

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

Meeting of
October 21, 2006

AGENDA TITLE: Agreement 260-S0711, Calfee & Konwinski, Foreclosure Counsel

DEPARTMENT: Auditor-Controller

DEPT SIGNOFF:

CAO USE ONLY: C

CONTACT: Joe Harn

DATE: 9/28/2006

PHONE: 5456



Senati 10/19/06

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

The Auditor-Controller recommends the Board of Supervisors approve and authorize the Chairman to sign the attached agreement 260-S0711 with Calfee & Konwinski effective upon full execution by both parties and extending for three (3) years thereafter with the option of extending the contract for one (1) additional year. Contractor will provide foreclosure counsel for 1915 and Mello-Roos bond special assessment delinquencies. Contract will not exceed \$25,000 per fiscal year. Adequate funds are budgeted in the CFDs.

CAO RECOMMENDATIONS:

*Recommend approval. Laure A. Hill
10/10/06*

Financial impact? () Yes (X) No

Funding Source: () Gen Fund (X) Other

BUDGET SUMMARY:

Other: CFD Funds

Total Est. Cost _____

CAO Office Use Only:

Funding

4/5's Vote Required () Yes (X) No

Budgeted _____

Change in Policy () Yes (X) No

New Funding _____

New Personnel () Yes (X) No

Savings _____

CONCURRENCES:

Other _____

Risk Management

Total Funding _____

County Counsel

Change in Net County Cost _____

Other

***Explain**

BOARD ACTIONS:

Vote: Unanimous _____ Or

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Ayes:

Date: _____

Noes:

Abstentions:

Attest: Cindy Keck, Board of Supervisors Clerk

Absent:

By: _____



County of El Dorado
OFFICE OF AUDITOR-CONTROLLER

360 FAIR LANE
PLACERVILLE, CALIFORNIA 95667-4193
Phone: (530) 621-5487 Fax: (530) 295-2535

JOE HARN, CPA
Auditor-Controller

BOB TOSCANO
Assistant Auditor-Controller

October 3, 2006

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Subject: Agreement 260-S0711, Calfee & Konwinski

Dear Board Members:

Recommendation:

The Auditor-Controller recommends the Board of Supervisors approve and authorize the Chairman to sign the attached agreement 260-S0711 with Calfee & Konwinski.

Reasons for Recommendation:

Community Facility District and 1915 Bond Indentures require County to take certain measures including foreclosure proceedings on delinquent special assessment parcels. County Counsel is unable to provide these legal services at this time.

Fiscal Impact:

Adequate funds are budgeted in the CFDs and foreclosure costs should be reimbursed from foreclosure proceedings.

Net County Cost

None.

Action to be Taken Following Approval

- 1) Chairman to sign the two (2) original Agreements.
- 2) Board Clerk's office will forward the executed agreement to the Auditor-Controller for distribution.
- 3) Department to send one (1) originally signed contract to Calfee & Konwinski.

Sincerely,

A handwritten signature in black ink that reads "Joe Harn".

Joe Harn
Auditor-Controller

CONTRACT ROUTING SHEET

"URGENT REVIEW"

Contract # 260-S0711

PROCESSING DEPARTMENT:

Department: Auditor's Office
Dept Contact: Heather Pence
Phone #: 621-5854
Dept Head
Signature: [Handwritten Signature]

CONTRACTOR:

Name: Calfee & Konwinski
Address: 611 North Street
Woodland, CA 95695
Phone: (530) 666-2185

CONTRACTING DEPARTMENT:

Auditor-Controller

Compliance with Human Resources requirements? Yes: No: N/A
Compliance verified by:

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 10/10/06 By: [Handwritten Signature]

Approved: Disapproved: Date: By:

2006 OCT 10 PM 5:05
ET DORADO COUNTY COUNSEL
HAND DELIVERED

XIII Non-standard indemnity - OK [Handwritten Signature]

