

DATE: May 19, 2022

TO: Watershed Conservation Authority Governing Board

FROM: Mark Stanley, Executive Officer

SUBJECT: Item 12: Consideration of a resolution to ratify a professional services contract with Orbach Huff & Henderson LLP to provide legal services for the Watershed Conservation Authority.

RECOMMENDATION: That the WCA approve a professional services contract with Orbach Huff & Henderson LLP to provide legal services for the Watershed Conservation Authority in an amount not to exceed \$50,000 (Exhibit A).

BACKGROUND: The Watershed Conservation Authority has benefitted from the services of the Deputy Attorney General for most of its legal services since inception in 2003, currently provided in the person of Elizabeth S. St. John. However, there are limits to the services provided to the WCA, and additional specialized knowledge may benefit the agency. One of the limits is that the Deputy Attorney General cannot serve as a litigator for a Joint Powers Authority (JPA).

The WCA has previously engaged similar services from Laurie Collins, Esquire recommended by the former Deputy Attorney General Terry Fujimoto to notable benefit for specialized knowledge of JPAs, conservation, and acquisitions. Elizabeth S. St. John assisted in identifying firms that could provide the WCA with legal services beyond the scope of the in-kind services provide by RMC to WCA for legal counsel. After careful review of three firms, staff selected Orbach Huff & Henderson LLP for specialized knowledge of contract law concerning public works projects.

Given the immediacy of items that needed addressing particularly around construction projects, staff engaged the services of Orbach Huff & Henderson LLP and staff recommends ratification of a contract for legal services to proceed.

FISCAL INFORMATION: Funds will be utilized from grant funds, when the tasks are attributed to a funded project, or from operational funds as applicable currently budgeted at \$30,000. If this item is approved the FY 2022/2023 budget may be revised, to adjust for funding Legal Services an amount up to \$50,000.

Exhibit A



Item 12
Attorneys at Law

www.ohhlegal.com

•
Suite 575
1901 Avenue of the Stars
Los Angeles, CA 90067
310 788-9200 · PHONE
310 788-9210 · FAX

■
Suite 225
6200 Stoneridge Mall Road
Pleasanton, CA 94588
510 999-7908 · PHONE
510 999-7918 · FAX

■
Suite 200
2877 Historic Decatur Road
San Diego, CA 92106

•
Suite 170
13181 Crossroads Parkway N.
City of Industry, CA 91745

■
Suite 202
667 Lighthouse Avenue
Pacific Grove, CA 93950

File Number

April 5, 2022

VIA E-MAIL ONLY

Watershed Conservation Authority
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702

Re: Retention of Orbach Huff & Henderson LLP

Dear Watershed Conservation Authority:

Thank you for the opportunity to provide legal services to the Watershed Conservation Authority (“WCA”). This letter shall serve to outline the proposed terms and conditions of our representation of the WCA. If you have any questions concerning any of the information provided in this letter, I welcome your call.

1. Scope of Services. Our responsibilities shall be to represent the WCA in matters related to its facilities and construction projects and on other matters from time to time as the WCA may request upon our mutual agreement.
2. Fees. The measure for our services will be the actual time expended performing legal services at hourly rates in effect at the time services are performed for the lawyers, paralegals and clerks who are directly involved in the matters for which you have retained us. Because of its public mission and it being our privilege to perform services for the WCA, we will charge the WCA at the following discounted rates: Partners: \$425/hour; Associates: \$325/hour; Paralegals: \$175/hour; and Clerks at \$50/hour. Each rate will increase annually by 3% unless otherwise agreed in writing.
3. Retainer. As a matter of policy, we require new clients of the firm to pay us an initial retainer to be applied towards fees and costs. In this instance, however, we are willing to waive this policy.



Elizabeth St. John

April 5, 2022

Page 2

4. Expenses Incurred and Other Charges. In addition to our fee, we will expect the WCA to reimburse us for all expenses we incur on its behalf, including expert witness fees, court reporters, long distance telephone calls, travel costs, postage, air freight, messenger services, computer research time, external printing costs and the like. We will bill you our direct costs for these expenses without mark-up. We will charge the WCA for all internal photocopying (at 10¢ per page) done by us with respect to WCA matters.

5. Billing Practices. We will send an invoice to you monthly detailing all of the expenses incurred during the previous month. These invoices will be of sufficient detail to enable you to determine the nature of any expenses incurred. Payment is due upon receipt.

6. Termination of Representation. The attorney-client relationship is one of mutual trust and confidence, and the WCA is, of course, free to terminate our relationship at any time. We will also be free to terminate the relationship at any time, and should that unlikely event occur, we will do so in a manner which complies with applicable law, court rules and the Rules of Professional Conduct of the State Bar of California. These rules permit us to withdraw if, among other reasons, your conduct renders it unreasonably difficult for us to carry out the representation effectively.

7. Professional Liability Insurance. Orbach Huff & Henderson LLP carries professional errors and omissions liability insurance. No representation is made by Orbach Huff & Henderson LLP as to "insurance coverage" for the types of service which we may perform for the WCA.

