

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



ITEM: 3.32
(ID # 12229)

MEETING DATE:
Tuesday, April 21, 2020

FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/ TRANSPORTATION:
Approval of the Legal Services Agreement between the County of Riverside and
Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Jurupa
Road Grade Separation Project for a term of 3 years. District 2. [\$300,000 Total
Cost - Local Funds 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Legal Services Agreement between the County of Riverside and Murphy & Evertz, Attorneys at Law, for legal counsel and services for the Jurupa Road Grade Separation Project; and authorize the Chairman of the Board to execute the same.


ACTION: Policy


Patricia Romo, Director of Transportation 4/6/2020

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: April 21, 2020
xc: Transp.

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 30,000	\$ 150,000	\$ 300,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: SB-132 (100%)			Budget Adjustment:	No
			For Fiscal Year:	19/20 – 22/23

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Riverside County Transportation Department in cooperation with the City of Jurupa Valley, and the Riverside County Transportation Commission (RCTC) desire to construct a new grade separation to replace the existing Union Pacific Railroad (UPRR) at-grade crossing located on Jurupa Road in the City of Jurupa Valley, just east of Van Buren Boulevard. Jurupa Road is a four-lane Arterial Highway that provides access to commercial, industrial and residential land uses in the City of Jurupa Valley.

This proposed project will grade separate Jurupa Road and the UPRR mainline tracks with an underpass where it crosses the tracks. This project will improve vehicular traffic circulation and safety and will provide uninterrupted and efficient access for motorists, residents, businesses, pedestrians and emergency vehicles in the area. Additionally, the project will enhance the operational characteristics (i.e. speed, efficiency, and reliability) of freight and passenger trains throughout Riverside County by eliminating conflicts between railroad operations and vehicular traffic.

The existing at-grade crossing and the proposed grade separation project are located within the jurisdictional boundaries of the City of Jurupa Valley. The County Transportation Department has extensive experience in the development and implementation of State and Railroad grade separation projects. Both the City and the County have designated the Transportation Department as the lead agency in the development and implementation of the project in part due to the experience and expertise of the Department.

By Minute Order 3-14 of October 24, 2017, the Board of Supervisors approved an agreement with the City of Jurupa Valley and the Riverside County Transportation Commission that defines how the project is to be administered, financed, coordinated, engineered and constructed. RCTC will be responsible for approving fund expenditures. The City is participating in the project meetings and is providing review and approval of the various design components.

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 due to complex settlement negotiations. The focused legal assistance provided by Murphy & Evertz is

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

necessary in order to meet funding deadlines. The contract is for approximately a three-year term ending on December 31, 2022.

The project requires the acquisition of 61 property interests from 20 separate property owners. Real Property staff has made offers to 12 owners and has settled with 3 including a full take of a gas station. Additional acquisitions are required with 17 owners that include another gas station, a restaurant and 2 additional businesses as well as partial takes of another restaurant and a supermarket. Murphy & Evertz, Attorneys at Law will provide legal services in support of these acquisitions.

The project team is developing a Business Retention Plan to support the local business during the construction of the project. There are approximately 30 businesses in the immediate vicinity. Murphy & Evertz, Attorneys at Law will be assisting in the development and implementation of this plan as well.

Project Number: C8-0060

Impact on Residents and Businesses

The expertise of Murphy & Evertz will facilitate project completion of this important project, which will improve vehicular traffic circulation and safety and will provide uninterrupted and efficient access for motorists, residents, businesses, pedestrians and emergency vehicles in the area. Additionally, the project will enhance the operational characteristics (i.e. speed, efficiency, and reliability) of freight and passenger trains through Riverside County by eliminating conflicts between railroad operations and vehicular traffic.

SUPPLEMENTAL:

Additional Fiscal Information

In April 2017, the Governor and State Legislators dedicated \$427 million to improve five major transportation projects in Riverside County. The Jurupa Road Grade Separation project was allocated \$108.4 million for the design and construction of a new roadway and structure to grade separate Jurupa Road from the UPRR railroad tracks. Without this approved funding, the project would not have been built for many years. These funds will be distributed through RCTC and include a stipulation that all funds must be encumbered and liquidated by June 30, 2023.