ASSIGNMENT DATE 10/10/2006

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 10/11/06 By: [Handwritten Signature]

Approved: Disapproved: Date: By:

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Department(s):

Approved: Disapproved: Date: By:
Approved: Disapproved: Date: By:

AGREEMENT FOR LEGAL SERVICES #260-S0711

THIS AGREEMENT is made and entered into between the County of El Dorado ("County"), a governmental entity organized and existing under the laws of the State of California, and Calfee & Konwinski, A Professional Corporation, a professional law corporation ("Law Firm"), duly authorized to do business in the State of California, whose principal place of business is 611 North Street, Woodland, California 95695, for the performance of specific legal services for County.

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a consultant to provide legal services relative to the preparation of legal proceedings regarding the collection of delinquent special taxes for special assessment districts and Mello Roos districts.

WHEREAS, Law Firm has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state, and local laws, and

WHEREAS, County has determined that the provision of such services provided by Law Firm are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code 31000;

NOW, THEREFORE, County and Law Firm mutually agree as follows:

ARTICLE I

Scope of Services:

The County retains the Law Firm as special legal counsel under the direction of County Counsel and the Auditor/Controller, to advise and represent County in legal proceedings regarding the collection of delinquent 1915 Improvement Bond assessments for the El Dorado Hills Business Park Phase 1 Refunding Assessment District, El Dorado Hills Business Park Phase 2 Refunding Assessment District, and El Dorado Hills Community Facilities Districts Nos. 1992-1, 2001-1, 2005-1, and 2005-2. Such legal services shall include all such services normally provided by the Law Firm, which are reasonably related to the accomplishment of the County's goal of recovery of all delinquent 1915 and Mello-Roos Improvement Bond assessment accounts that are referred to the Law Firm for collection efforts.

The Law Firm and every employee there shall provide their services, advice and reports in full compliance with all applicable law and professional standards, and each individual providing legal services shall be a member in good standing of the California State Bar.

The parties acknowledge that the delinquent 1915 Improvement Bond assessments for the El Dorado Hills Business Park Phase 1 Refunding Assessment District and El Dorado Hills Business Park Phase 2 Refunding Assessment District to which Law Firm's services shall apply are extremely delinquent and issues exist with respect to the County's compliance with its responsibilities and obligations to the Bondholders. The parties further acknowledge and agree that prior to entering into this Agreement, Law Firm has had no involvement with the subject matter of the anticipated services or the resultant situation of the delinquencies as they currently exist.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire three (3) years from the date thereof. This Agreement may be extended for one (1) additional one-year period if mutually agreed between the parties hereto in writing not less than thirty (30) days prior to the expiration of the then current Agreement.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Law Firm monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. Such itemized invoices shall identify the services rendered, and specify the time expended in rendering such services, calculated in no greater than one-tenth (.10) hour increments.

For the purposes hereof, County agrees to pay Law Firm for its attorney services time at an hourly rate of \$210.00. Law Firm shall be entitled to reimbursement for its actual costs and expenses incurred in addition to attorney time spent in these matters, (i.e. newspaper publication charges, delivery charges, process service, etc., excluding expenses for expert witness consultants or co-counsel) provided proof of payment supports invoices, however this shall not include normal operating expenses.

Law Firm shall not charge for the toll cost of telephone calls, regular postage, copies or any other similar items unless there is a special circumstance requiring an inordinate quantity. In the case of such a special circumstance, Law Firm will charge for actual postage charges incurred and copies at the rate of 10 cents per copy. Law Firm will also not charge for secretarial or clerical time unless overtime is required for a special circumstance. Secretarial overtime is billed at \$25 per hour. The Law Firm may utilize outside services as Law Firm deems appropriate for a particular task. Any utilization of outside services or situations of special circumstance in excess of \$100 per occurrence shall require advance written approval of County.

