

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

157
A



FROM: County Counsel

SUBMITTAL DATE:
July 14, 2014

SUBJECT: Conflicts Waiver

RECOMMENDED MOTION: That the Board of Supervisors approve the waiver of conflict of interest letter and authorize County Counsel to sign the waiver for the law firm of Richards, Watson and Gershon to represent the County of Riverside in negotiations with the Gas Company for renewal of its current franchise agreement as contained in Ordinance No. 553.

BACKGROUND:

Summary

The County has retained the law firm of Richards, Watson and Gershon pursuant to a not-to-exceed \$25,000 legal services agreement to assist the County team in its work to negotiate an extension of the critical Gas Company franchise agreement, which will expire shortly after 30 years in effect.

Richards, Watson and Gershon is a well-regarded firm that represents many public entities throughout California, including acting as City Attorney for Temecula, Palm Desert and Rancho Cucamonga. The firm has previously represented the County on issues related to changes in cable franchise law and

(continued next page)

PAMELA J. WALLS
County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$	\$	\$	\$	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	

SOURCE OF FUNDS:

Budget Adjustment:

For Fiscal Year:

C.E.O. RECOMMENDATION:

APPROVE

BY:

Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.:

District:

Agenda Number:

2-12

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

FORM 11: Conflicts Waiver

DATE: July 14, 2014

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BACKGROUND:

Summary (continued)

corresponding new agreements; and that expertise carries over to the Gas Company franchise assistance. Because of its work as City Attorney for Indio, and because both Indio and the County are involved as parties (though they are cooperating and not adverse parties) in separate but related eminent domain actions for construction of the I-10 Jefferson Street Interchange and adjacent improvements, the firm requests the County to sign the attached waiver of conflict of interest letter. County Counsel has reviewed the waiver letter and does not believe an actual conflict of interest would arise in connection with the firm's separate representation of Indio and the County in unrelated matters. Further, County Counsel does not believe the County's interests would be adversely affected by the firm's representation of Indio in the I-10 eminent domain action concurrently with representing and advising the County on the Gas Company franchise agreement.

The request for a conflicts waiver by Richards, Watson and Gershon is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part:

- “(C) A member [of the Bar] shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
 - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”



RICHARDS | WATSON | GERSHON

ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

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May 30, 2014

RICHARD RICHARDS
(1916–1988)

GLENN R. WATSON
(1917–2010)

HARRY L. GERSHON
(1922–2007)

VIA ELECTRONIC MAIL & U.S. MAIL

Mr. Neal Kipnis
Deputy County Counsel
County of Riverside
Office of the County Counsel
County of Riverside
3960 Orange Street, Suite 500
Riverside, California 92501

Re: Attorney Conflict Waiver for Richards, Watson & Gershon regarding County of Riverside Gas Company Franchise

Dear Mr. Kipnis:

The County of Riverside has requested that Richards, Watson & Gershon represent it in negotiating the Gas Company's new franchise within unincorporated areas of the County (hereafter "Unincorporated Gas Franchise"). I would be the attorney representing the County in this matter.

As we discussed, Richards, Watson & Gershon ("RWG") provides on-going services to several public entities within Riverside County, including the City of Palm Desert, the City of Indio ("Indio"), the City of Jurupa Valley, the City of Temecula, the City of Calimesa, the City of Blythe, the Successor Agency to the Blythe Redevelopment Agency, the Successor Agency to the Indio Redevelopment Agency, the Successor Agency to the Palm Desert Redevelopment Agency, the Palm Desert Housing Authority, the Mission Springs Water District, the Imperial Irrigation District, and the Beaumont-Cherry Valley Water District. The firm may also be engaged in the future by other private and public entity clients located or doing business within the County of Riverside or otherwise whose interests affect the County of Riverside. For ease of reference, these entities are collectively referred to hereafter as "RWG Clients."

We write to request that the County consent to our representation of RWG Clients in all current and future matters that are adverse or potentially adverse to the County, so long as such matters are unrelated to the substance of our representation of the County in the Unincorporated Gas Franchise matter.