Attachments:

Legal Services Agreement
Jurupa Road Grade Separation Project

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



Jason Farin, Senior Management Analyst

4/14/2020



Gregory L. Priamos, Director County Counsel

4/9/2020

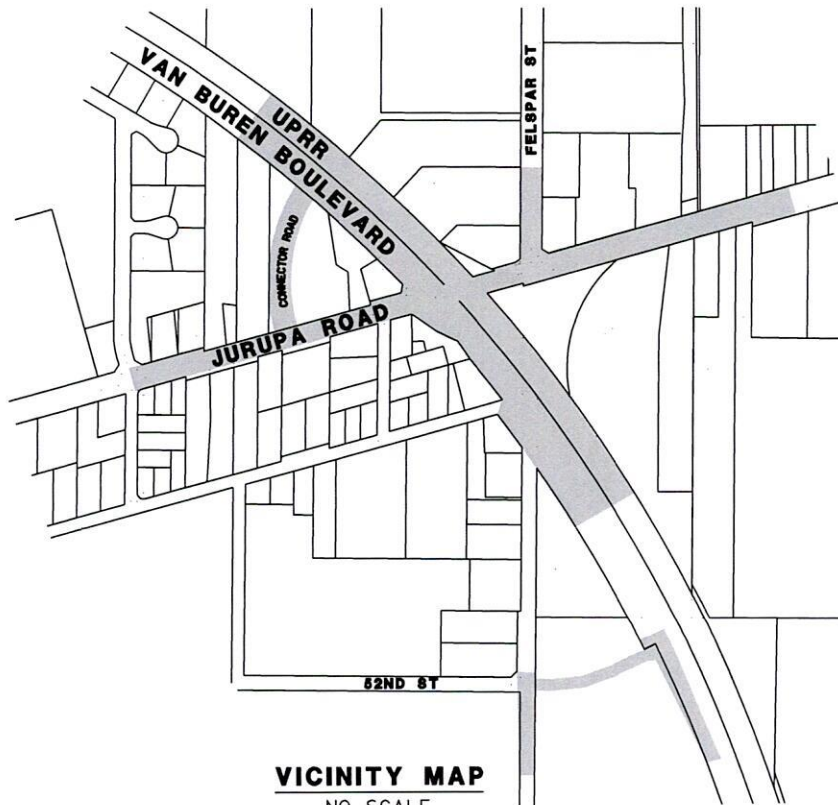
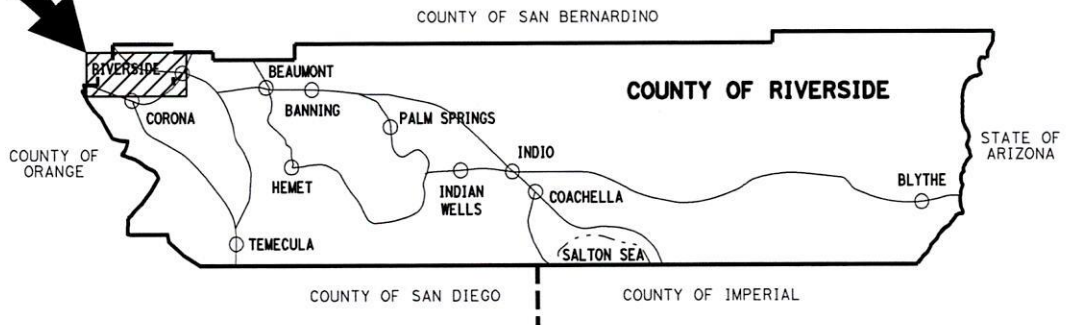
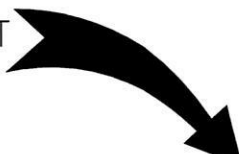
COUNTY OF RIVERSIDE
TRANSPORTATION DEPARTMENT

