

# ROSS VALLEY PUBLIC FINANCING AUTHORITY

2960 Kerner Boulevard, San Rafael, CA 94901  
Ph: 415.259.2949 Fax: 415.460.2149

**Officers and Directors:** Michael Boorstein ~ Thomas Gaffney ~ Doug Kelly ~ Pamela Meigs ~ Mary Sylla

## **SPECIAL GOVERNING BOARD MEETING AGENDA**

**May 15, 2019: Session Convenes at 6:30 p.m.**

Central Marin Police Authority Community Room– 250 Doherty Drive, Larkspur, CA

**Welcome:** *The RVPFA Board of Directors welcomes members of the public at its meetings and encourages citizen participation and input. The Board takes seriously its responsibility to be a model of civility and to safeguard the public ability to directly address the Board by providing the appropriate Board Meetings Decorum. Thank you.*

*The Board President will call agenda items, ask for the Staff Report, hear questions or initial concerns from Board members, open the item for public comment and return to the Board for additional comments and action. The public may speak for up to three minutes, as time allows, on agenda items.*

1. Call Meeting to Order
  - a) Roll Call
2. Approval of Agenda
3. Open Time for Public to Raise Items Not on Agenda or for Future Agendas

*Members of the public may address the Board re: issues that are within Ross Valley Public Finance Authority's jurisdiction but not on the posted agenda may do so. Each speaker is limited to three minutes. The Board may not take action on or discuss items not on the agenda but may briefly respond to statements or questions by a member of the public. The Board President may refer any matter to staff for further follow-up or elect to have the matter placed on an agenda for a future meeting.*
4. Consideration of Approving Engagement Agreement with Downey Brand, LLP, for Legal Services Associated with the Upcoming Bond Sale
5. Consideration of Adopting Resolution No. PFA 19-1556 of the Ross Valley Public Financing Authority Authorizing the Issuance of Revenue Bonds in an Initial Aggregate Principal Amount Not to Exceed \$37,000,000 in Connection with Financing Acquisitions and Improvements to the Ross Valley Sanitary District's Facilities, Authorizing and Directing Execution of an Indenture of Trust, an Installment Sale Agreement and Certain Other Documents, Authorizing the Negotiation for the Sale of Bonds, Approving an Official Statement, and Authorizing Other Related Actions

### **Adjourn**

Any person with a disability covered under the Americans with Disabilities Act (ADA) may receive a copy of the agenda or a copy of all documents constituting the agenda packet prepared by the local agency or other interested person for this meeting upon request in an appropriate alternative format. Requests for mailed copies of agendas or agenda packets are valid for the calendar year in which requests are made and must be renewed annually after January 1. Any person with a disability covered under the ADA may also request a disability-related modification or accommodation, including auxiliary aids or services in order to participate in a public meeting. Please contact the office at 415.259.2949 at least ten working days prior to the meeting and provide information on the assistance required.

Copies of all staff reports and documents subject to disclosure that relate to each item of business referred to on the agenda are available for public inspection at least 72 hours before each regularly scheduled Board meeting at the Authority Office, located at 2960 Kerner Boulevard, San Rafael, CA. Any documents subject to disclosure that are provided to all, or a majority of all, of the members of the Board regarding any item on this agenda after the agenda has been distributed will also be made available for inspection at the District Office during regular business hours.

ROSS VALLEY PUBLIC FINANCING AUTHORITY

STAFF REPORT

For the Meeting of May 15, 2019

May 9, 2019

**To:** Governing Board  
Ross Valley Public Financing Authority

Approved By:



**From:** Steve Moore  
Executive Director

**Subject:** Consideration of Approving Engagement Agreement with Downey Brand, LLP, for Legal Services Associated with the Upcoming Bond Sale

**Discussion:**

The Ross Valley Public Financing Authority (“Authority”) is a joint powers authority formed pursuant to California Govt. Code section 6500 *et seq* between Ross Valley Sanitary District and the California Municipal Financing Authority. It was formed in 2012 for the purpose of facilitating the sale of bonds by Ross Valley Sanitary District. The District board serves as the Authority’s governing board. The Authority’s By-Laws provide that the District’s legal counsel “shall act as the legal advisor of the Authority” unless counsel identifies a conflict of interest (By-Laws, section 2.8). Despite this language evidencing the parties’ intent that the District counsel serve as counsel to the Authority, there is currently no separate engagement agreement between the District’s counsel (Downey Brand LLP) and the Authority that would allow Downey Brand to carry out such representation.

