compensation:

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

20 b. Commercial General Liability:

21 Commercial General Liability insurance coverage (covering claims which may arise from
22 or out of ATTORNEYS performance of its obligations hereunder) which includes, but is not
23 limited to: premises liability, contractual liability, products and completed operations liability,
24 personal and advertising injury, and cross liability coverage. Policy shall name the County of
25 Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors,
26 officers, Board of Supervisors, employees, elected or appointed officials, agents or
27 representatives as Additional Insured's. Policy's limit of liability shall not be less than One Million
28 Dollars (\$1,000,000.00) per occurrence combined single limit. If such insurance contains a

1 general aggregate limit, it shall apply separately to this Agreement or be no less than two (2)
2 times the occurrence limit.

3 c. Vehicle Liability:

4 If vehicles or mobile equipment are used in the performance of the obligations under this
5 Agreement, then ATTORNEY shall maintain liability insurance for all owned, non-owned or hired
6 vehicles so used in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence
7 combined single limit. If such insurance contains a general aggregate limit, it shall apply
8 separately to this Agreement, or be no less than two (2) times the occurrence limit. Policy shall
9 name the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
10 respective directors, officers, Board of Supervisors, employees, elected or appointed officials,
11 agents or representatives as Additional Insureds.

12 d. Professional Liability:

13 ATTORNEYS shall maintain Professional Liability Insurance providing coverage for
14 ATTORNEYS' performance of work included within this Agreement, with a limit of liability of not
15 less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars
16 (\$2,000,000.00) annual aggregate. If ATTORNEYS' Professional Liability Insurance is written
17 on a claims made basis rather than an occurrence basis, such insurance shall continue through
18 the term of this Agreement and ATTORNEYS shall purchase at his sole expense either: 1) and
19 Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage
20 from a new insurer with a date retroactive to the date of or prior to, the inception of this
21 Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEYS have
22 maintained continuous coverage with the same or original insurer. Coverage provided under
23 items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this
24 Agreement.

25 e. General Insurance Provisions – All Lines:

- 26 1) Any insurance carrier providing insurance coverage hereunder
27 shall be admitted to the State of California and have an A.M.
28 BEST rating of not less than an A:VIII (A:8) unless such

1 requirements are waived, in writing, by the County Risk Manager.
2 If the County's Risk Manager waives a requirement for a particular
3 insurer such waiver is only valid for the specific insurer and only
4 for one policy term.

5 2) ATTORNEYS' insurance carrier(s) must declare its insurance self-
6 insured retentions. If such self-insured retentions exceed
7 \$500,000.00 per occurrence, such retentions shall have the prior
8 written consent of the County Risk Manager before the
9 commencement of operations under this Agreement. Upon
10 notification of self-insured retentions which are deemed
11 unacceptable to the COUNTY, at the election of the County's Risk
12 Manager, ATTORNEYS' carriers shall either 1) reduce or
13 eliminate such self-insured retentions with respect to this
14 Agreement with County; or 2) procure a bond which guarantees
15 payment of losses and related investigations, claims
16 administration, defense costs and expenses.

17 3) ATTORNEYS shall cause their insurance carrier(s) to furnish
18 COUNTY with 1) a properly executed original certificate(s) of
19 insurance and original certified copies of endorsements effecting
20 coverage as required herein; and 2) if requested to do so orally or
21 in writing by the County Risk Manager, provide original certified
22 copies of policies including all Endorsements and all attachments
23 thereto, showing such insurance as in full force and effect.
24 Further, said Certificate(s) and policies of insurance shall contain
25 the covenant of the insurance carrier(s) that thirty (30) days
26 written notice be given to COUNTY prior to any material
27 modification, cancellation, expiration, or reduction in coverage of
28 such insurance. In the event of a material modification,

1 cancellation, expiration, or reduction in coverage, this Agreement
2 shall terminate forthwith, unless COUNTY receives, prior to such
3 effective date, another properly executed original Certificate of
4 Insurance and original copies of endorsements or certified original
5 policies, including all endorsements and attachments thereto,
6 evidencing coverage's set forth herein, and the insurance required
7 herein is in full force and effect. Individual(s) authorized by the
8 insurance carrier shall sign the original endorsements for each
9 policy and the Certificate of Insurance on its behalf. ATTORNEYS
10 shall not commence operations until COUNTY has been furnished
11 with original Certificate(s) of Insurance and certified original copies
12 of endorsements and, if requested, certified original policies of
13 insurance including all endorsements and any and all other
14 attachments as required in this Section.

