

MEMO

To: Board of Directors

From: District Manager

Subject: Special Acquisition Legal Counsel

Date: December 9, 2005

RECOMMENDATION:

It is recommended that the Board of Directors review this memo, receive the recommendation of the Special Acquisition Legal Counsel Committee relative to the engagement of the Special Legal Counsel Services and adopt the attached resolution.

BACKGROUND:

On September 1, 2005 your Board established an "Ad-Hoc" Advisory Committee for the purpose of producing a recommendation to the full Board for the procurement of Special Acquisition Legal Counsel to the District relative to the potential acquisition of California American Water Company, Felton District (Cal-Am). Pursuant to the Joint Community Facilities Agreement by and between the County of Santa Cruz and San Lorenzo Valley Water District, the District is solely responsible for all activities relative to the potential acquisition of Cal-Am. Dirs. Rapoza and Ross were appointed to the Ad-Hoc Special Legal Counsel Advisory Committee.

On September 7, 2005 District staff distributed a Request for Proposals for Special Legal Services for San Lorenzo Valley Water District to nine (9) identified law firms in California with specific areas of practice and expertise in legal activities relative to the potential acquisition of Cal-Am. See Attachment 1. The deadline for the submittal of proposals was September 30, 2005. The District received six (6) proposals in response to the Request for Proposals.

A seven (7) member selection panel was assembled to assist the Ad-Hoc Special Legal Counsel Committee with the selection process. The selection panel consisted of the following individuals: Dir. Rapoza, Dir. Ross, District Counsel Hynes, District Manager Mueller, Santa Cruz County Administrative Officer Mauriello, Assistant County Administrator Officer Bush and a representative from Santa Cruz County Counsel's Office. Each member of the selection panel reviewed and evaluated the six (6) proposals. On October 13, 2005, the selection panel met to review and discuss the six (6) proposals. At the October 13, 2005 meeting, the selection panel by consensus short listed the six (6) proposals down to four (4) proposals for the purpose of oral interviews. Oral interviews approximately ninety (90) minutes in length were scheduled with each firm. The four (4) firms selected for oral interviews by the selection panel were:

- Bingham McCutchen
- Davis Wright Tremaine, LLP/Herman Fitzgerald; Joint Proposal

- Rutan & Tucker, LLP
- Shute, Mahaly & Weinberger, LLP

The selection panel conducted oral interviews with the final four (4) firms during the period November 3-10, 2005. Oral interviews were conducted as a structured process. Each firm was asked to address a standard set of questions relative to the subject matter. Each firm was represented by the primary attorney(s) who would be directly responsible for the potential acquisition activities.

Upon completion of the aforesaid process, the selection panel by consensus selected Rutan & Tucker, LLP as the “most highly qualified” firm. The primary attorney for Rutan & Tucker, LLP relative to this matter would be Jeffery M. Oderman. Based upon the selection panel ranking of Mr. Oderman/Rutan & Tucker, LLP as the “most highly qualified” firm for Special Acquisition Legal Counsel, District staff completed a reference check on Mr. Oderman. District staff contacted and spoke with the City Manager in four (4) cities, Director of Community Development in two (2) cities and two (2) private clients of Mr. Oderman. Reference checking provided valuable information regarding Mr. Oderman’s previous performance and assisted in the final recommendation process.

The Special Counsel Ad-Hoc Advisory Committee (Drs. Rapoza and Ross) is hereby recommending that your Board engage the services of Rutan & Tucker, LLP as Special Acquisition Legal Counsel relative to the potential acquisition of Cal-Am. See Attachment 2 for a copy of the engagement document.

It is recommended that the Board of Directors receive the recommendation of the Special Acquisition Legal Counsel Committee and adopt the attached resolution.

James Mueller
District Manager

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SAN LORENZO VALLEY WATER DISTRICT

RESOLUTION NO. (05-06)

SUBJECT: SPECIAL ACQUISITION LEGAL COUNSEL

WHEREAS, Pursuant to the Joint Community Facilities Agreement by and between the County and San Lorenzo Valley Water District, San Lorenzo Valley Water District is solely responsible for all activities relative to the potential acquisition of California American Water Company, Felton District (Cal-Am); and

WHEREAS, there is a need to engage the services of a law firm with specific areas of practice and expertise in legal activities relative to the potential acquisition of Cal-Am; and

