

MARIPOSA COUNTY  
BOARD OF SUPERVISORS

AGENDA  
ACTION FORM

DATE: June 4, 1991  
AGENDA ITEM NO. RA 4

DEPT.: COUNTY COUNSEL

BY: JEFFREY G. GREEN

PHONE: 966-3625

RECOMMENDED ACTION AND JUSTIFICATION:

Resolution: 1) Approving Contract renewal with Freese & Gianelli to continue Liability Claims Administration for Fiscal Year 1991/92, 2) Approving increase in hourly rate for services from \$35.00 to \$38.50, and 3) Accept the attached letter from Neal Trost, Manager of Freese & Gianelli Claim Services as a letter Agreement for Fiscal Year 1991/92.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has contracted for liability claims administration with Freese & Gianelli since the 1985/86 Fiscal Year. Service from this firm has been excellent and the requested rate increase is reasonable. It is Counsel's recommendation that the Board adopt this resolution. A copy of last year's contract is attached for Board review. Only the hourly fee, listed at the bottom of page 3, would be increased. All other terms and conditions would remain the same.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Request for Proposals would have to be initiated immediately to solicit proposals from other claims administrators.

COST: ( ) Not Applicable  
A. Budgeted current FY \$ \_\_\_\_\_  
B. Total anticipated costs \$ \_\_\_\_\_  
C. Required add'l funding \$ \_\_\_\_\_  
D. Source: \_\_\_\_\_

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively:  
Letter dated 5/21/91 from  
Neal Trost -- 6 page contract  
copied back-to-back

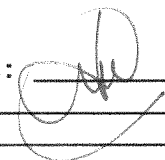
SOURCE: ( ) 4/5ths Vote Required  
A. Internal transfers \$ \_\_\_\_\_  
B. Unanticipated revenues \$ \_\_\_\_\_  
C. Reserve for contingency \$ \_\_\_\_\_  
D. Description: \_\_\_\_\_  
Balance in Reserve for Contingencies, if approved: \$ \_\_\_\_\_

CLERK'S USE ONLY:  
Resolution No. 91-237  
Ordinance No. \_\_\_\_\_  
Vote: Ayes: 3 Noes: \_\_\_\_\_  
Absent: Radomovich Abstained: \_\_\_\_\_  
(mw) Approved Kunte ( ) Denied  
( ) Minute Order Attached

ADMINISTRATIVE OFFICER'S RECOMMENDATION:  
  
This item on agenda as:  
 Recommended  
 Not Recommended  
 For Policy Determination  
 Submitted with Comment  
 Returned for Further Action

The foregoing instrument is a correct copy of the original on file in this office.

DATE: \_\_\_\_\_  
ATTEST: MARGIE WILLIAMS  
Clerk of the Board of Supervisors  
County of Mariposa, State of Calif.

Comment: 



## freese & gianelli claim services

P.O. BOX 1109, MERCED, CALIFORNIA 95341

PHONE (209) 383-5991  
FAX (209) 383-5283  
Our File No.

May 21, 1991

Jeffrey G. Green  
County Counsel  
County of Mariposa  
P.O. Box 189  
Mariposa, CA 95338

Re: Liability Claims Administration - Contract Renewal

Dear Mr. Green:

As you are aware, the Liability Claims Administration Agreement expires June 30, 1991. I would like to take this opportunity to submit a proposal to renew and continue the liability claims administration for the County of Mariposa.

Our proposal of continued service would be on the same basis as the current agreement except our hourly rate for services is to be increased to \$38.50 per hour. The expense factors would remain the same as in the previous contract as would the maximum annual fee for adjusting and investigating services. Additionally, the annual administration fee of \$2,000.00 would remain the same.

Based upon the current trend, the claims carryover and loss experience, I feel the above amount should be more than adequate even considering the increase in our hourly charge.

Let me state it has been a pleasure to be of service to you and it is a pleasure to submit this proposal for renewal.

Should you have any questions, please do not hesitate to contact me.

Yours very truly,



NEAL TROST  
Manager

NT:ar

LIABILITY CLAIMS ADMINISTRATION

AGREEMENT

THIS AGREEMENT is entered into on the date or dates last below written by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Freese & Gianelli, Inc., A California Corporation, hereinafter referred to as "ADMINISTRATOR".

WITNESSETH:

WHEREAS, COUNTY'S Auto/General Liability Insurance requires COUNTY to be self-insured for a portion of the potential liability of COUNTY, and

WHEREAS, COUNTY'S liability policy additionally requires that COUNTY employ a liability claims administrator, and

WHEREAS, ADMINISTRATOR is in the business of providing liability claims administration, and

WHEREAS, ADMINISTRATOR desires to provide liability claims administration services to COUNTY, and

WHEREAS, COUNTY desires ADMINISTRATOR to provide liability claims administration to COUNTY;

NOW THEREFORE, for a valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and conditions hereinafter contained, the PARTIES hereto agree as follows:

