



111 E. COMMERCIAL STREET
WILLITS, CALIFORNIA 95490
(707) 459-4601 TEL
(707) 459-1562 FAX

**WILLITS CITY COUNCIL
AGENDA
SPECIAL MEETING**

WEDNESDAY, SEPTEMBER 15, 2010 ♦ 6:00 P.M. ♦ COUNCIL CHAMBERS

1. **OPENING MATTERS** – a) Call to Order; b) Roll Call

2. **DISCUSSION AND POSSIBLE APPROVAL OF AN AGREEMENT FOR LEGAL SERVICES WITH JONES HALL, A PROFESSIONAL LAW CORPORATION, TO CONDUCT THE PROCEEDINGS NECESSARY TO ACCOMPANY ISSUANCE OF BONDS FOR FINANCING OF THE WASTE WATER TREATMENT PLANT PROJECT**

3. **CLOSED SESSION NOTICE**
 - a. Conference with Legal Counsel Pursuant to Government Code Section 54956.9 – Existing Litigation: Brooktrails Township Community Services District, a Public Agency vs. City of Willits, a General Law City; and DOES 1 through 100, Inclusive; Case No. SCUJ CVG-1056037
 - b. Conference with Legal Counsel Pursuant to Government Code Section 54956.9 – Existing Litigation: People of the State of California and the City of Willits v. Remco Hydraulics, Inc., et al. (United States District Court – Northern District of California, Case No. C-96-6283 SI 12/22/2000)

4. **ADJOURNMENT**

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the bulletin board at the main entrance of the City of Willits City Hall, located at 111 East Commercial Street, Willits, California, not less than 24 hours prior to the meeting set forth on this agenda.

*Dated this 14th day of September, 2010.
Adrienne Moore, City Clerk*

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

The meeting room is wheelchair accessible and disabled parking is available. If you are a person with a disability and need disability-related modifications or accommodations to participate in this meeting, please contact Adrienne Moore at (707) 459-7120 or Fax (707) 459-1562. Requests for such modifications or accommodations must be made at least two full business days prior to the meeting.

ADDITIONAL MEETING INFORMATION FOR INTERESTED PARTIES

Materials related to an item on this Agenda submitted to the Willits City Council, Planning Commission, or Community Development Agency after distribution of the agenda packet are available for public inspection at City Clerk's office at 111 E. Commercial Street, Willits, during normal business hours.



Item No. 2a

Meeting Date: Sept 15, 2010

AGENDA SUMMARY REPORT

To: Honorable Mayor and Council Members

From: Paul Cayler, City Manager
Joanne Cavallari, Finance Director

Agenda Title: DISCUSSION AND POSSIBLE APPROVAL OF AN AGREEMENT FOR LEGAL SERVICES WITH JONES HALL, A PROFESSIONAL LAW CORPORATION, TO CONDUCT THE PROCEEDINGS NECESSARY TO ACCOMPANY ISSUANCE OF BONDS FOR FINANCING OF THE WASTE WATER TREATMENT PLANT PROJECT

Type: Presentation Consent Special Agenda Public Hearing Urgent Time: 5 min.

Summary of Request: We have received the attached legal agreement from Scott Ferguson of Jones Hall to provide legal services related to the issuance of the \$8,300,000 bonds which will be used to finance the Waste Water Treatment Plant project. This agreement is substantially the same as the agreement that was done in 2007, and has been reviewed by our City Attorney and approved as to form. The fee charged is based on a percentage of the principal. This fee will be financed through the loan proceeds.

Recommended Action: Approve the attached agreement for legal services with Jones Hall to conduct the proceedings necessary to accompany issuance of bonds for financing of the Waste Water Treatment Plant Project.

Alternative(s): None Recommended

Fiscal Impact: The formula for the fee is cumulative, calculated as 1% of \$1 million, plus 0.5% of \$4 million, plus 0.25% of \$3.3 million (i.e., the amount over \$5 million), which adds up to \$38,250 plus reimbursable expenses and travel costs. We have \$45,000 in our USDA project budget to cover Bond Counsel.

Personnel Impact: Minimal

Reviewed by: City Manager City Attorney Finance Director Human Resources Risk

Council Action: Approved Denied Other: _____

Records: Agreement Resolution # _____ Ordinance # _____ Other _____

**JONES HALL,
A PROFESSIONAL LAW CORPORATION**

**AGREEMENT FOR LEGAL SERVICES
(Wastewater System Improvement Project)**

THIS AGREEMENT FOR LEGAL SERVICES is made and entered into on September 15, 2010, by and between the CITY OF WILLITS (the "Client"), and JONES HALL, A Professional Law Corporation, San Francisco, California ("Attorneys").

RECITALS:

WHEREAS, the Client anticipates the issuance of bonds, certificates of participation other indebtedness (the "Bonds") of the Client pursuant to the appropriate state laws to finance public improvements in and for the Client's wastewater system through the sale of the Bonds to USDA Rural Development; and

WHEREAS, the Client has determined that Attorneys are specially trained and experienced to provide services for accomplishing such financing plan and Attorneys are willing to provide such services; and

WHEREAS, the public interest, economy and general welfare will be served by this Agreement for Legal Services;

NOW, THEREFORE, IT IS HEREBY AGREED, as follows:

1. Duties of Attorneys. Attorneys shall provide legal services in connection with the authorization, issuance and consummation of the financing proceedings relating to the Bonds. Such services shall include the following:

a. Confer and consult with the officers and administrative staff of the Client and Client's engineers and consultants as to matters relating to the financing proceedings;

b. Prepare any required resolutions, notices, instructions and legal documents and provide advice by telephone and/or electronic mail as necessary for the proper conduct of the financing proceedings relating to the Bonds;

c. Review all financial documents for legal sufficiency;

d. Prepare and provide a signature and no-litigation certificate, an arbitrage certificate and any and all other closing documents required to accompany issuance of the Bonds;

e. Prepare and provide a complete transcript of the conduct of the proceedings necessary to accompany issuance of the Bonds;

f. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys that the interest on the Bonds is excludable from gross income for purposes of federal income taxation and that such interest is exempt from California personal income taxation; and

g. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys approving in all regards the legality of all proceedings relating to the Bonds.