JURUPA ROAD

UPRR GRADE SEPARATION PROJECT

CITY OF JURUPA VALLEY

PROJECT
SITE



VICINITY MAP
NO SCALE

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

LEGAL SERVICES AGREEMENT

This Legal Services Agreement ("Agreement") is entered into as of the date written below, and is made by and between the COUNTY OF RIVERSIDE, on behalf of its Department of Transportation, a political subdivision of the State of California, hereinafter "COUNTY", and Murphy & Evertz, Attorneys at Law, hereinafter "ATTORNEY". The Parties hereto agree as follows:

1. TERM OF AGREEMENT. This Agreement shall commence as of _____, 2020 and continue until December 31, 2022, or completion of the last work assignment, whichever occurs first, unless sooner terminated.

2. LEGAL SERVICES. ATTORNEY shall provide legal counsel and services. ATTORNEY legal representation shall include representation of County in all aspects of the Jurupa Road Grade Separation Project involving any condemnation and/or inverse condemnation actions associated with the project (hereinafter "LITIGATION"). The legal services are necessary due to complex and unique legal issues arising out of the LITIGATION which require a heightened level of expertise, including but not limited to:

- (a) Review of the law and legal guidance in regard to the condemnation of real property and relocation of occupants for public works projects;
- (b) Review of the law and legal guidance in the area of environmental regulations including California Environmental Quality Act compliance; and
- (c) Review of the law and legal guidance in the area of real estate law, government code and natural resources code in matters of real property title, appraisal purchases, exchanges, leases and crafting of associated contract documents.
- (d) Review of the law and legal guidance in regard to the development and implementation of a retention plan for businesses impacted by public work projects.

3. ASSIGNMENT OF PERSONNEL. The Supervising Attorney for this Agreement will be Douglas J. Evertz. 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 Patricia Romo, Director of Transportation Department and County Counsel.

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. ATTORNEY 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 ATTORNEY, 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 ATTORNEY in any capacity (employee, associate or partner) shall not: (i) participate in the services provided by ATTORNEY to County; or (ii) become a partner, shareholder or otherwise share in the profits of ATTORNEY for a period of one year from the date the former County employee left County employment.

The ATTORNEY shall have conducted a conflict of interest check prior to appointment under this Legal Services Agreement. Since it is possible that some of the ATTORNEY'S present or future clients will have disputes with COUNTY during the time that ATTORNEY are representing the COUNTY, COUNTY and ATTORNEY agree that should the situation arise where a new or existing client engages ATTORNEY in any matter adverse to COUNTY, or in which COUNTY'S interest may be adversely affected, ATTORNEY will advise and request a waiver from COUNTY in writing. Upon receipt of such notice and request, 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 ATTORNEY. Should COUNTY determine that it is best to terminate the services of ATTORNEY, COUNTY will notify ATTORNEY in writing of such decision and termination shall take effect upon the date indicated in the notice. ATTORNEY 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 ATTORNEY 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, ATTORNEY 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 ATTORNEY for COUNTY. ATTORNEY 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 ATTORNEY under the terms of this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000). These amounts 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. ATTORNEY shall notify the COUNTY immediately in writing when ATTORNEY 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>Hourly Rates</u>
Senior Partner	\$340.00
Junior Partner	\$300.00
All Associates	\$275.00
Paralegals	\$160.00

7. EXPENSES. COUNTY shall reimburse ATTORNEY 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 ATTORNEY'S 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 ATTORNEY 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 ATTORNEY 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:

Bruce G. Fordon, Deputy County Counsel
Office of County Counsel
3960 Orange Street, Suite 500
Riverside, California 92501
bgfordon@rivco.org

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

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

COUNTY shall make payment(s) for services rendered under this Agreement monthly in arrears based on itemized billing statement(s) submitted by ATTORNEY. Payments shall be made by COUNTY within thirty (30) days of receipt of billing statements from ATTORNEY. 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 ATTORNEY. ATTORNEY shall be reimbursed for services performed and covered under the terms of this Agreement.

