

Regional Conservation Authority

AGREEMENT NO. 09001
PROFESSIONAL SERVICES AGREEMENT BETWEEN THE WESTERN
RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND DAVID
KENNETT TO PROVIDE GOVERNMENT RELATIONS SERVICES

Staff Contact:

Charles V. Landry
Executive Director
(951) 955-9700

Background:

The RCA formerly retained the services of David Kennett through The Ferguson Group to provide government relations services. Mr. Kennett has started his own company, Capitol Alliance Consulting, LLC. The present contract with The Ferguson Group expires on June 30, 2008. In order to maintain continuity of services and the specific expertise of Mr. Kennett, staff recommends not renewing the contract with The Ferguson Group and retaining the services of Mr. Kennett through an agreement with Capitol Alliance Consulting, LLC.

The term of the Agreement is for a period of 12 months, from July 1, 2008 until June 30, 2009. The consultant shall receive compensation for all services, excluding reimbursable expenses. The total compensation shall not exceed \$75,000 for the term of the agreement. Payments will be made in 12 monthly installments of \$6,250.

Sufficient funds were allocated in the Fiscal Year 2008-09 budget to cover the cost of this agreement.

Staff Recommendation(s):

That the Executive Committee:

- 1) Recommend that the Board approve Agreement No. 09001, Professional Services Agreement between the RCA and David Kennett to Provide Government Relations Services; and
- 2) Authorize staff to agendize this matter for the June 9, 2008 Special Meeting of the RCA Board of Directors.

FINANCIAL INFORMATION	
In Fiscal Year 2008-09 Budget: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Cost: \$ 75,000 Annual Cost: \$ N/A
Source of Funds: MSHCP Development Mitigation Fees	Budget Adjustment: No
Approved by:	Date: May 13, 2008

Attachment:

Professional Services Agreement between RCA and David Kennett

AGENDA ITEM NO. 13

ATTACHMENT 1 DAVID KENNETT AGREEMENT AND SCOPE OF SERVICES

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
AND DAVID KENNETT
TO PROVIDE GOVERNMENT RELATIONS SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this 1st day of July, 2008, by and between the Western Riverside County Regional Conservation Authority, a joint powers agency (“the RCA”) with its principal place of business at 4080 Lemon St., Twelfth Floor, Riverside, California, 92501, and Capitol Alliance Consulting, LLC (“Consultant”), a Limited Liability Corporation with a principal place of business at 8 Oak Tree Drive, Newport Beach, California, 92660. The RCA and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 RCA: The RCA is a joint power authority created pursuant to the provisions of California Government Code section 6500.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the RCA on the terms and conditions set forth in this Agreement.

2.3 Project. The RCA desires to engage Consultant to render government relations services for the RCA as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant shall assist in performing general government relations services (“Services” or “the Project”) as directed by the RCA Executive Director. Consultant shall advise the RCA concerning implementation of the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”) and assist with funding options and legislative and regulatory proposals generated by the RCA, the Executive Branch, Congress, or others. The Scope of Services is more particularly described in Exhibit “A” attached hereto and incorporated herein. Services shall include, but not be limited to, any duties and responsibilities assigned by the RCA Executive Director. All Services shall be subject to, and performed in accordance with, this Agreement and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be for a period not to exceed twelve (12) months from the executed date in Section 1 of this Agreement

above until June 30, 2009, unless earlier terminated as provided herein. This Agreement may be renewed upon mutual agreement of the Parties.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor.

The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The RCA retains Consultant on an independent contractor basis and not as an employee. An independent contractor is not an employee of the RCA and as such is not entitled to the protections and benefits provided to RCA employees.

3.2.2 Schedule of Services. Consultant shall provide its Services to the RCA on an as needed basis, within the term of this Agreement.

3.2.3 RCA's Representative. The RCA hereby designates the RCA Executive Director, or his or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the RCA. The RCA Executive Director shall have the power to act on behalf of the RCA for all purposes under this Agreement.

3.2.4 Coordination of Services. Consultant agrees to work closely with the RCA Executive Director and RCA staff in the performance of Services and shall be available to RCA's Executive Director, staff, consultants and other staff at all reasonable times.

3.2.5 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the RCA, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation for all Services, excluding reimbursable expenses, rendered under this Agreement. The total compensation shall not exceed seventy-five thousand dollars (\$75,000) for the term of this Agreement. Payments shall be made in 12 monthly installments of \$6250. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to the RCA a monthly statement for Services rendered by Consultant. Said compensation shall be paid in accordance with an invoice submitted to the RCA by Consultant within fifteen (15) days from the last day of each calendar month, and the RCA shall, within forty-five

(45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Extra Work. At any time during the term of this Agreement, RCA may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by RCA to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from RCA's Representative.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all reimbursable expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the RCA during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to RCA, and Consultant shall be entitled to no further compensation.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the RCA may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the RCA may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

RCA

Western Riverside County
Regional Conservation Authority
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Attn: Executive Director

Consultant

David Kennett, Capitol Alliance
Consulting, LLC
8 Oak Tree Drive
Newport Beach, CA 92660

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.6 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.8 RCA's Right to Employ Other Consultants. The RCA reserves the right to employ other consultants in connection with this Project.