The legal opinion will be based on facts and law existing as of its date, will cover certain matters not directly addressed by such authorities, and will represent Attorneys' judgment as to the proper treatment of the Bonds for federal income tax purposes. Attorneys' opinion is not binding on the Internal Revenue Service ("IRS") or the courts. Attorneys cannot and will not give any opinion or assurance about the effect of future changes in the Internal Revenue Code of 1986 (the "Code"), the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. Client acknowledges that future legislation, if enacted into law, or clarification of the Code may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Bonds from realizing the full current benefit of the tax status of such interest. Attorneys will express no opinion regarding any pending or proposed federal tax legislation.

In rendering the legal opinion, Attorneys will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Attorneys without undertaking to verify the same by independent investigation, and Attorneys will assume continuing compliance by the Client with applicable laws relating to the Bonds.

2. Compensation. For the services set forth under Section 1, Attorneys shall be paid the percentage compensation set forth below for each series of Bonds (subject to a minimum fee of \$25,000 for each such series).

a. One percent (1%) of the principal amount of the Bonds up to a principal amount of \$1,000,000; plus

b. One-half percent (0.5%) of the principal amount of the Bonds in excess of \$1,000,000 and less than \$5,000,000; plus

c. One-quarter percent (0.25%) of the principal amount of the Bonds in excess of \$5,000,000.

The foregoing compensation includes a maximum of four transcript binders to be delivered after closing. Payment of such compensation shall include all costs and expenses incurred by Attorneys and shall be entirely contingent, shall be due and payable upon the delivery of the Bonds and shall be payable solely from the proceeds of the Bonds and from no other funds of the Client.

3. Exceptions. The services to be rendered for the compensation set forth in Section 2 above do not include the following: (a) any services rendered in any litigation (including judicial validation proceedings deemed necessary by Attorneys) involving the Client or the financing proceedings relating to the Bonds; (b) on-going advice and preparation of necessary documentation regarding compliance with Section 148 of the Internal Revenue Code of 1986, relating to arbitrage limitations and rebate provisions; and (c) conduct of proceedings to increase utility rates under Proposition 218. For such services which Attorneys are directed to render for and on behalf of the Client, compensation shall be on the basis of reasonable fees to be agreed upon by the Client and Attorneys.

4. Attorney-Client Relationship. Upon execution of this Agreement, the Client will be Attorney's client and an attorney-client relationship will exist between Client and Attorneys. Attorneys assume that all other parties will retain such counsel, as they deem necessary and appropriate to represent their interests in this transaction. Attorneys further assume that all other parties understand that in this transaction Attorneys represent only the Client, Attorneys

are not counsel to any other party, and Attorneys are not acting as an intermediary among the parties. Attorneys' services as bond counsel are limited to those contracted for in this Agreement; the Client's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the Client will not affect, however, our responsibility to render an objective Bond Opinion.

5. Conflicts; Prospective Consent. Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the Client, one or more of Attorneys present or future clients will have transactions with the Client. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the Bonds. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent you as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Bonds. Execution of this Agreement will signify the Client's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

6. Responsibilities of the Client.

(a) General. The Client will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the Client, or otherwise deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. During the course of this engagement, Attorneys will rely on Client to provide Attorneys with complete and timely information on all developments pertaining to any aspect of the Bonds and their security. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the Bonds, including the cost of preparing certified copies of proceedings required by Attorneys in connection with the issuance of the Bonds, and printing and publication costs.

(b) Federal Tax Law-Related Responsibilities. The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. As a condition of Attorneys issuing their opinion, you will be required to make certain representations and covenants to comply with certain restrictions designed to insure that interest on the Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Bonds. Attorneys' opinion will assume the accuracy of these representations and compliance with these covenants. Attorneys will not undertake to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds. In this regard, Client agrees to familiarize itself with the relevant requirements and restrictions necessary for the Bonds to qualify for exemption from federal income taxation and to exercise due diligence both before and after issuance of the Bonds in complying with these requirements.

7. Termination of Agreement.

(a) **Termination by Client.** This Agreement may be terminated at any time by the Client with or without cause upon written notice to Attorneys.

(b) Termination by Attorneys. This Agreement may be terminated by Attorneys upon 15 days' written notice to Client if Client fails to follow written legal advice given by Attorneys.

(c) Termination Upon Issuance of Bonds. This Agreement shall terminate upon the issuance of the Bonds.

(d) Consequences of Termination. If this agreement is terminated, all finished and unfinished documents shall at the option of the Client become its property and shall be delivered to the Client by Attorneys.

8. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Attorneys be considered an agent, partner, or employee of the Client.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

CLIENT:

CITY OF WILLITS

Paul Cayler, City Manager

ATTORNEYS:

JONES HALL,
A Professional Law Corporation

Scott R. Ferguson, Vice President