To our knowledge, RWG currently is only representing one firm client in matters that are potentially adverse to the County's interests. Specifically, we represent Indio (for

STEVEN L. DORSEY
WILLIAM L. STRAUZ
MITCHELL E. ABBOTT
GREGORY W. STEPANICH
QUINN M. BARRON
CAROL W. LYNCH
GREGORY M. KUNERT
THOMAS M. JIMBO
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STEVEN H. KAUFMANN
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MICHAEL ESTRADA
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PETER M. THORSON
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CRAIG A. STEELE
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LOLLY A. ENRIQUEZ
KIRSTEN R. BOWMAN
GINETTA L. GIOVINCO
TRISHA ORTIZ
CANDICE K. LEE
JENNIFER PETRUSIS
STEVEN L. FLOWER
TOUSSAINT S. BAILEY
AMY GREYSON
DEBORAH R. HAKMAN
D. CRAIG FOX
MARI CELA E. MARROQUIN
KATHERINE L. WISINSKI
SERITA R. YOUNG
SHIRI KLIMA
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JULIE A. HANMILL
AARON C. O'DELL
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PATRICK D. SKAHAN
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Mr. Neal Kipnis
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which we serve as City Attorney) in regard to the I-10/Jefferson Street Interchange Project (“Interchange Project”). The County is the lead agency for the Interchange Project and has filed an eminent domain proceeding to acquire several acres of property owned by an entity called Jefferson Street Ventures, LLC (“JSV”).

Indio previously conditioned the development of the JSV property to restrict development within the footprint of the planned interchange. In 2007, JSV sued Indio for inverse condemnation (“JSV Inverse Case”) challenging this restriction. The trial court dismissed the damages claims, and the matter is currently on appeal.

Indio is separately constructing the Jefferson/Varner Road Intersection Improvement Project (“City’s Intersection Project”) to accommodate the Interchange Project. In connection with the City’s Intersection Project, Indio has filed an eminent domain proceeding (“JSV Eminent Domain Case”) to acquire a permanent easement and slope easement from a different part of the same JSV property that is the subject of the County’s condemnation proceeding. For the purposes of this letter, the Interchange Project, the JSV Inverse Case, the City’s Intersection Project and the JSV Eminent Domain Case shall be sometimes referred to herein as the “Related Interchange Matters.”

JSV is now claiming severance damages stemming from the actions of the County and Indio, and all three parties recently agreed to enter into a global mediation process starting in late July 2014.

The County and Indio share a common interest in the successful resolution of the Related Interchange Matters. The attempt to jointly resolve these matters through mediation, if successful, will benefit both entities. However, there is a potential for adversity in the mediation process as the County and Indio may be required to negotiate at arms’ length their respective contributions toward the amount of just compensation necessary to make JSV whole and satisfy it.

The California Rules of Professional Conduct preclude an attorney (or his or her law firm), without the informed written consent of each client, from representing a client in one matter and at the same time, in a separate matter, accepting as a client an entity whose interest in the first matter is adverse to the client in the first matter. Specifically, Rule 3-310 of the Rules of Professional Conduct provide as follows:

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Rule 3-310. Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:

- (1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;*
- (2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;*
- (3) "Written" means any writing as defined in Evidence Code section 250.*

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional or personal relationship with a party or witness in the same matter; or*
- (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and*
 - (b) the previous relationship would substantially affect the member's representation; or**
- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or*

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- (4) *The member has or had a legal, business, financial or professional interest in the subject matter of the representation.*
- (C) *A member shall not, without the informed written consent of each client:*
 - (1) *Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or*
 - (2) *Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or*
 - (3) *Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.*

This rule means that RWG is precluded from performing services for a new client (the County) if, at the same time, the firm represents an existing client in a matter where the County's interests are currently or potentially adverse to the existing client without the informed written consent of each client.

At this time, we only are required to obtain consent with regard to our representation of Indio in the Related Interchange Matters. However, given the broad scope of the County's activities, there is the potential that additional adverse or potentially adverse matters will arise with other RWG Clients in the future. We feel it is important to preserve continuity of representation for RWG Clients, many of which rely on us in ongoing or long-term general and special counsel relationships. We would not be comfortable accepting the representation of the County on the Unincorporated Gas Franchise unless we had undertaken all available steps to prevent interruption of RWG Clients' legal representation.