Despite Law Firm's location in Yolo County, Law Firm shall not charge any travel time to County for court appearances by attorneys and conferences with County at County's offices. Chris Konwinski, a principal of Law Firm, is a resident of El Dorado County and will be the attorney primarily responsible for Law Firm's services contemplated

hereunder. Law Firm shall keep proper records to enable County to verify the services rendered, and such records shall be made reasonably available to County or its agents for inspection and audit.

The total amount of this Agreement shall not exceed \$25,000.00 per year. In no event shall the making by County of any payment to Law Firm constitute or be construed as a waiver by County of any breach of covenant, or any default which may then exist on the part of Law Firm, and the making of any such payment by County while any such breach or default shall exist in no way impair or prejudice any right or remedy available to County in respect to such breach or default.

ARTICLE IV

Ownership of Documents. All documents and other writings prepared by or for Law Firm in the course of implementing this Agreement shall become the property of County immediately and the County shall have the right to use such materials in its discretion without compensation to the Law Firm or any other party other than the compensation provided under this Agreement.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California State Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of the Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder. Provided however, the Law Firm shall be compensated for services rendered and expenses incurred through the effective date of cancellation.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department of which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be

canceled in its entirety subject to payment for services performed and expenses incurred prior to the effective date of cancellation.

ARTICLE VII

Termination: This Agreement shall be terminable by the County at any time for any reason upon a 10-day notice to Attorney. Funds budgeted for the purpose of this Agreement are made available on a fiscal year basis, and budgeting is subject to change at any time. Should funding not be made available, this Agreement shall be automatically terminated in its entirety. Attorney may terminate this Agreement upon sufficient written notice to County, made in such a manner so that the County shall not be prejudiced. Upon termination of this Agreement for any reason, Attorney shall immediately cease all work, and within ten (10) days shall provide a final bill to County for all services rendered. The obligation of confidentiality shall continue and shall not terminate when this Agreement ends.

ARTICLE VIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO
AUDITOR-CONTROLLER
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: JOE HARN

Or to such other location as the County directs.

Notices to Law Firm shall be addressed as follows:

CALFEE & KONWINSKI
611 NORTH STREET
WOODLAND, CA 95695
ATTN: CHRIS KONWINSKI

Or to such other location as Law Firm directs. Such notices shall be deemed deliverable seven (7) days after deposit in the United States Post Office.

ARTICLE IX

Consultant to County: The Law Firm and every employee there shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Law Firm represents that it is experienced and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is licensed to practice in California. Further, Law Firm certifies that it will not accept representations in any

matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein.

ARTICLE X

Assignment and Delegation: Law Firm certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner. It is understood that the services under this Agreement must be provided immediately, and that they are time-critical. Law Firm is engaged by County for its unique qualifications and skills. Law Firm shall not subcontract, delegate or assign the legal services to be provided under this Agreement, in whole or in part, to any other person or entity not employed by Law Firm without written consent of County.

ARTICLE XI

Attorney-Client Relationship: Law Firm agrees that it will comply with all ethical duties, will maintain the integrity of the lawyer-client relationship, and will take all steps available to preserve all applicable legal privileges, confidences, and records from disclosure. All documents and information obtained by or generated by Law Firm pursuant to this contract, all opinions and conclusions of Law Firm, any reports, information, data, statistics, forms, procedures, systems, studies and all communications with County, are confidential. Law Firm is responsible for insuring that it and all of its employees faithfully adhere to the confidentiality requirements of law and this Agreement.

Notification of Potential Conflicts of Interest: Attorney certifies that it will not accept representation in any matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein. Attorney shall immediately notify County if any services to be performed under this Agreement involves an actual or potential conflict of interest unless Attorney first makes full and complete disclosure of all relevant facts and obtains a written waiver of such conflict in advance from County.

ARTICLE XII

Independent Consultant/Liability: The Law Firm and all persons who perform services for or through the Law Firm pursuant to this Agreement shall be an independent contractor and shall not be deemed to be an employee of the County for any purpose.