10. SUPERVISION OF AGREEMENT. Patricia Romo, Director of Transportation, with concurrence from County Counsel on material issues, shall have authority to act for COUNTY regarding ATTORNEY'S services.

11. CONFIDENTIALITY. ATTORNEY 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. ATTORNEY 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. ATTORNEY 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. ATTORNEY 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. ATTORNEY understand that the Office of County Counsel is the empowered legal representative of COUNTY and its officers and employees and ATTORNEY 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. LITIGATION. The County of Riverside's Litigation Management Guidelines ("Guidelines") are attached hereto as Exhibit A and are incorporated herein by this reference and made an integral part of this Agreement. The Guidelines may be updated from time to time. ATTORNEY agree that any superseding update shall become an integral part of this Agreement and will not change nor alter any other portion of this Agreement in anyway whatsoever.

The Guidelines contain required reporting forms to be completed and submitted to COUNTY by the ATTORNEY on each case. The required reporting forms as listed hereafter are attached hereto and by this reference incorporated herein:

- Exhibit A:** Litigation Management Guidelines
- Exhibit B:** Initial Case Evaluation and Plan Guideline
- Exhibit C:** Case Status Report Guideline
- Exhibit D:** Attorney Pre-Trial Status Report Guideline
- Exhibit E:** Budget Estimate

The ATTORNEY agree that these forms shall be completed properly for each assigned case and will be submitted to COUNTY on a timely basis as described in the Guidelines and when requested by COUNTY. ATTORNEY shall submit a comprehensive Pre-Trial Status Report to COUNTY no later than sixty (60) days prior to commencement of trial, which shall contain the essential components as outlined in Exhibit D. Additionally, ATTORNEY shall meet with COUNTY no later than forty-five (45) days prior to trial to discuss the strengths, weaknesses and defense strategy of the case.

15. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to indemnify or hold COUNTY harmless, ATTORNEY 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 ATTORNEY have employees as defined by the State of California, ATTORNEY 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 ATTORNEY 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 ATTORNEY 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: ATTORNEY shall maintain Professional Liability Insurance providing coverage for ATTORNEY'S 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 ATTORNEY'S 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 ATTORNEY 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 ATTORNEY 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) ATTORNEY 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, ATTORNEY'S 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) ATTORNEY 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. *ATTORNEY 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 ATTORNEY'S 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 ATTORNEY 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 ATTORNEY shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 8) ATTORNEY 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.

16. INDEMNIFICATION. ATTORNEY 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 ATTORNEY, 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 performance of ATTORNEY, its officers, employees, subcontractors, agents or representatives. ATTORNEY 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 ATTORNEY, ATTORNEY 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 ATTORNEY'S indemnification to Indemnitees as set forth herein.

ATTORNEY'S obligation hereunder shall be satisfied when ATTORNEY 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 ATTORNEY'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

17. 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 ATTORNEY at the following addresses below, or at any other address COUNTY or ATTORNEY shall provide in writing to each other:

To ATTORNEY:

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

To COUNTY:

Bruce G. Fordon, Deputy County Counsel
Office of County Counsel
3960 Orange Street, Suite 500
Riverside, California 92501

AND

Patricia Romo, Director
Transportation Department
County of Riverside
4080 Lemon Street, 8th Floor
Riverside, California 92501

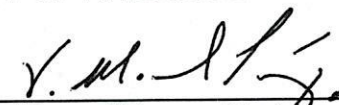
18. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable without the written consent of COUNTY. Any attempt by ATTORNEY to assign or subcontract services relating to this Agreement without the consent of COUNTY shall constitute a material breach of this Agreement.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

19. NON-DISCRIMINATION. In the performance of the terms of this Agreement, ATTORNEY 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 supersedes all previous written or oral agreements, and all prior communications between COUNTY and ATTORNEY relating to the subject matter of this Agreement.