15 4) It is understood and agreed by the parties hereto and
16 ATTORNEYS' insurance shall be construed as primary insurance,
17 and COUNTY'S insurance and/or deductibles and/or self-insured
18 retentions or self-insured programs shall be construed as
19 contributory.

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

1 in the County Risk Manager's reasonable judgment, the amount or
2 type of insurance carried by the ATTORNEYS has become
3 inadequate.

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

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

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

12 12. INDEMNITY AND HOLD HARMLESS. ATTORNEYS shall indemnify and hold
13 harmless the County of Riverside from any liability whatsoever, including but not limited to:
14 property damage, bodily injury, or death, based or asserted upon any services of ATTORNEYS,
15 its officers, employees, subcontractors, agents or representatives arising out of or in any way
16 relating to the ATTORNEYS' errors and omissions and ATTORNEYS shall defend at its sole
17 expense and pay all costs and fees, including but not limited to: attorney fees, cost of
18 investigation, defense and settlements or awards, on behalf of the Indemnified Parties in any
19 claim or action based upon such liability.

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

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

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

4 13. TERMINATION. Services performed under this Agreement may be terminated in
5 whole or in part at any time the COUNTY determines to be in its best interest, as determined by
6 the Board of Supervisors upon the recommendation of the Assistant County Executive
7 Officer/EDA, or designee. County shall terminate services by delivering to ATTORNEYS a
8 written termination notice executed by COUNTY and specifying the extent to which services are
9 terminated and the effective date.

10 13.1. After receiving a termination notice, and unless otherwise directed by
11 COUNTY, ATTORNEYS shall take all steps necessary to stop services on the date and to the
12 extent specified in the termination notice, and submit billing for all services performed to date of
13 notice of termination and any services to be completed as set forth in the notice of termination
14 within thirty (30) days from effective termination date. ATTORNEY shall promptly submit a brief
15 report advising of the status of all matters, including any unresolved matters being handled by
16 ATTORNEYS for COUNTY. ATTORNEYS shall give COUNTY copies or originals, as
17 appropriate of all files and attorney work product for all matters on which it has been working.
18 This includes any computerized index, computer programs and document retrieval system
19 created or used for these matters.

20 14. SUPERVISION OF AGREEMENT. The Assistant County Executive Officer/EDA
21 shall designate an individual in his office to act in his stead. The Assistant County Executive
22 Officer/EDA, or his designee, shall have authority to act for COUNTY on all daily operational
23 matters under this Agreement and shall review and approve all ATTORNEYS' invoices, reports,
24 whether written or verbal, and any change in ATTORNEYS' Supervising Attorney.

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

1 constitute a material breach of this Agreement. However, ATTORNEYS may retain consultants
2 and experts as ATTORNEYS deem appropriate after receiving written approval of COUNTY.

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

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

14 Anyone who is a former employee of COUNTY at the time of execution of this
15 Agreement or who subsequently becomes affiliated with ATTORNEYS in any capacity
16 (employee, associate or partner) shall not: (i) participate in the services provided by
17 ATTORNEYS to County; or (ii) become a partner, shareholder or otherwise share in the profits
18 of ATTORNEYS for a period of one (1) year from the date the former County employee left
19 County employment.

20 It is possible that some of the ATTORNEYS' present or future clients will have disputes
21 with COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and
22 ATTORNEYS agree that should the situation arise where a new or existing client engages
23 ATTORNEYS in any matter in a position adverse to COUNTY or in which COUNTY'S interest
24 may be adversely affected, that ATTORNEYS will so advise COUNTY, and upon receipt of such
25 notice COUNTY may determine that the conflict be waived, or may determine that it is in the
26 COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY determine
27 that it is best to terminate the services of ATTORNEYS, COUNTY will notify ATTORNEYS of
28

1 such decision. ATTORNEYS may then submit any outstanding invoices for payment up to the
2 date of termination as determined by the notice from COUNTY.

