

Bertrand, Fox, & Elliot

2749 Hyde Street
San Francisco, CA 94109
Tel: (415) 353-0999
Fax: (415) 353-0990
[REDACTED]

To: Michael Rock, Town Manager
From: Thomas F. Bertrand, Outside Legal Counsel
Date: April 30, 2012
Re: **Review of Proposed Amendment To
RVFA Joint Powers Agreement**

You requested that I review, on behalf of the Town of Fairfax, the ten-page draft amendment prepared by Jim Karpiak relating to the Town of Ross' new membership in the RVFA effective July 1, 2012. Since Jim represents both the Town of Fairfax and the RVFA, you requested a second attorney review the proposed amendment solely from the perspective of the Town of Fairfax.

Given your request, Jim transmitted his original draft of the amendment to me as well as to the attorneys representing the Town of San Anselmo and the Town of Ross. All four of us worked together on multiple draft versions/revisions to complete a final draft acceptable to all involved legal counsel.

You advised me that your Town council members were chiefly concerned with assuring that the other Authority members were not unfairly assuming the pre-existing retirement/benefit liabilities of the Town of Ross once it joined the RVFA. Those pre-existing liabilities/obligations can be categorized into three different types: (1) CalPERS Medical Program Benefits; (2) CalPERS Public Safety 3%@55 Retirement Benefits; and (3) Compensated Absence Liabilities (accrued vacation, sick and compensatory leave). Following is a summary of how the proposed amendment handles each of these three types of liabilities/obligations:

CONFIDENTIAL
UNLAWFUL TO DISCLOSE

(1) **CalPERS Medical Program Benefits:** Prior to July 1, 2012, both Authority members and Ross participated in different CalPERS medical programs resulting in funding liabilities for each of their active and retired employees. Once Ross joins the Authority on July 1st, the Authority becomes financially responsible for the medical benefits of former Ross employees becoming Authority employees (as well as for any continuing or new Authority employees) and all future retirees. However, the Authority does not become financially responsible for the medical benefits of existing Ross retirees (including the Fire Chief), as these liabilities remain with Ross.

(2) **CalPERS Public Safety 3%@55 Retirement Benefits:** Both the Authority and Ross participate in the CalPERS Public Safety 3%@55 Retirement Plan. Both the Authority and Ross also have established since 2003 the required Side Fund for this plan (which Side Fund requires each employer to account for the difference between the funded status of the larger CalPERS pool to which it is assigned and the funded status of the participating agency). The proposed amendment does not have the Employer Side Funds transferred to the expanded Authority on July 1st. Rather, Ross remains solely liable for its own Employer Side Fund. (Fairfax, San Anselmo and Sleepy Hollow likewise remain solely liable for the Authority's pre-existing Employer Side Fund).

(3) **Compensated Absence Liabilities (Accrued Vacation, Sick, Compensatory Leave):** When Ross joins the Authority on July 1st, its liability for its employees' accrued sick leave, vacation leave and compensatory time balances will transfer to the Authority, and the respective balances of the Authority and of Ross will not be equal to the members' new percentage shares (i.e., Ross' share will be less than its 23.37% share). However, since future Authority balances will be allocated upon members' percentage shares, the amendment establishes a temporary process to reconcile the differences in a fair manner by periodic dollar contributions of the members to a compensated absences reserve fund. Thus, all such respective liabilities will be tracked and reconciled with dollar contributions to the reserve fund until the differences are totally reconciled.

It is my opinion that the proposed amendment, by allocating the respective liabilities for medical, retirement and leave benefits in the manner described above, treats each of the member entities, including the Town of Fairfax, fairly and equitably. The Town of Ross retains sole responsibility for its fair share of its pre-existing obligations/liabilities. The proposed amendment creates a mechanism/fund to account for and reconcile any dollar differences not accounted for by new member percentage shares or by other means. In point of fact, I am unaware of any more fair or equitable manner of parsing out and allocating such liabilities in such a situation in which an existing JPA adds a new member.

Memo to: Michael Rock, Town Manager
April 30, 2012
Page 3

The remainder of the proposed amendment, in dealing with items such as vehicle leases, MERA bond payments, personnel, cash reserves, capital assets, etc, are straight-forward and self-explanatory. These likewise are treated in a clear, fair and equitable manner in the proposed amendment.

In conclusion, the proposed draft amendment adding Ross as a member of the existing Ross Valley JPA treats the existing members, including the Town of Fairfax, in a fair and balanced fashion, including its treatment of Ross' pre-existing medical, retirement and leave obligations. As each new member is added to such an existing JPA, of course, the idea is for all members to realize corresponding reductions in costs. Jim's proposed amendment accomplishes this goal while at the same time treating all the parties even-handedly.

Thank you for the opportunity to review this interesting agreement on the Town's behalf.