As part of the upcoming sale of bonds by the Authority, counsel for the Authority must provide an opinion letter regarding the valid existence of the Authority and its ability to sell bonds. Downey Brand requires an engagement agreement with the Authority in order to create a valid attorney-client relationship and to allow Downey Brand to provide the required opinion letter.

The attached engagement agreement serves this purpose and is limited to this particular bond sale.

**Recommendation:**

Approve the engagement agreement with Downey Brand, LLP, for legal services associated with the upcoming bond sale.

Attachment(s):

- a. Proposed Engagement Agreement with Downey Brand, LLP

April 1, 2019

VIA ELECTRONIC MAIL – [SMOORE@RVSD.ORG](mailto:SMOORE@RVSD.ORG)

Mr. Steve Moore, General Manager  
Ross Valley Public Financing Authority  
2960 Kerner Boulevard  
San Rafael, CA 94901

Re: **Representation by Downey Brand LLP – Bond Financing Matter**

Dear Mr. Moore:

Thank you for your interest in retaining Downey Brand LLP for legal services. This letter sets forth our understanding regarding the retention of Downey Brand LLP to advise and represent the Ross Valley Public Financing Authority (“Authority”) with regard to a bond financing currently scheduled to close in late spring of 2019.

I am writing to confirm the general nature of the legal services we will be providing, our respective responsibilities, and the manner in which we will charge the Authority for our fees and out-of-pocket costs. If the Authority is in agreement with these terms, I would appreciate a representative of the Authority signing this letter and returning it for our records. We will forward a fully executed copy for the Authority’s files. This will signify the Authority’s agreement with and acceptance of the terms of engagement.

### **2019 Bond Financing**

The Authority was created pursuant to a Joint Exercise of Powers Agreement, dated May 18, 2012 between the Sanitary District No. 1 of Marin County (“District”) and the California Municipal Finance Authority. The Authority will be issuing, selling and delivering revenue bonds as part of a financing effort by the District for construction of public capital improvements. The Authority’s by-laws provide that the District’s general counsel also serves as counsel to the Authority in connection with the bond transaction. This representation is limited to this specific bond sale only, and encompasses the necessary document review and opinion by the Authority for the bond sale.

### **Conflict of Interest**

We have run a conflict check on the matters discussed above related to the Authority, and have not identified any actual conflicts.

### **Fees and Charges**

Except where other arrangements are negotiated, our fees for this representation will be charged on an hourly basis. Work on this matter will primarily be conducted by Andrea Clark, whose 2019 discounted municipal billing rate for this matter will be \$375.00/hour. Travel time for attending Authority Board meetings shall be charged at one-half (50%) of the standard rates.

If litigation or other issues arise requiring specialized expertise additional attorneys may work on the matter. Our firm includes lawyers with a variety of skills and experience, and we draw upon each other's skills to provide cost-effective service and to give our clients the benefit of all of the diverse resources available within the firm. At the present time, the hourly rates of the attorneys in our firm vary starting at \$215.00 per hour. The hourly rates of our paralegals start at \$185.00 per hour. While we will make every effort to notify the Authority in advance of any rate increase, any such increase will be reflected in our billings to the Authority, and receipt of such billings will constitute notice of any rate increase. No other modification of this agreement is valid without the express written consent of both the Authority and us.

Unless other arrangements are negotiated, we normally charge in six-minute units of time (tenths of an hour), and bill for travel, legal research and analysis, court waiting time, review of documents, drafting of documents, personal and telephone conferences within and without our office, as well as attendance at and preparation for conferences and meetings we have been requested to attend on behalf of the Authority, preparation of documents (including memos, pleadings, motions, declarations, responses and other filings or court papers), investigation, and negotiation.