WHEREAS, the Board of Directors of the San Lorenzo Valley Water District desire to engage the law firm of Rutan & Tucker, LLP for special legal services relative to this matter;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Lorenzo Valley Water District that the District Manager is hereby authorized and directed to execute all pertinent documents relative to the engagement of the law firm Rutan & Tucker, LLP for special legal services.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the San Lorenzo Valley Water District, County of Santa Cruz, State of California, on the 15th day of December, 2005, by the following vote of the members thereof:

AYES:

NOES:

ABSENT:

District Secretary
San Lorenzo Valley Water District

REQUEST FOR PROPOSALS FOR SPECIAL COUNSEL

SAN LORENZO VALLEY WATER DISTRICT

BACKGROUND

The San Lorenzo Valley Water District (the "District") desires to retain the services of a law firm to serve as Special Counsel to the District for the potential acquisition of a water system serving the residents of an area known as Felton, located in the unincorporated area of Santa Cruz County. The Felton water system is currently owned by California American Water Company. It is anticipated that use of eminent domain may be necessary for the potential acquisition.

The District believes that the potential acquisition will require careful consideration of the requirements of the California Environmental Quality Act (the "CEQA"). Law firms responding to this RFP must have CEQA expertise or demonstrate how they will address CEQA issues through association with another law firm with CEQA expertise.

The potential acquisition of the water system is to be financed by bonds issued by Community Facilities District No. 1 (Felton) of the County of Santa Cruz (the "CFD"). The registered voters of the CFD authorized the CFD, bonded indebtedness in the maximum aggregate principal amount of \$11,000,000 and the associated special tax on July 26, 2005 by a 75% affirmative vote.

The CFD, the bonds, the special tax and the relationship between the District and the CFD are discussed in Attachment 1 of this Request for Proposals. It should be noted that the CFD issued the first bond, which is known as the Formation Bond, in the amount of \$1,000,000 on August 18, 2005.

MINIMUM QUALIFICATIONS

1. Attorneys providing services shall be licensed by the State of California to practice law and also admitted before the Federal courts of the Northern District of California.
2. The attorney providing the primary service to the District shall be able to demonstrate particular expertise in the area of law relating to the acquisition of real property, eminent domain and the associated CEQA issues. This expertise may be demonstrated by previous matters handled for other clients.
3. The attorney providing the primary service to the District shall demonstrate at least ten years of experience as an attorney in the State of California.

4. The District is an equal opportunity employer. Each firm shall comply with Federal, State and District equal employment opportunity requirements.

ATTORNEY SELECTION PROCEDURE

1. A panel consisting of the District Manager, the District Counsel and a representative of Santa Cruz County's County Administrative Office and a representative of Santa Cruz County's County Counsel's Office will review proposals and determine which applicants to call for an oral interview. Each oral interview will be scheduled for approximately 60 minutes.
2. Proposals will be evaluated on the following criteria:
 - A. Demonstrated expertise in representing public entities in acquisition of real property, including use of eminent domain and attendant issues involving the California Environmental Quality Act.
 - B. An understanding of the subtleties of the representation of public entities.
 - C. The capability for teamwork between the attorney and the District Manager, District Counsel and the Community Facilities District representative from the County.
 - D. The relevancy and quality of recent work, including pertinent references.
 - E. The capacity to perform work within a budget.
 - F. The expertise, professional experience and capabilities of the lead attorney and other attorneys in the firm who will be performing legal services for the District.
3. The reviewing panel will make a recommendation to the Board of Directors of the San Lorenzo Valley Water District. The contract negotiated with the selected firm will be submitted to the Board of Directors for approval and execution.
4. The District reserves the right to reject any and all proposals. The District is under no obligation to award any contract.
5. Any submitted proposal materials will be made public following the deadline date.

INFORMATION TO BE SUBMITTED

Firms wishing to respond to this Request for Proposals must submit the following minimum information in five (5) copies. The nature and form of response are at the responder's discretion, but must not exceed 12 pages. The following minimum information must be included.

1. Information on the firm or attorneys:
 - A. Name, address and telephone number of principal office;
 - B. Type of organization, (i.e. partnership, corporation, etc.);
 - C. Description of the type of legal services usually provided by the firm;
 - D. The name of the attorney who would have primary responsibility for the matter, the names of the partners, their professional qualifications, State Bar numbers and resumes of experience; and
 - E. Names of associates who will be working on these matters, their professional qualifications, State Bar numbers and resumes of experience.
2. The name, address and telephone number of the person to whom correspondence should be directed.
3. Professional Errors and Omissions Malpractice Liability Insurance information.
4. List of acquisitions the primary attorney has handled and the clients represented. Include in detail your expertise representing a public entity.
5. List all water system acquisitions the firm has handled and the client represented.
6. In narrative form, please describe your technical approaches to providing legal services to the District including a description of:
 - A. How you plan to organize and provide these services to the District, if selected;
 - B. The relevance of your experience or your firm's experience to the provision of legal services to the District;
 - C. Your understanding of the important and unique considerations in providing legal services to a public entity; and

- D. The interaction between you and your team and the District, and the techniques you will use to provide effective legal services within limited budgets.
7. Each applicant shall bear its own costs in preparing a responsive proposal. All submitted proposals shall remain the property of the District. Proposals received after the specified submittal deadline be returned and will not be considered.