COUNTY OF RIVERSIDE


By: 
V. Manuel Perez, Chairman
Board of Supervisors

ATTEST:
KEGIA R. HARPER, Clerk
By: 
DEPUTY

MURPHY & EVERTZ
Attorneys at Law

By: _____
Douglas J. Evertz

APPROVED AS TO FORM:

By: 
County Counsel

ATTACHMENTS:

- Exhibit A:** Litigation Management Guidelines
- Exhibit B:** Initial Case Evaluation and Plan Guideline
- Exhibit C:** Case Status Report Guideline
- Exhibit D:** Attorney Pre-Trial Status Report Guideline
- Exhibit E:** Budget Estimate

Exhibit A
Litigation Management Guidelines

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County of Riverside

Litigation Management Guidelines

Claims Philosophy

The County's 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 Office of County Counsel in conjunction with the individual county department involved. 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 2) and as follows:

1. Analysis. (a comprehensive written analysis of the case). This analysis shall provide an initial evaluation of the case, including a brief synopsis of the facts of the case, damages and exposures in the case, and identification of the strengths and weaknesses of the case. Counsel shall also provide an initial impression of liability and identify the pertinent statutes and/or case law that may affect the outcome of the litigation.
2. Investigation. We require investigations be done timely. This includes but is not limited to:
 - a. Identification of and taking statements of witnesses.
 - b. Production of documents.
 - c. Purchase order/contracts/lease agreements.
 - d. Internal statements, memos, and correspondence
 - e. Inspections, etc.
 - 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 County 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 Exhibit 1. 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 hearings. We require timely notification of all scheduled depositions, deposition preparations, mediations, MSC, VSC, arbitrations, trials, etc. We consider timely notification to be not less than 2 weeks in advance with 3-4 weeks advanced notice being preferable. Notice of all hearings shall be sent by defense counsel to County Counsel. It is required that within 10 days of any County employee's deposition being taken, defense counsel will meet with the county employee for the purpose of preparing the employee for their depositions and for trials in which they will serve as witnesses and/or experts. There are to be no telephone preparations (See VII Trials and Reports).
- C. Evaluations. We request evaluations as to liability and settlement value issues as early in the case as possible. Upon request, and at such other times as deemed necessary, defense counsel shall provide written or oral evaluations of the litigation. These evaluations shall disclose any weaknesses or strengths that have been discovered, any changes in applicable statutes or case law, any increase or decrease in anticipated costs, and (if possible) the potential liability and settlement value of the case. These evaluations should be as straightforward 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 County Counsel. 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 require all billings be itemized to indicate the following:
 - a. The attorney doing the work.
 - b. Hours spent for each specific task.
 - c. Hourly rate.
 - d. Work being done by paralegals or law clerks should be identified.

Please advise if research time and/or overtime is billed and how it is indicated on the billing.

3. The amount of time to complete the task must be broken down into tenths of hours. Block time billing is not acceptable; therefore, not reimbursable.
4. The rates charged by each attorney working on the case must be summarized with the amount of hours to depict a cost per attorney.
5. Where expenses have been incurred for others, such as copy service, court reporters, experts, etc, please submit bills directly to County Counsel after approving them for payment. If you inadvertently paid a bill, please submit the itemized invoice you have paid along with your billing requesting reimbursement.
6. We understand the need to pay for unusual expenses incurred by you on behalf of Riverside County, however, we should not be asked to pay for ordinary overhead expenses, which we believe includes:
 - a. Ordinary postage.
 - b. Local telephone calls and faxes.
 - c. Ordinary word processing.
 - d. Time to prepare and review billings.
 - e. Local travel (30 miles or less, round trip.)
 - f. Meals when involved in local (in-town) cases.
7. If overpayments are/have been made by the County, the attorney firm must remit a reimbursement payment to the County of Riverside, within 30 days. No credit balances will be acceptable.

B. We will gladly pay for unusual charges which we believe include:

1. Long distance telephone calls - these should be itemized whenever possible.
2. Express mail when deemed necessary.
3. Long distance fax charges.