1. The terms and conditions of this AGREEMENT shall cover the operations of COUNTY in the State of California.

2. This AGREEMENT shall commence upon the execution hereof by COUNTY and shall terminate June 30, 1991.

3. ADMINISTRATOR shall provide to COUNTY all of COUNTY'S liability claims administration during the term of this AGREEMENT. ADMINISTRATOR shall provide to COUNTY the following:

a. Examination of all claim and loss reports of personal injury, sickness, or disease, incurred during the term of this AGREEMENT (and death resulting at any time from any of the foregoing) by any person, and including personal injury,

sickness, disease, or death, with respect to which the COUNTY has assumed the liability of others under contract. This provision does not apply to personal injury, sickness, disease, or death incurred by any employee of the COUNTY in the course and scope of his employment by the COUNTY and for which benefits are payable under any State or Federal Workers Compensation Laws or similar laws.

b. Examination of all claim and loss reports of loss, damage or destruction of property incurred during the term of this AGREEMENT.

This provision does not apply to:

i. Property owned by or in the care, custody, or control of COUNTY or property as to which COUNTY is exercising physical control for any purpose whatsoever, nor to

ii. Property loss, damage, or destruction which is covered by property insurance maintained by or inuring to the benefit of COUNTY.

c. Conduct an investigation of the reported claims and loss, qualifying under 3(a) and 3(b) above, to the extent deemed necessary in the judgment of ADMINISTRATOR; to adjust and handle to a conclusion those claims ADMINISTRATOR, in its judgment, believes COUNTY is legally obligated to pay or which COUNTY advises ADMINISTRATOR they voluntarily wish to pay, and including the necessary preparation fee for any subrogation or contribution action which, in the judgment of ADMINISTRATOR, may inure to the benefit of COUNTY.

d. Perform all reasonable and necessary administrative and clerical work in connection with claim or loss reports qualifying under provisions 3(a) and 3(b).

e. Adjust, settle, or resist all qualifying claims and loss and litigation arising therefrom, within discretionary settlement authority limit which may be provided by COUNTY; and with specific approval of COUNTY to adjust, settle, or resist all other qualifying claims and losses and litigation resulting therefrom, in excess of the discretionary settlement authority limit.

f. Conduct all necessary trial preparation, as requested by defense counsel.

g. Maintain a claim file for each reported claim which shall be reviewable at any and all reasonable times by COUNTY.

h. Provide all claim forms necessary for the efficient operation of the self-insurance program.

i. Provide a quarterly report which shall include a detailed listing of all claims by departments, summary description, loss payments, allocated expense, open reserves and a status of each pending claim in a format acceptable to COUNTY.

j. Provide 24-hour claim service with the availability of adequate backup staff from other offices.

k. Where ADMINISTRATOR deems necessary, ADMINISTRATOR will immediately consult with defense counsel for COUNTY in order to establish protection of the investigation under the theory of work-product through the theory of attorney-client privilege.

l. Once a suit has been filed against COUNTY, an immediate determination will be made relative to referring the case to defense counsel for the filing of the appropriate appearance. In those instances where it appears settlement is imminent, the time for filing an answer will be protected in writing by ADMINISTRATOR and negotiations either instituted or continued.

m. Upon decision to refer the case to defense counsel, a copy of the entire investigative file will be transmitted to the defense attorney for review, analysis and filing of the appropriate appearance. From that point forward, ADMINISTRATOR will continue to investigate, report, consult and meet with defense counsel and COUNTY personnel or representatives of their excess carrier in an attempt to analyze the developments in the case and perfect those areas of defense as may be required.

n. ADMINISTRATOR will handle all pre-trial and in-trial investigation and activity as may be required to reach the optimum results in those cases of litigation.

4. COUNTY shall pay to ADMINISTRATOR for services provided hereunder the following:

a. An annual administration fee of TWO THOUSAND DOLLARS (\$2,000.00).

b. COUNTY shall additionally pay ADMINISTRATOR adjusting and investigation fees on a per claim basis as follows:

Hourly Fee .....	\$ 35.00	
Steno .....	\$ 12.50	
Office Expense .....	25%	service fee applies only to hourly fee.
Automobile .....	\$ .40	cents/mile.
Telephone .....	\$ 10.5%	service fee applies only to hourly fee.
Photographs .....	\$ 2.00	each
Cassettes .....	\$ 1.50	each
Photocopy .....	\$ .50	per page, first 10.
		.25 per page, thereafter.
Maximum Annual Fee .....	\$ 30,000.00	(AGREEMENT year).

The above-charges do not include:

investigative and adjustment expense outside of the area serviced by Freese and Gianelli Claim Services; court costs; fees for

attorneys; costs of undercover operatives; cost of employing consultants or experts for preparation of maps, photographs, diagrams, chemical or physical analysis or for advice, opinion or testimony concerning claims under investigation or litigation.

Also not included are costs for legal transcripts of testimonies taken at coroner's inquests, criminal or civil proceedings; costs of copies of any public records; cost of depositions and court reporters; and any other similar fee, cost or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim.

c. It is expressly agreed by and between the PARTIES hereto that the total of the above administrative fee and adjusting and investigation fees shall not exceed an annual total cost to COUNTY of THIRTY THOUSAND DOLLARS (\$30,000.00).