ARTICLE XIII

Indemnity: To the fullest extent allowed by law, the Law Firm shall defend, indemnify, and hold harmless the County against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind and description, including reasonable attorneys' fees and costs incurred, which are claimed to or in any way arise out of, directly or indirectly, or are connected with: (1) any negligent act, whether passive or active, error or omission, or willful misconduct, of the Law Firm, its subcontractor(s), agents or employee(s) or any of these; or (2) any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities, or duties required of Law Firm by this Agreement. The

duty of Law Firm to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

ARTICLE XIV

Insurance: Law Firm shall maintain insurance in a form acceptable to County to be in full force and effect from the first day of the term of this Agreement, as set forth below. Law Firm specifically represents that it maintains errors and omissions insurance applicable to the services to be rendered under this Agreement.

Proof of Insurance: Law Firm shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation in the form of a copy of the policy evidencing that Law Firm maintains insurance that meets the following requirements:

- A. Full Workers Compensation and Employers Liability Insurance covering all employees of Law Firm as required by law in the State of California;
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Professional liability insurance is required with a limit of liability not less than \$1 million per occurrence.
- D. Law Firm shall furnish evidence of insurance satisfactory to the El Dorado County Risk Manager proving the insurance required above, is being maintained.
- E. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- F. Law Firm agrees that the insurance required above shall be in effect at all times during the term of this contract. In the event the Law Firm fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. As to Commercial General Liability Insurance, Law Firm shall provide a certificate of insurance that shall provide the following provisions:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the County; and
 - 2. The county of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this contract are concerned.
- H. Law Firm's Commercial General Liability Insurance coverage as it applies to the operations under this contract, shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of Law Firm's insurance and shall not contribute with it.

- I. As a condition of the effectiveness of this Agreement, any deductibles or self-insured retentions must be declared to and approved by the County.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- K. The insurance companies shall have no recourse against the County, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- L. Law Firm's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of its Agreement.
- M. In the event Law Firm cannot provide an occurrence policy, the Law Firm shall provide insurance covering claims made as a result of performance of this contract for not less than three years following completion of performance of this Agreement.

ARTICLE XV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Law Firm under this Agreement shall participate in or attempt to influence any decisions relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVI

Interest of Consultant: Law Firm shall immediately notify County if any services to be performed under this Agreement involves an actual or potential conflict of interest, financial or otherwise. Law Firm shall not engage in any activity under this Agreement that involves any actual or potential conflict of interest unless Law Firm first makes a full and complete disclosure of all relevant facts and obtained a written waiver of such conflict in advance from County.

ARTICLE XVII

California Residency (Form 590): All independent consultants providing services to the County must file a State of California Form 590 certifying their California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. Law Firm will be required to submit a Form 590 prior to execution of this Agreement or County shall withhold seven (7) percent of each payment to be made to Law Firm during the term of this Agreement. This requirement applies to any Agreement exceeding \$1,500.00.

ARTICLE XVIII

Taxpayer Identification Number (Form W-9): All independent consultants or corporations providing services to the County must file a Department Treasury Internal Revenue Services Form W-9, certifying their Taxpayer Identification Number

ARTICLE XIX

Administrator: For purposes of administering this Agreement, the County shall be represented by County Counsel and Joe Harn, Auditor-Controller, or successor.

ARTICLE XX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXI

Partial Invalidity: If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

REQUESTING DEPARTMENT CONCURRENCE:

By _____ Date: _____
Joe Harn
Auditor-Controller

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year set forth below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
James R. (Jack) Sweeney, Chairman
Board of Supervisors
"County"

**ATTEST: Cindy Keck, Clerk
of the Board of Supervisors**

By: _____ Dated: _____

Dated: _____

-- "LAW FIRM" --

Dated: _____

CALFEE & KONWINSKI
A Professional Corporation

By: _____
Christopher J. Konwinski
State Bar #122099

By: _____ Dated: _____
Corporate Secretary