NUMBER OF PROPOSALS AND SUBMITTAL DEADLINE

1. A total of five (5) proposals shall be delivered to the San Lorenzo Valley Water District by no later than 5:00 p.m. PDT on Friday, September 30, 2005. One (1) copy of the proposal shall be unbound. Proposal shall be addressed as follows:

James Mueller, District Manger
Proposal for Legal Services
San Lorenzo Valley Water District
13060 Highway 9
Boulder Creek, CA 95006-9119

ATTACHMENTS

Material from April 26, 2005 public hearing of the Board of Supervisors of the County of Santa Cruz on establishment of Community Facilities District No. 1. (Felton). This document is intended to provide background on the current situation. Of particular interest:

- March 15, 2005 Letter of Santa Cruz County's County Administrative Officer beginning on page 5 of the Attachment
- Joint Facilities Agreement between the County of Santa Cruz and the San Lorenzo Valley Water District beginning on page 68 of the Attachment
- Letter of Meyers/Nave on behalf of California American Water Company beginning on page 102 of the Attachment.

REQUEST FOR PROPOSALS
SAN LORENZO VALLEY WATER DISTRICT

- 1) Bingham McCutchen
Walnut Creek, CA
- 2) Davis Wright Tremaine, LLP
San Francisco, CA
- 3) Erickson, Beasley, Hewitt & Wilson, LLP
Oakland, CA
- 4) Herman Fitzgerald
Burlingame, CA
- 5) Mamatt, Phelps, Phillips
Los Angeles, CA
- 6) Matteoni, Saxe and O'Laughlin
San Jose, CA
- 7) McCracken, Byers & Haesloop
San Mateo, CA
- 8) Rutan & Tucker, LLP
Costa Mesa, CA
- 9) Shute, Mahaly and Weinberger, LLP
San Francisco, CA

RUTAN & TUCKER, LLP**AGREEMENT FOR PROVISION OF LEGAL SERVICES**

This AGREEMENT FOR PROVISION OF LEGAL SERVICES ("Agreement") is entered into as of December 15, 2005, by and between RUTAN & TUCKER, LLP, a limited liability partnership including professional corporations ("Attorney"), and SAN LORENZO VALLEY WATER DISTRICT ("Client").

1. Scope of Agreement

Client retains Attorney to provide the following legal services: legal advice and assistance regarding the potential acquisition of the California American Water Company ("Cal-Am") water system in Felton, including potential eminent domain litigation services, advice relating to annexation of the Cal-Am service area into the District's boundaries, advice relating to the applicability of and means of compliance with the California Environmental Quality Act ("CEQA"), and related matters. Attorney's scope of services does not include representation of Client in pending or possible future proceedings involving the Cal-Am water system before the California Public Utilities Commission, but Attorney's scope of services may include coordinating the work that Attorney is performing with such other matters, including other counsel that may be selected by Client to represent Client with respect thereto. Other services can be provided on an as-needed and as-requested basis. Attorney hereby designates Jeffrey M. Oderman, a partner of Attorney, as the lead counsel to provide legal services under this Agreement; provided, however, that the lead counsel shall have the discretion to utilize the services of other partners, associates, or staff of Attorney in connection with services to be undertaken under this Agreement.

2. Duties of Attorney and Client

Attorney shall provide those legal services reasonably required to represent Client in the matters described in Paragraph 1 of this Agreement, including but not limited to preparation of agreements and instruments, review of Client documents and applicable laws, legal research, Client conferences, and attendance at conferences with third parties when reasonably required by Client. Attorney shall also take reasonable steps to keep Client informed of significant developments and to respond to Client's inquiries.

Client shall cooperate with Attorney, keep Attorney informed of all developments, documents, or facts that would affect the provision of Attorney's services described in Paragraph 1 of this Agreement, perform all obligations Client has agreed to perform under this Agreement, and pay in a timely manner all of Attorney's statements for services performed and costs incurred.