In addition, we will charge the Authority for our out-of-pocket costs, which may include mileage, parking, and postage, and delivery and messenger service costs. The Authority will also be responsible for payment of any applicable court costs, which may include appearance fees, filing fees, process server fees, and court reporters' fees. Some of these costs can be substantial (especially court reporters, and experts), and we will be sure to discuss the major costs with the Authority before incurring them on the Authority's behalf.

We will bill the Authority on a monthly basis, and our bills are due and payable within 30 days of receipt. Our bills will clearly state the date of each service, the name and hourly rate of the professional performing the service, the service performed, and the number of hours (or portions of hours) devoted to each item. Our out-of-pocket costs will be itemized. We encourage the Authority to ask if there are any questions at any time about our bills or about the conduct of this matter.

**Retainer**

Normally, before beginning work on a matter, we require receipt of a retainer amount. However, in the case of municipalities, this requirement is waived so long as the Authority's invoices are timely paid. If invoices become overdue, we will request payment of a retainer that will be applied monthly against the Authority's bill and may apply interest to overdue amounts. If a retainer is paid, any unused deposit remaining at the conclusion of our services will be refunded to the Authority.

This letter will govern all legal services performed by Downey Brand LLP on the Authority's behalf commencing with the date we first performed services. The date at the beginning of this letter is for reference only.

**Termination of Contract**

The Authority may discharge us at any time. However, upon termination or conclusion of our services, all unpaid charges will immediately become due and payable. In the event that any proceeding is instituted (such as, for example, fee arbitration or a lawsuit) to enforce or interpret any part of this Agreement, the prevailing party will be entitled to recover, in addition to the amount of any judgment or award, a sum as and for reasonable attorneys' fees and court or other costs, as applicable, including, without limitation, the value of the time spent by Downey Brand LLP attorneys in representing the firm in any such proceeding (calculated at the hourly rate(s) then normally charged by such Downey Brand LLP attorneys to clients which such attorneys represent on an hourly basis).

**Conclusion**

Our overall aim is to work with the Authority in a cooperative effort to achieve the best possible result consistent with the Authority's business objectives and to provide the most cost-effective legal services possible given the circumstances of the particular matters on which we are requested to work.

If you have any questions about any of the above or the attached Standard Provisions, or if you have suggestions that would make our working relationship better, we would be pleased to respond to them. If the foregoing terms are acceptable to the Authority, please sign where indicated below. This will signify agreement to the terms of our engagement as described in this letter. We look forward to working with the Authority on this matter.

Sincerely,

DOWNEY BRAND LLP



Andrea P. Clark

**ACCEPTANCE**

The undersigned representative of the Authority hereby accepts the above terms and conditions pertaining to the waiver of potential future conflicts, agreement not to seek to disqualify Downey Brand LLP from representing its current clients in the future if and when actual conflicts arise, and engagement of the law firm of Downey Brand LLP for the legal services described.

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CONFLICT WAIVER AND ADDITIONAL TERMS**  
**CONCERNING ENGAGEMENT FOR LEGAL SERVICES**  
**BY DOWNEY BRAND LLP**

The following conflict waiver accompanies the engagement letter between Ross Valley Public Financing Authority (“Authority”) and Downey Brand LLP dated March 14, 2019.

a. Conflicts of Interest. We have conducted a search of our files to determine if any conflicts exist that would make it impossible for us to assist the Authority in this matter. A conflict occurs when we are asked to represent a party against a former or present client. We are prohibited from providing services where a conflict exists unless all affected parties give us permission in writing. If a conflict arises, we will not be able to continue to represent the Authority unless and until we obtain the aforementioned authorizations. At this time, we do not see any conflicts of this nature. If we discover any such conflicts during the course of our representation, we will bring them to your attention immediately. Furthermore, for conflicts purposes, our representation on specific matters does not automatically provide or create an attorney-client relationship on other non-related matters conducted by the Authority.

