



County of Santa Cruz

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OFFICE OF THE COUNTY COUNSEL

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January 29, 2002

Agenda: February 12, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: County Counsel Services


Dear Members of the Board:

As your Board is aware, Dwight Herr has been providing special legal services to the Office of the County Counsel including providing expertise and continued oversight of important pending litigation. In order to continue utilizing Mr. Herr's special services, the Office of the County Counsel requests that your Board authorize a contract with Mr. Herr for the period March 1, 2002 to June 30, 2002. The attached agreement provides for Mr. Herr to be compensated at a rate of \$75.00 per hour, which is equal to the previous amount authorized by the Board for his continuing services. The contract maximum will not exceed \$35,000.

IT IS THEREFORE RECOMMENDED that your Board approve the attached employment services contract with Dwight Herr for the period March 1, 2002 through June 30, 2002, for special legal services.

Very truly yours,

DANA McRAE, COUNTY COUNSEL

By 

Dana McRae
County Counsel

RECOMMENDED:



SUSAN A. MAURIELLO
County **Administrative Officer**

Dear:

CONTRACT FOR LEGAL SERVICES

This Agreement is entered into this 1st day of March, 2002, by and between the County of Santa Cruz, hereinafter referred to as "County", and DWIGHT L. HERR, hereinafter referred to as "Special Counsel". The parties agree as follows:

1. Services. Special Counsel agrees to provide such legal assistance and legal representation regarding litigation and projects as requested by the Santa Cruz County Counsel's Office for which the services of Special Counsel are authorized by the Santa Cruz County Board of Supervisors.

2. Compensation. County agrees to pay Special Counsel on a periodic basis and upon written invoice for the services provided at the hourly rate of \$75.00. In addition, compensation will include the payment of actual expenses including, but not limited to, reproduction charges, filing fees, reimbursement for travel expenses and other incidental expenses. Special Counsel shall not perform services the payment for which will exceed \$35,000 total compensation for 2001-2002 fiscal year under this Agreement unless prior authorization is granted by the Santa Cruz County Board of Supervisors.

3. Duration of Agreement. This Agreement shall commence on March 1, 2002, and continue until June 30, 2002. However, either party may terminate this Agreement upon giving the other party 30 days written notice, the effective date of cancellation being the 30th day of said written notice. Special Counsel shall be entitled to the compensation earned prior to the date of termination, computed pro rata up to and including the date of termination.

4. Facilities and Equipment. It is understood and agreed that a portion of the services of Special Counsel under this agreement will be provided at the Office of County Counsel and with the assistance of secretarial staff of the County Counsel's Office. Except as otherwise provided, Special Counsel shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

5. Time. Special Counsel shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Special Counsel's obligations pursuant to this Agreement.

6. Indemnification for Damages, Taxes and Contributions. Special Counsel shall exonerate, indemnify, defend, and hold harmless County (which for the purposes of this paragraph shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which County may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the Special Counsel's performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the County. Such indemnification includes any damage to the person(s), or property(ies) of Special Counsel and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to Special Counsel and Special Counsel's officers, employees and agents engaged in the performance of this Agreement (including, without limitations, unemployment insurance, social security and payroll tax withholding).

7. Equal Employment Opportunity. During and in relation to the performance of this Agreement, the Special Counsel agrees as follows:

Special Counsel will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship), employment, upgrading, demotion or transfer. Special Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discriminatory clause.

8. Special Counsel Not Agent. Except as County may specify in writing, Special Counsel shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Special Counsel shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

9. Ownership of Documents. Except as herein provided, all documents, maps, sketches, reports, graphics, models and listings prepared by Special Counsel in connection with providing services to County under this Agreement shall become the property of County and delivered to County upon termination of this Agreement. Such documents and writing shall not be disclosed to any other person without the prior consent of County.

10. Assignment Prohibited. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt to purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

11. Independent Contractor Status. Special Counsel and County have reviewed and considered the principal test and secondary factors below and agree that Special Counsel is an independent contractor and not an employee of County. Special Counsel is responsible for **all** insurance (workers' compensation, unemployment, etc.) and all payroll related taxes. Special Counsel is not entitled to any employee benefits. County agrees that Special Counsel shall have the right to control the manner and means of accomplishing the result contracted for herein.

Principal Test: Special Counsel, rather than County, has the right to control the manner and means of accomplishing the result contracted for.

Secondary Factors: (a) The extent of control which, by agreement, County may exercise over the details of the work is slight rather than substantial; (b) Special Counsel is engaged in a distinct occupation or business; (c) In the locality, the work to be done by Special Counsel is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The Special Counsel rather than **the** County supplies the instrumentalities, tools, and work place; (f) The length of time for which Special Counsel is engaged is of limited duration rather than indefinite; (g) The method of payment of Special Counsel is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of County; (i) Special Counsel and County believe they are creating **an** independent contractor relationship rather than an employer-employee relationship and (j) The County conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of **an** independent contractor relationship, but rather that overall there are significant secondary factors which indicate that Special Counsel is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the Special Counsel engaged under **this** Agreement is in fact **an** independent contractor.

12. Conflict of Interest. Special Counsel and its employees, and members, including officers of its governing Board shall avoid any actual, apparent or potential conflicts of interest pertaining to services provided under this Agreement.

13. Presentation of Claims. Presentation and processing of any or all claims arising out of or related to ~~this~~ Agreement shall be made in accordance with the provisions contained in Chapter **1.05** of the Santa Cruz County Code, which by this reference is incorporated herein.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

DWIGHT L. HERR

By: _____
SUSAN A. MAURIELLO
County Administrative Office

Address: **407** Spreading *Oak* Drive
Scotts Valley, CA **95066**
Telephone: **(831) 440-1486**

APPROVED AS TO FORM:

By: 
DANA McRAE
County Counsel

DISTRIBUTION: CAO
Auditor-Controller
County Counsel