8. Mediation, Binding Arbitration and Related Fees and Costs. We look forward to a beneficial and mutually productive relationship with the WCA. If, however, you become dissatisfied for any reason with the services we have performed, we encourage you to bring that to our attention immediately. It is our belief that most such problems can be resolved by good faith discussions between the parties. Nevertheless, it is always possible that some dispute may arise which cannot be resolved by discussions between us. We believe that such disputes can be resolved more expeditiously and with less expense to all concerned by mediation and, if mediation is unsuccessful through binding arbitration, rather than through court proceedings. Therefore, the parties will first attempt to resolve all disputes through mediation with a mediator mutually agreed to by the parties.

a. To the extent mediation is unsuccessful in resolving any dispute, the parties agree to proceed with binding arbitration. Arbitration is a process by which both parties to a dispute agree to submit the matter to an arbitrator and to abide by the arbitrator's



Elizabeth St. John

April 5, 2022

Page 3

decision. In arbitration, there is no right to a trial by jury, and the arbitrator's legal and factual determinations are generally not subject to appellate review. Rules of evidence and procedure are often less formal and rigid than in a court trial. Arbitration usually results in a decision much more quickly than proceedings in court, and the attorneys' fees and other costs incurred by both sides are usually substantially less. Of course, you are encouraged to discuss the advisability of arbitration with other counsel or any of your other advisors and to ask any questions which you may have.

b. Any dispute based upon, arising out of or relating to our engagement, this letter agreement and/or the performance or non-performance of services (including, without limitation, claims of professional negligence) as well as any dispute as to the arbitrability of any such claims will be subject to binding arbitration to be held in the county in which the WCA resides before a retired California superior court judge pursuant to the commercial arbitration rules of the American Arbitration Association. The arbitrator's award will be final and binding and judgment thereon may be entered in any court of competent jurisdiction. As a practical matter, by agreeing to arbitrate all parties are waiving the right to a jury trial.

c. In any dispute, at any stage, including mediation or arbitration, the parties shall bear their own attorneys' fees and costs.

9. File Retention and Destruction. As discrete matters conclude, we may close those matters and we will retain a client file of that matter for a period of three (3) years. We may store some or all client file materials in a digital format. In the process of digitizing those documents, we will return to you any original paper documents provided by you. We will not return copies of paper documents provided by you unless you request those copies in writing. After a paper document is digitized, we will destroy all paper documents in the client file, subject to the exceptions noted above. At the expiration of the 3-year period, we will destroy all client file materials unless you notify us in writing that you wish to take possession of them. This clause applies to any client file materials being held or stored by a third-party vendor.

10. Term. The term of this agreement and our representation of the WCA shall begin on the date WCA indicates by its authorized signature below and shall continue unless our representation is terminated as indicated herein.

My signature below binds our firm to the foregoing. If you agree with the foregoing, please electronically or physically sign this letter, and return it to me. Please keep a duplicate for your records. If you ever have any concerns about our work, please contact me at any time. I look



Elizabeth St. John
April 5, 2022
Page 4

forward to working with you and thank you again for your trust in choosing Orbach Huff & Henderson LLP.

Very truly yours,
ORBACH HUFF & HENDERSON LLP



David M. Orbach

The undersigned has read and understood this agreement, represents that he or she has the authority to execute this agreement on behalf of the WCA, and acknowledges that this agreement is subject to mediation and binding arbitration as provided above. The foregoing accurately sets forth all the terms of your engagement and is approved and accepted on April 8, 2022, 2022.

By:  _____
3EF0743E521D4ED...
Title: Executive Officer _____

May 19, 2022 - Item 12

RESOLUTION 2022-24

RESOLUTION TO RATIFY A PROFESSIONAL SERVICES CONTRACT WITH ORBACH HUFF & HENDERSON LLP TO PROVIDE LEGAL SERVICES LEVERAGING THE WORKLOAD OF THE DEPUTY ATTORNEY GENERAL FOR THE WATERSHED CONSERVATION AUTHORITY.

WHEREAS, the Watershed Conservation Authority (WCA) has been established as a joint powers agency between the Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District (District); and

WHEREAS, the Watershed Conservation Authority (WCA) has further been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects in both the San Gabriel and Lower Los Angeles Rivers watershed; and

WHEREAS, this action will ratify a contract with Orbach Huff & Henderson LLP for legal services; and

WHEREAS, the proposed action is exempt from the provisions of the California Environmental Quality Act; NOW

Therefore be it resolved that the WCA hereby:

1. **FINDS** that this action is consistent with the purposes and objectives of the WCA.
2. **FINDS** that the actions contemplated by this resolution are exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA).
3. **ADOPTS** the staff report dated May 19, 2022.
4. **RATIFIES** a professional services contract with Orbach Huff & Henderson LLP in an amount not to exceed \$50,000 for legal services for the WCA.
5. **AUTHORIZES** the WCA to amend the FY 2022/2023 budget accordingly.

~ End of Resolution ~

//

Motion: _____ Second: _____

Ayes: _____ Nays: _____ Abstentions: _____

Passed and Adopted by the Board of the
WATERSHED CONSERVATION AUTHORITY
On May 19, 2022

Herlinda Chico
Governing Board Chair

ATTEST: _____
Elizabeth St. John
Deputy Attorney General