b. Modification. The above-quoted hourly rates are those currently used by our firm. Like all business people, we are not immune from increasing costs. Therefore, we annually review and revise our rates in order to keep pace with such demands. While we will make every effort to notify you in advance of any rate increase, any such increase will be reflected in our billings to you, and your receipt and payment of such billings will constitute notice and acceptance of any rate increase. No other modification of this agreement is valid without the express written consent.

c. Consent To Electronic Communications. In order to maximize efficiency in representing the Authority, we intend to use state-of-the-art communications tools and devices, such as email, document transfer by computer, cellular telephones, and “smart phones” to the fullest extent possible. The use of such devices under current technology may place confidences and privileges at risk. However, we believe the effectiveness involved in the use of these devices and our use of security protocols outweighs the risk of accidental disclosure. By signing this letter, the Authority acknowledges its consent to the use of these tools and devices.

d. Waiver Concerning Internal Downey Brand LLP Attorney-Client Privilege. The occasion might arise for us to consult with our own general counsel regarding our engagement with the Authority, at our expense. Such counsel may include our firm’s General Counsel or other firm lawyers working with our General Counsel who do not perform work for the Authority, or with our own outside counsel. To the extent we are addressing our own rights or responsibilities, a conflict of interest might be deemed to exist between us and the Authority as to such consultation or resulting communications, particularly if a dispute were to arise between us and the Authority regarding our representation of the Authority. A condition of this engagement is that, in such circumstances, the Authority hereby consents to such consultation occurring, and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify us from continuing to represent the Authority or

from acting in our own behalf, even if doing so might be deemed adverse to the Authority's interests. The Authority acknowledges that such communications are protected by our own attorney-client privilege from disclosure to the Authority.

e. Interest and Attorneys' Fees. Fees charged should be timely paid, and Downey Brand LLP reserves the right to request interest on overdue payments. In the event that suit is brought to enforce or interpret any part of this engagement agreement, the prevailing party will be entitled to recover, in addition to the amount of any judgment or award, a sum as and for reasonable attorneys' fees and court costs.

f. Subcontractor. It is understood that Downey Brand LLP will perform services as an independent sub-contractor and that we will maintain adequate worker's compensation, comprehensive general liability and property damage, motor vehicle, and professional liability insurance as set forth in our proposal.

**Waiver and Acceptance**

By signing below, the Authority agrees to and understands the terms of this retention agreement and waives all potential conflicts raised by our representation of other clients or consultations with Downey Brand's general counsel described above. The Authority further agrees not to object to Downey Brand's representation of existing and/or future clients in such matters where those clients are adverse to the Authority on matters other than those for which Downey Brand was retained as counsel, and will not seek to disqualify our firm from any such representation.

Dated: \_\_\_\_\_, 2019

For Ross Valley Public Financing Authority:

By: \_\_\_\_\_



ROSS VALLEY PUBLIC  
FINANCING AUTHORITY

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Ph: 415.259.2949 Fax: 415.460.2149

Officers and Directors: Michael Boorstein ~ Thomas Gaffney ~ Doug Kelly ~ Pamela Meigs ~ Mary Sylla

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STAFF REPORT

For the Meeting of May 15, 2019

May 9, 2019

To: Governing Board  
Ross Valley Public Financing Authority

Approved By:



From: Felicia Newhouse, Assistant General Manager, Ross Valley Sanitary District

**Subject: Consideration of Adopting Resolution No. PFA 19-1556 of the Ross Valley Public Financing Authority Authorizing the Issuance of Revenue Bonds in an Initial Aggregate Principal Amount Not to Exceed \$37,000,000 in Connection with Financing Acquisitions and Improvements to the Ross Valley Sanitary District's Facilities, Authorizing and Directing Execution of an Indenture of Trust, an Installment Sale Agreement and Certain Other Documents, Authorizing the Negotiation for the Sale of Bonds, Approving an Official Statement, and Authorizing Other Related Actions**

**SUMMARY**

Please see the staff report and attachments for this item under Item #11 in the Ross Valley Sanitary District agenda for the Regular Board meeting on May 15, 2019.