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

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

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

23
24
25 (REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)
26
27
28

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

3
4 COUNTY OF RIVERSIDE, a political
5 subdivision of the State of California

6 Dated: DEC 08 2015

7 By: Marion Ashley
8 Marion Ashley, Chairman
9 Board of Supervisors

10 ATTEST:
11 Kecia Harper-Ihem
12 Clerk of the Board

13 Dated: DEC 08 2015

14 By: Kecia Harper-Ihem
15 Deputy

16 MURPHY & EVERTZ, ATTORNEYS AT
17 LAW

18 Dated: 10/27/15

19 By: Doug Evertz
20 Doug Evertz, Esq.

21 APPROVED AS TO FORM
22 Gregory P. Priamos, County Counsel

23 Dated: 10/22/15

24 By: Raymond M. Mistica
25 Raymond M. Mistica
26 Deputy County Counsel

27 ATTACHMENTS:
28 Exhibit A: Litigation Management Guidelines
Exhibit B, C, and D
Attachment C – Budget Guidelines

SV:tg/081115/300TR/17.691 S:\Real Property\TYPING\Docs-17.500 to 17.999\17.691.doc

County of Riverside

Litigation Management Guidelines

Claims Philosophy

The County claims philosophy is to identify, on a timely basis, those claims for which there is liability and to make settlement offers promptly. The County of Riverside will generally not settle claims on a nuisance value basis as a matter of policy. The County of Riverside, hereinafter referred to as County, policy is to defend all claims where there is no liability or where liability is questionable. Thorough, early investigation and rigorous development of the legal issues will identify the strengths and weaknesses of a case and allow us to develop a negotiating or trial strategy properly which is reflective of the case's value. It is always appropriate for counsel to provide us with settlement or trial recommendations.

I. LITIGATION COUNSEL

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

II. CASE ANALYSIS, STRATEGY AND BUDGET

- A. Development of an effective and strategically sound legal approach is the responsibility of counsel and includes the following:
 - 1. Identifying and developing all liability issues.
 - 2. Bringing viable third-party actions and/or cross actions against co-defendants.
 - 3. Developing the defense of contributory or comparative negligence.

4. Raising causation issues to ascertain whether there is a nexus between the County's alleged act(s) and the actual damages sustained.

5. Critically analyzing the basis for all claims alleged or damages claimed.

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

1. Analysis. (a comprehensive written analysis of the case). This analysis shall provide an initial evaluation of the case, including a brief synopsis of the facts of the case, damages and exposures in the case, and identification of the strengths and weaknesses of the case. Counsel shall also provide an initial impression of liability and identify the pertinent statutes and/or case law that may affect the outcome of the litigation.

2. Investigation. We require investigations be done timely. This includes but is not limited:

- a. Identification of and taking statements of witnesses;
- b. Production of documents;
- c. Purchase order/contracts/lease agreements;
- d. Internal statements, memos, and correspondence;
- e. Inspections, etc.; and
- f. Blue prints, if applicable.

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

3. Strategy. Counsel shall define the strategy to be used in each lawsuit, including, but not limited to:

- a. The anticipated course of action to be taken and prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.).
 - b. The facts or elements which must be proved or disproved and the discovery necessary to establish these defenses or proof.
 - c. The timing of the discovery, filing of motions, negotiations or other objectives.
 - d. A description of how the work will be distributed among those who will be working on the case.
 - e. The tactics to be used in handling the case and the advantages to be gained by use of these tactics.
 - f. When appropriate, bifurcation of liability from damages' issues should be considered.
- C. Budget. Defense counsel will also provide an estimate of the anticipated cost of each significant aspect of the litigation, pursuant to the attached Budget Guidelines Attachment C. These guidelines may change from time to time and you should always familiarize yourself with all changes.

III. COMMUNICATION

- A. Correspondence and pleadings. Copies of all pertinent correspondence, investigations, and summaries of depositions, interrogatories and pertinent pleadings shall be promptly provided by defense counsel to County Counsel. 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 hearing. 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. 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 preparation (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.
- D. Any demand, settlement, or judgment that includes or requests a "non-monetary" remedy from the court will be immediately communicated to the director(s) of the involved Agency. Non-monetary remedies can include, but is not limited to, injunctions (mandatory or prohibitory), remedies with policy implications, including labor relations, and/or any other non-monetary remedies. Such communication will include a request for either approval or rejection of the proposed remedy.
- E. Insofar as the non-monetary remedies may require approval of the Board of Supervisors, litigation counsel shall communicate to County Counsel the nature and effect of the proposed remedy for determination by County Counsel as to any Board involvement.