In light of the foregoing, we request the County to consent to our representation of RWG Clients in any current or future matters involving the County, including those potentially or actually adverse to the County, so long as our representation of an

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RWG Client is unrelated to the substance of our representation of the County in the Unincorporated Gas Franchise matter. This prospective waiver would be immediately effective and would apply during and after the time RWG is actively representing the County.

Included with this letter is a statement of Acknowledgment, Waiver, and Consent, which reads as follows:

The County of Riverside (“County”) acknowledges and understands the disclosures and description of potential adverse consequences in connection with the representation of the County in negotiating the Gas Company’s new franchise within unincorporated areas set forth in the letter (“Disclosure and Consent Letter”) of Richards, Watson & Gershon (“RWG”) dated May 30, 2014 above. The County hereby waives any actual or potential conflicts and consents to RWG’s representation of the City of Indio in regard to the Related Interchange Matters and any future matters or litigation that may arise therefrom, notwithstanding that such representation may be adverse to the County. The County further consents to RWG’s representation of the firm’s current and prospective clients in any other current or future matters actually or potentially adverse to the County, including (without limitation) litigation against the County, so long as such matters are unrelated to the substance of RWG’s representation of the County in the Unincorporated Gas Franchise matter.

Under the language of the Acknowledgment, Waiver and Consent, the County will have consented: (i) specifically to the firm representing Indio in regard to the Related Interchange Matters (including future matters or litigation arising therefrom); and (ii) more generally that, during or after the time that we are providing services to the County related to the Unincorporated Gas Franchise, RWG may represent RWG Clients in any matters that are potentially or actually adverse to the County but that are unrelated to the substance of the Unincorporated Gas Franchise, including, without limitation, litigation adverse to the County and adversarial non-litigation matters such as disputes and negotiations.

We are required by the Rules of Professional Conduct to explain the reasonably foreseeable impacts and consequences of the conflicts referenced in this letter. We do not reasonably foresee any significant potential for direct consequences to the County

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from our representation of Indio in the Related Interchange Matters. The County will be represented by its own independent counsel, who will protect the County's interests and advise it with regard to such matters.

Similarly, we do not reasonably foresee any significant potential for conflict between RWG Clients and the County with regard to the Unincorporated Gas Franchise representation. Franchises in the unincorporated areas of the County do not substantively (nor in most cases geographically) overlap our representation of other public entities. Consequently, there would be no potential for any confidential information we obtain from the County in the Unincorporated Gas Franchise Matter to be used against the County in unrelated matters for other RWG clients.

The only potentially adverse consequences we foresee at this time are indirect. For example, the County should consider whether it would cause the County to question our loyalty or performance in the Unincorporated Gas Franchise matter, if attorneys in our firm were to separately represent RWG Clients in matters adverse to the County that are unrelated to the substance of our representation of the County in the Unincorporated Gas Franchise matter. An effective attorney-client relationship requires the client to have confidence in its counsel's loyalty and objectivity.

We have no doubts that we can effectively represent the County in the Unincorporated Gas Franchise matter while separately representing RWG Clients in matters adverse to the County that are unrelated to the substance of our representation of the County in the Unincorporated Gas Franchise matter. We have an obligation to zealously represent the County in connection with the Unincorporated Gas Franchise matter and are certain we can do that in this situation. We would not seek the County's consent if we believed otherwise.

In addition, we believe the County should consider any potential perception problems created by our representation of RWG Clients in matters that are adverse to the County. It is extremely common for firms of our size with specialized expertise to represent potentially adverse clients with their mutual consent. However, we are sensitive to the concerns of public entities regarding public perception and urge the County to grant the consent requested herein only if the County concurs with our view regarding the unlikely chance of adverse public perception resulting from our representation of the County.

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Pursuant to the foregoing, we request that the County sign the attached Acknowledgment, Waiver, and Consent and return it to me at your earliest convenience.

The County remains free to seek advice on this matter from its County Counsel or independent counsel at any time in connection with the approval of this consent.

I apologize for the formality of this letter, but we are required by California law and the Rules of Professional Conduct to provide this information to you in writing.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Flower", with a stylized flourish at the end.

Steven L. Flower

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ACKNOWLEDGEMENT, WAIVER, AND CONSENT

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COUNTY OF RIVERSIDE

By: _____
Title: _____
Date: _____

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE: 7/14/14