

RESOLUTION NO. 3312-2009

RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE LETTERS OF REPRESENTATION WITH ROBERT GULLEY AND MARK STERMITZ TO REPRESENT THE CITY OF FORT BRAGG IN THE MATTER OF 128 FERC ¶ 6161,034; UNITED STATES OF AMERICA; FEDERAL REGULATORY COMMISSION; GREEN WAVE ENERGY SOLUTIONS, LLC; PROJECT NO. 13053-001

WHEREAS, the City of Fort Bragg ("City") has obtained "intervenor" status in a proposed wave energy project ("Project") whereby a preliminary permit has been issued by the Federal Energy Regulatory Commission ("FERC") to Green Wave Energy Solutions, LLC ("Green Wave"); and

WHEREAS, the City (and other intervenors) expressed concerns to FERC about siting of the Project, its potential adverse environmental and economic effects, and the lack of a comprehensive plan by which applications for such preliminary permits are processed and evaluated; and

WHEREAS, on February 6, 2009, the City joined in a motion filed with FERC seeking to compel FERC to develop a comprehensive plan and to stop issuing preliminary permits for wave energy projects in the Pacific Ocean until a comprehensive plan was developed; and

WHEREAS, on May 1, 2009, FERC issued a preliminary permit to Green Wave and denied the City's motion; and

WHEREAS, the City (and other intervenors) have exhausted their administrative remedies relating to the issuance of the preliminary permit to Green Wave; and

WHEREAS, the City wishes to pursue judicial review of FERC's denial of the City's motion by filing a petition for review with the Ninth Circuit Court of Appeals, said petition to be filed jointly with other intervenors and interested parties; and

WHEREAS, Robert Gulley and Mark Stermitz are attorneys who are well qualified to represent the City's interests in an appellate review; and

WHEREAS, Robert Gulley and Mark Stermitz have verbally offered to represent the interests of the City on a "pro bono" basis in seeking appellate review of this matter; and

WHEREAS, the basis and scope of representation of the City's interest by Robert Gulley is described in the letters of representation, attached hereto as Exhibit A; and

WHEREAS, while Mark Stermitz has not yet confirmed his representation of the City in this matter in writing, it is anticipated that Mr. Stermitz will agree to represent the City's interests in this matter on substantially the same terms and conditions as those set forth in Exhibit A; and

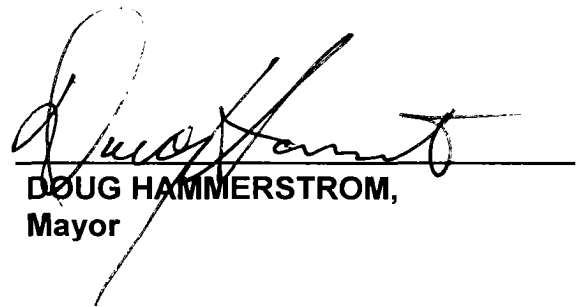
WHEREAS, the City Council finds that it is in the interests of the City and its residents to engage the services of Robert Gulley and Mark Stermitz on the terms and conditions described in the attached letter of representation;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg hereby authorizes the City Manager to execute the letter of representation with Robert Gulley in the form attached as Exhibit A to represent the City in the herein described matter.

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg hereby authorizes the City Manager to execute a letter of representation with Mark Stermitz in a form substantially similar to Exhibit A to represent the City in the herein described matter.

The above and foregoing Resolution was introduced by Councilmember Turner, seconded by Councilmember Melo, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 14th day of September, 2009, by the following vote:

AYES: Councilmembers Turner, Courtney, Gjerde, Melo, and Mayor Hammerstrom.
NOES: None.
ABSENT: None.
ABSTAIN: None.



DOUG HAMMERSTROM,
Mayor

ATTEST:



Cynthia M. VanWormer, CMC
City Clerk

EXHIBIT "A"

**Michael Gogna
Attorney at Law
707.545.8009**

PRIVILEGED AND CONFIDENTIAL

August 21, 2009

Robert L. Gulley, Esq.
106 Ruelle Lane
San Antonio, Texas 78209

**RE: Engagement for Pro Bono Legal Services for Representation of Fort Bragg
FERC Proceeding, Project No. P-13053, Green Wave Mendocino Project**

Dear Mr. Gulley:

Thank you for offering to perform legal services on a *pro bono* basis on behalf of the City of Fort Bragg ("City") for the limited purpose of submitting a Petition for Review to the Ninth Circuit Court of Appeals regarding a decision from the Federal Energy Regulatory Commission ("FERC") in the above-referenced matter. As you know, I serve as City Attorney for the City, and on its behalf, let me express our appreciation for your offer to assist the City in this matter.

This letter sets forth the City's proposed terms for legal services you will provide to the City. (If appropriate, the City will enter into a separate engagement agreement with Mark Stermitz, who may serve as co-counsel with you in the matter.) Please read this agreement and if it is acceptable, please sign and return it to us.

- 1. Scope of Engagement.** You will provide the legal services reasonably required to prepare and file a Petition for Review or a Joint Petition for Review (with other intervenors and interested parties) to the Ninth Circuit Court of Appeals in the above-referenced matter on behalf of the City. (Said services are hereinafter referred to as "Services"). Your work in the matter will be limited to preparing and filing the Petition (or Joint Petition). In this regard, you will not be required to provide the City with advice regarding the case itself or representing the City in any other way. You will not be expected or required to provide other legal services unless you first agree to perform that additional work.
- 2. Fees and Costs.** You agree to perform the Services on behalf of the City on a *pro bono* basis and at no cost to the City. Before incurring any costs that you expect to be borne by the City, you will get prior approval of the City Manager to incur such costs prior to incurring same. Any costs incurred by you on behalf of the City without the prior approval of the City will not be borne by the City.
- 3. Termination of Services:** You or the City may terminate this Agreement or your performance of Services at any time by providing five (5) business days prior written notice. After either providing or receiving such notice, you will cease providing services.

Robert Gulley, Esq.
August 21, 2009
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4. No Guarantee of Outcome. The City understands that any comments made by you about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

5. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains the entire agreement regarding your representation of the City in this matter. Any modifications or additions to this letter agreement must be made in writing.

If this letter is acceptable to you, please sign and return one original to this office. Again, on behalf of the City, we thank you for agreeing to provide the Services described in this letter on a *pro bono* basis.

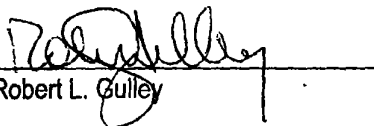
Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON


Michael Gogna, City Attorney
City of Fort Bragg

cc: Linda Ruffing, City Manager

These terms are accepted and agreed to as of the date of this letter.

By: 
Robert L. Gulley

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