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 will 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.

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

G. Audit

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

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

VII. TRIALS AND REPORTING

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

VIII. FINAL REPORTS

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

IX. Electronic Communication/Data Storage/Presentation

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

INITIAL CASE EVALUATION AND PLAN 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:

TYPE OF CASE:

CASE/MATTER DESCRIPTION AND FACTS:

OPPOSING ATTORNEY'S NAME (if applicable):

2. INVESTIGATION NEEDED:

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

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

5. CLAIMANT'S CONTENTION:

6. AFFIRMATIVE DEFENSES:

7. INITIAL DISCOVERY (designate expert/parties):

- a. Depositions to be taken (list names).
- b. Interrogations to be sent (list names).
- c. Records/Documents to be produced (list names).

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

INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

9. MONETARY EVALUATION OF CASE:

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

10. RECOMMENDED CASE STRATEGY:

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

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

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

14. Estimated final disposition date.

Approved by: _____
(Firm's Supervising Attorney)

Date: _____

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)

Date: _____

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO: CASE NAME:
FROM: COUNTY FILE NO.:
DATE:
EXPECTED TRIAL DATE: VENUE:

I. **DEFENDANT**

- A. Effectiveness of each anticipated witness; rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- B. Other Insurance Coverage – type of policy, policy number and/or claim number, carrier name, address and phone number, claims person, type of other insurance clause (excess, escape or proratal), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

II. **PLANTIFF**

- 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 value cases would be those above \$750,000.00

III. **SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM**

IV. **CO-DEFENDENTS AND/OR THIRD PARTY DEFENDANTS**

- A. Identity of parties.
- B. Respective attorneys – Names, business address, telephone numbers.
- C. Factual and legal basis for plaintiff's/cross-complainant's claims against other parties.
- D. Brief summary of probable exposure.

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

V. WITNESSES

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

VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

- A. Plaintiff's theories.
- B. Defense theories.
- C. Co-defendants and/or third-party defendant theories.
- D. Strengths and weaknesses of subsections A, B and C above.
- E. Chance of defense verdict for County, co-defendant and/or third-party defendant (discuss each separately).
- F. If the County, co-defendant and/or third-party defendant settle, the probability of success of the non-settling defendant(s) in obtaining indemnity against the settling defendant (discuss each separately).
- G. Causation issues, i.e., was the County's alleged negligence a cause in fact of the damages claimed.
- H. Probable damages (compensatory) if case is lost.
- I. Punitive damage exposure? Will Plaintiff's attorney's fees be recoverable?
- J. Probability of contributory negligence finding (i.e. defense verdict) or probable percentage of comparative negligence (i.e. plaintiff's percentage of fault).
- K. Probable apportionment of fault among defendants (assign percentages).
- L. Net exposure (state a dollar amount) to County after all apportionment and based on probable damages.

- M. Settlement value and basis for evaluation.
- N. Should case be tried? Explain risks.
- O. Brief summary of probable outcome as to both liability and damage issues, indicating whether you consider this a case of liability and why.

VII. SETTLEMENT DISCUSSIONS

- A. What is the demand?
 - a) Original amount and date.
 - b) Present amount and date.
- B. What, if anything, has the County offered? If a definite offer has not been made but an indicator or range has been discussed, so state, listing each indicator or range figure discussed.
- C. What, in your opinion, can the case be settled for at this time?
- D. Do you recommend that we settle? Why?

VIII. FUTURE HANDLING

- A. In your opinion, is the investigation of this case complete?
- B. If not complete, what future investigation do you suggest and what would it cost?
- C. What further discovery is needed; what would it cost to conclude the discovery and when do you expect discovery to be completed?
- D. Experts – explain need, their field, the number, probable testimony, cost of each and whether plaintiff has experts (if so, who and how effective is he/she?).

IX. LEGAL EXPENSES

- A. What are the total legal expenses to date?
- B. If case is tried, what would be the appropriate cost of defense through trial excluding IX.A. above (including the expense described in VII.D.)?

County of Riverside Budget Guidelines

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

Expenses (Itemize)			
Copying, Printing, Facsimile			
Messenger, Postage			
Travel, Meals, Telephone			
Subpoena Fees, Witness Fees			
Online Research			
Total Hours and Expenses	0	\$0.00	\$0.00
Grand Total	0	\$0.00	\$0.00