3.5.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the RCA. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the RCA include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience

and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.13 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.14 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.15 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the RCA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the RCA, during the term of his or her service with the RCA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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3.5.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

**WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY**

CAPITOL ALLIANCE CONSULTING, LLC

By: _____
Eugene Montanez
Chairman

By: _____
David Kennett, President

ATTEST

Approved as to form:

By: _____
Honey Bernas
Clerk of the Board

By: _____
RCA General Counsel
Best Best & Krieger LLP

EXHIBIT A

Scope of Services

The Scope of Services outlines ongoing and anticipated work related to counsel on all issues associated with the federal government. Specifically this will include:

- Supporting RCA on issues related to obtaining and utilizing Endangered Species Act Section 6 grant funding.
- Working with the Department of Interior, Department of Transportation and other agencies on issues related to species' conservation.
- Building and presenting the case for federal support of habitat conservation plans.
- Supporting the County's appropriations requests related to habitat acquisition and the Riverside County Integrated Plan as a whole.
- Supporting attempts to secure legislation related to the Riverside County Transportation Commission's participation in the Riverside County Multi-Species Habitat Conservation Plan.
- Other projects as may be developed from time to time.

A. Scope of Work. The scope of work outlines activities necessary to achieve our clients' objectives for July 2008 through June 2009.

Task 1: Review, Research, and Identify Federal Funding Opportunities. CAC reviews and identifies federal funding and partnership opportunities associated with our projects.

- Work product: Research and develop funding and partnership opportunity information for meetings with our clients, initial communications with Congressional and Administration contacts regarding funding opportunities and trends. Help coordinate efforts on already existing authorizations with Congressional offices and other interests in the region.

Task 2: Develop Project Agenda. CAC meets with our clients to refine projects and strategy related to the federal government. CAC briefs our clients on our proposed strategy for project requests. CAC also communicates with Congressional staff regarding the strategy for securing federal support.

- Work product: Communications with our client regarding the federal strategy. Communications and coordination with Congressional staff regarding strategy for authorization and appropriations.

Task 3: Project Descriptions and Project Submission. CAC works with our clients to finalize project descriptions and supporting materials for project submission. CAC

assists our clients in drafting correspondence to Congressional offices requesting support for projects. CAC coordinates communications with Congressional offices and confirms submission of project requests. CAC drafts any necessary legislative language for Congressional office consideration.

- Work product: Project descriptions, supporting materials, Congressional correspondence and other communications, draft legislative language.

Task 4: Project Support. While ensuring our clients meet project submission deadlines, CAC advocates on behalf of our clients for early Congressional support for our project agenda. CAC provides support to Congressional staff with project descriptions and draft correspondence to Congressional committees in support of the projects. CAC arranges meetings with Congressional staff to ensure project submission and support. CAC also arranges meetings with Congressional offices, the Department of Interior, and other agencies in Washington and in California to discuss our projects.

- Work product: Communications with Congressional offices, draft client correspondence, draft Congressional correspondence, Congressional memoranda, project support material required or requested by Congressional committees, meetings with Administration officials and staff.

Task 5: Client Advocacy. CAC strongly encourages our clients to meet with Congressional representatives and Administration officials to lobby for our projects. CAC provides full support to our clients, including, but not limited to, meeting scheduling, briefing materials, and talking points for meetings. CAC staff accompanies our clients to meetings in Washington and California, and follows up on all action items resulting from meetings, including letters of appreciation. CAC advises our clients regarding additional communications at key points throughout the process, and provides draft correspondence, contact information, and talking points to our clients. CAC also advises our clients regarding building and maintaining strong working relationships with Congressional offices, and as appropriate, with Administration officials and staff.

- Work product: Meeting schedules, briefing materials, talking points, draft correspondence, communications with our clients, Congressional testimony.

Task 6: CAC Advocacy. Throughout the Congressional session, CAC will regularly communicate with Members of Congress, their staff, and key committee staffers in support of our projects. CAC provides support to Congressional offices, including support letters to Congressional committees, talking points for Member and staff meetings, memoranda regarding project and budget status, draft Congressional testimony, and other communications as requested by Congressional offices. CAC tracks legislation of interest to our clients, including appropriations, authorization legislation, and other legislation, and will report key developments in the legislative process. CAC staff attends relevant committee hearings and markups and provides updates to our clients.

- Work product: Communications with Congressional representatives, draft correspondence, draft proposed legislation, support materials, memoranda for Congressional offices regarding project status, and other support as requested and needed by Congressional offices, attend Congressional hearings.

Task 7: Client Communications. CAC's presence in Southern California has always promoted open and easy communications between our team and our clients regarding projects and other needs. We will be available for meetings in Riverside and we will remain available via telephone and email to answer questions and respond to other inquiries and requests from you. In addition to meetings with our clients, CAC is available to attend other meetings in Southern California of interest to you, including joint powers authority meetings, advisory board meetings, and other meetings. CAC personnel are also available at anytime to check and track the status of any legislation or regulatory activity at the federal level, as well as to advise you regarding any impact on your interests.

- Work product: Meetings, written status reports, other communications as necessary, meetings with other relevant entities, legislation, respond to information requests from our clients, monitor local and regional news.

Task 8: Outcomes and Project Assessment. Upon final determinations by Congress or agencies, CAC reports results to our clients immediately upon information availability, and provides copies of relevant legislation, Congressional reports, and other documents when made available to CAC or the public. CAC debriefs Congressional offices regarding project results and reports findings to our clients. CAC also provides outcomes assessments, assisting CAC and you in formulating our federal agenda for the next cycle. CAC also provides draft letters of appreciation as appropriate.

- Work product: Communications regarding results and assessment of federal agenda, debriefing our clients and Congressional offices regarding outcomes.

Task 9: Secure Funds from the Federal Bureaucracy. Fiscal and political realities have changed in recent years to the degree that, even if Congress appropriates funds for a specific project, federal agencies can delay or even deny the release of these funds. CAC will take an active role in working past, present and future Congressional appropriations through the applicable agencies.

- Work product: Help our clients meet the procedural and political requirements necessary to release appropriated funds. Such assistance may be in the form of legislation or report language, exchanges of letters, facilitating and managing meetings, or other assistance.