4. Photocopy charges - must include itemization, showing the number of pages and the cost per page which must not be excessive nor above industry standards. Where expense has been extensive, we would appreciate an explanation.
5. Travel time - if you are required to fly to another destination, reimbursable time begins at the airport you are departing from and ends at the arriving destination airport. Other out of town travel is reimbursable from your office location to your destination utilizing the most direct or quickest route.
6. Out of town travel – you must obtain prior authorization for any out of town travel. We ask that you do not fly first class or business class nor stay in a hotel whose rates are expensive or above the average daily rate of \$159.00, or \$239.00 in high cost cities such as San Francisco, New York, Washington D.C., etc (averages may vary by locale). We do not reimburse alcoholic beverage consumption. Food consumption should be reasonable and not excessive. Meals must be itemized as to food, beverages and tips. Itemization of all travel expenses by each person incurring those expenses must be made. This includes airfare, hotel, food, ground travel and any other major costs. Arrangements must be made to use a local court reporter or any other local service you believe is necessary as we will not authorize travel expenses for these services. Car rentals should be compact to mid-size vehicles and not in the luxury class.

C. Use of Appropriate Personnel

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

D. Multiple Attorney Conferences/Attendance

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

E. Research

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

F. Copy Service

We prefer to use one copy service wherever possible so that we can participate in volume discounts. We may establish and provide a panel of copy service

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

G. Audit

Attorneys shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. Attorneys shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between 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 (photo's, text, animation, etc.) via the use of an Elmo and a computer. The Courts also have a large screen which is used to project the electronic evidence and information onto so that all jurors can easily view the evidence presented. The 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.

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Exhibit B
INITIAL CASE EVALUATION AND
PLAN GUIDELINE

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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. Interrogatories to be sent (list names).
 - c. Records/Documents to be produced (list names).
8. RESEARCH REQUIRED (general description of issues and extent): Specifically identify any research requiring original effort as opposed to research that has generally been done previously by your FIRM.

(Exhibit 2 continued)

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Exhibit C
CASE STATUS REPORT GUIDELINE

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CASE STATUS REPORT GUIDELINE

To be completed by Firm's Supervising Attorney

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- 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: _____ Date: _____
(Firm's Supervising Attorney)

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Exhibit D
ATTORNEY PRE-TRIAL STATUS
REPORT GUIDELINE

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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. PLAINTIFF

- A. Name, address, age, marital status and occupation. If plaintiff is a business, provide a description.
- B. Dependants, if any; their names, ages, and relationships.
- C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- D. Name of plaintiff attorney and his/her ability. You may also want to include any comments as to his/her success on high profile or high value cases. High values cases would be those above \$750,000.00.

III. SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM

IV. CO-DEFENDANTS AND/OR THIRD PARTY DEFENDANTS

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

1 V. WITNESSES

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

5 VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

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

28 VII. SETTLEMENT DISCUSSIONS

- A. What is the demand?
- (a) Original amount and date.
- (b) Present amount and date.

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

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

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

5 VIII. FUTURE HANDLING

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

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

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

10 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?).

11 IX. LEGAL EXPENSES

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

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

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Exhibit E
BUDGET ESTIMATE

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Budget Estimate			Exhibit E
Case Name:	Date of this Evaluation:		
Attorney(s):	Case No.:		
Type of Litigation Expense	Attorney Hours	Actuals To Date	Anticipated Projected Expenses
<u>Case Assessment, Development and Administration</u>			
Facts Investigation/Development			
Analysis/Strategy			
Experts/Consultants			
Document/File Management			
Budgeting			
Settlement			
Other Case Activity			
Total Hours and Expenses	0	\$0.00	\$0.00
<u>Pre-Trial Pleadings and Motions</u>			
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
<u>Discovery</u>			
Written Discovery			
Document Production			
Depositions			
Expert Discovery			
Discovery Motions			
Other Discovery			
Total Hours and Expenses	0	\$0.00	\$0.00
<u>Trial Preparation and Trial</u>			
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
<u>Appeal</u>			
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