3. Billing Rates

Client agrees to pay for Attorney's legal services for all work performed by Attorney at the hourly rate of Two Hundred Fifty Dollars (\$250) for attorney services and Attorney's normal hourly billing rates for paralegals, document clerks, and other timekeepers. Normal secretarial, accounting, and administrative staff support services shall not be billed to Client. The \$250 per hour billing rate for attorney services is subject to periodic adjustment on January 1 of each year that services are performed for Client commencing January 1, 2006, with the amount of each such annual adjustment not to exceed five percent (5%) above the rate in effect in the prior year.

If Attorney is required to perform services arising out of its representation of Client pursuant to this Agreement, including without limitation responding to subpoenas or requests to produce documents, responding to inquiries from Client's auditors, or otherwise, Client agrees to pay for such services at the same rates as are provided herein, including any such services that are provided after the termination of this Agreement.

4. Costs and Expenses

Client shall reimburse Attorney for all actual costs and expenses incurred by Attorney, including but not limited to long-distance and mobile telephone calls; messenger and other delivery fees; postage in excess of \$1.00 per item; reasonable facsimile charges (transmission only, not receipt); photocopying; reasonable travel expenses (with air fare not to exceed standard coach rates); parking and tolls; mileage at \$0.45 per mile for automobile travel by Attorney's associates and staff (but excluding Attorney's partners); charges for computer research and text editing; charges for clerical staff overtime necessitated by Client's (but not Attorney's) time demands; and litigation costs including, but not limited to, filing fees, court reporter fees, expert witness fees (to the extent the same are advanced by Attorney on Client's behalf, but with the understanding that Attorney is not authorized to retain expert witnesses without Client's prior approval), exhibit preparation costs, and the like. In addition, if Attorney anticipates incurring out-of-pocket costs in excess of a cumulative total of Five Hundred Dollars (\$500), Attorney may request that Client pay such costs and expenses directly.

5. Statements

Client shall be responsible for payment of the entire invoice(s) transmitted by Attorney for services rendered and costs incurred. Attorney shall send Client a statement for fees and costs incurred on a monthly basis. Attorney's statements shall clearly indicate the basis thereof, including the amount, rate, and basis of calculation of Attorney's fees.

Client shall notify Attorney promptly in writing if Client disputes any entry for legal services or costs on any statement; and if Client fails to do so within thirty (30) days after receipt thereof, all such entries shall be acknowledged as correct as between Attorney and Client.

In general, Attorney's billing statements shall be due and payable within thirty (30) days after receipt. In the event any statement remains unpaid past the due date(s) specified herein, interest thereon at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less, shall be due and payable from the date of the statement until the date of ultimate payment of the statement and all accrued interest.

6. Disclaimer of Guarantee

Attorney has made no representations, promises, warranties, or guarantees to Client, express or implied, regarding the outcome of Client's matters, and nothing in this Agreement shall be construed as such a representation, promise, warranty, or guarantee. In addition, Attorney has made no representations, promises, warranties, or guarantees to Client, express or implied, regarding the amount that Client will incur for attorney's fees and costs in this matter, as those amounts will depend upon numerous factors that cannot be predicted as of the date of this Agreement, including the negotiating positions of third parties, the complexity of the issues as they develop, and the nature and extent of research and document preparation required.

7. Termination or Conclusion

Client may discharge Attorney at any time, with or without cause, by written notice to Attorney. Attorney and Client shall each execute any documents reasonably necessary to complete Attorney's discharge or withdrawal. Attorney shall, upon request therefor by Client and subject to Client's payment of Attorney's copying costs at the rate provided for herein, deliver Client's file to Client at or after the termination or conclusion of Attorney's services.

Upon the termination or conclusion (by discharge or by withdrawal) of Attorney's services hereunder, all unpaid charges for services rendered and costs incurred or advanced through the date of termination or conclusion shall become immediately due and payable.

8. Errors and Omissions Insurance

In accordance with the requirements of California Business & Professions Code § 6148, Attorney maintains errors and omissions insurance coverage applicable to the services to be rendered as contemplated by this Agreement.

9. Integration

This Agreement represents the entire understanding of Attorney and Client as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. Except for the modification or adjustment of billing rates as set forth in Paragraph 3 hereinabove, this Agreement may not be modified, altered, or amended except in writing by Attorney and Client.

RUTAN & TUCKER, LLP

**SAN LORENZO VALLEY
WATER DISTRICT**

By: _____
Jeffrey M. Oderman
Partner

By: _____
Title: _____