5. Adjusting and investigation fees for which the County of Mariposa is reimbursed by COUNTY'S Special Excess Liability Insurance Carrier shall not be allocated or chargeable to the annual total costs limits of THIRTY THOUSAND DOLLARS (\$30,000.00).

6. All such fees described in Paragraph 4, above will be payable quarterly. Fees will be billed by ADMINISTRATOR on the basis of time and expense incurred for each claim file concluded or the interim charges for each claim file pending in litigation.

7. COUNTY shall:

a. Make funds available and pay all losses and claims which are approved for payment by COUNTY and for all "Allocated Loss Expense."

b. Pay to ADMINISTRATOR the service fee as prescribed and included in the conditions of this AGREEMENT. The service fee is not included in and does not include "Allocated Loss Expense."

8. All "Allocated Loss Expense", as defined herein, incurred in the adjustment, handling, settlement, or resistance to claims (including litigation), within the discretionary settlement authority limit of ADMINISTRATOR, or in excess of the discretionary settlement authority limit but not with the specific approval of COUNTY shall be borne by ADMINISTRATOR.

9. ADMINISTRATOR shall have full authority and control in all matters pertaining to the adjustment, handling, investigation, and administration of claims and losses within the discretionary settlement authority limit (if provided) and may make such adjustment or settlement of claims within the discretionary settlement authority limit which in its judgment it deems proper.

10. Failure of ADMINISTRATOR to settle a claim or loss

within the discretionary settlement authority limit shall not subject ADMINISTRATOR to liability above the discretionary limit in the event of an adverse judgment.

11. Upon termination of the AGREEMENT, a final accounting will be made of the service fees and "Allocated Loss Expense", if any, owing to ADMINISTRATOR and of any funds belonging to COUNTY in possession of ADMINISTRATOR. Any balance due will be promptly paid.

12. Any claim(s) or loss(es) pending on date of AGREEMENT termination will be handled and adjusted to conclusion by ADMINISTRATOR and sufficient funds of COUNTY shall remain available to ADMINISTRATOR to liquidate such outstanding claim(s) or loss(es), including sufficient funds to satisfy anticipated "Allocated Loss Expense." Should COUNTY specify in writing to ADMINISTRATOR that pending claim(s) and loss(es) are to revert to control of and become the responsibility of COUNTY upon date of AGREEMENT termination, final accounting as per 4(b) above shall include any amounts due either PARTY on account of such pending claim(s) and loss(es) including "Allocated Loss Expense."

13. "Allocated Loss Expense" shall mean all court costs, fees, and expenses; fees for service of process; fees to attorneys; costs of undercover operative and detective services; fees of independent adjusters or attorneys for investigation or adjustment of claims outside of the area normally services by ADMINISTRATOR; cost of employing experts for preparation of maps, photographs, diagrams, chemical or physical analysis or for advice, opinion or testimony concerning claims under investigation or in litigation; costs for legal transcripts of testimony for copies of any public records, costs of depositions and court reporter or recorded statements; and any other similar fee, cost or expense reasonably chargeable to the investigation, negotiations, settlement, or defense of a claim or loss or to the protection and perfection of the subrogation rights of COUNTY.

14. No forms, periodic reports, or reports on the status of individual claim or loss files, other than as provided in Paragraphs 3(g), 3(h), and 3(i), are required from ADMINISTRATOR, except as may be mutually agreed to on individual claim or loss files.

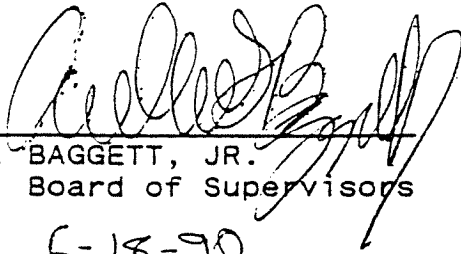
15. This AGREEMENT shall be interpreted pursuant to the laws of the State of California.

16. ADMINISTRATOR shall not assign or in any way hypothecate its interest hereunder without the express written consent of COUNTY first obtained.

17. In the event of a default hereunder, the non-defaulting PARTY shall be entitled to attorneys' fees and costs incurred, whether or not litigation is instituted.

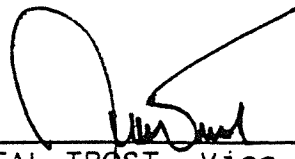
COUNTY OF MARIPOSA:

FREESE & GIANELLI, INC., A  
California Corporation.



ARTHUR G. BAGGETT, JR.  
Chairman, Board of Supervisors

Date: 6-18-90



NEAL TROST, Vice President and  
Manager, Merced Office

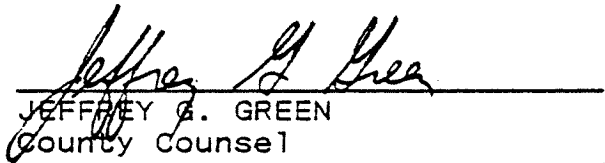
Date: 6-25-90

ATTEST:



MARGIE WILLIAMS  
Clerk of the Board

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
JEFFREY G. GREEN  
County Counsel