

**Meeting Date:** 11/24/2015

**Report Type:** Consent

**Report ID:** 2015-01053

**Title:** Agreement for Bond-Counsel Services with Orrick, Herrington & Sutcliffe (Refunding of 2002 COPs)

**Location:** Citywide

**Recommendation:** Pass a Motion approving an agreement with Orrick, Herrington & Sutcliffe for bond-counsel services needed in connection with refunding the 2002 Certificates of Participation issued to finance the Wells Fargo Pavilion.

**Contact:** Joseph Cerullo, Senior Deputy City Attorney (916) 808-5346, Office of the City Attorney

**Presenter:** None

**Department:** City Attorney

**Division:** City Attorney

**Dept ID:** 03001011

**Attachments:**

1-Description/Analysis

2-Attachment (Agreement for Bond-Counsel Services)

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### **City Attorney Review**

Approved as to Form

Matthew Ruyak

11/18/2015 10:59:47 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Sandra Talbott - 11/17/2015 10:00:26 AM

## Description/Analysis

### Issue Detail:

In August 2002, the Sacramento Regional Arts Facilities Financing Authority issued long-term debt—known as Certificates of Participation (the “**COPs**”)—to fund construction of the Wells Fargo Pavilion, the primary venue for California Musical Theater (“**CMT**”). The 2002 COPs also funded construction of facilities used by the Sacramento Theater Company. Because today’s interest rates are lower than the 2002 rates, the Sacramento Public Financing Authority (the “**Authority**”) plans to issue new debt and use the proceeds to refund the 2002 COPs. The City Council approved this refunding “in concept” at its meeting on July 21, 2015.

Bond-counsel services for the new debt will be provided by Orrick, Herrington, and Sutcliffe. A copy of the agreement for those services is attached to this report.

**Policy Considerations:** CMT leases the Wells Fargo Pavilion from the City and pays rent equal to debt service on the 2002 COPs. A successful refunding will lower the annual cost of debt service, thereby substantially reducing CMT’s annual rent. Importantly, the term of the new debt—and thus CMT’s obligation to pay rent—will *not* extend beyond the current maturity date of the 2002 COPs.

**Economic Impacts:** None.

**Environmental Considerations:** None. Passage of the motion is not a “project” subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to continuing administrative activities. (14 Cal. Code Regs. §§ 15061(b)(3), 15378(b)(2).)

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** Refunding the 2002 COPs will improve CMT’s financial stability by reducing its annual rent for use of the Wells Fargo Pavilion, and the assistance of bond counsel is critical to the success of the refunding.

**Financial Considerations:** None. Compensation for bond-counsel services is contingent on a successful issuance of the new debt and will be paid exclusively from proceeds of the new debt.

**Local Business Enterprise (LBE):** Not applicable.

## AGREEMENT FOR BOND-COUNSEL SERVICES

### Certificates of Participation related to California Music Circus and Sacramento Theatre Company

This Agreement for Bond-Counsel Services, dated as of October 5, 2015, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”); and ORRICK, HERRINGTON & SUTCLIFFE LLP, a California limited-liability partnership (“**Orrick**”).

#### Background

The City desires to engage the services of Orrick in connection with the authorization, issuance, sale, execution, and delivery by the City and the Sacramento Public Financing Authority (“**SPFA**”) of a lease financing (the “**2015 Financing**”), for the purpose of refunding certain Sacramento Regional Arts Facilities Financing Authority Series 2002 Certificates of Participation (the “**2002 COPs**”).

The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the 2015 Financing and to specify the terms of the engagement. Orrick possesses the necessary professional capabilities and resources to provide the legal services required by the City and SPFA, as described in this agreement.

#### *With these background facts in mind, the parties hereby agree as follows:*

1. *Scope of Services.* The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City and SPFA in connection with the 2015 Financing:
  - (a) Consultation on the timing, terms, and legal structure of the 2015 Financing with the City’s and SPFA’s representatives, including the City Treasurer and the City Attorney; the City’s financial advisor, First Southwest Company, LLC; the placement agent, Stifel, Nicolaus & Company, Incorporated, and its counsel (if any); the purchaser of the 2015 Financing and its counsel; and others.
  - (b) Preparation of documents that are required for the authorization, issuance, sale, execution, and delivery of the 2015 Financing and are to be adopted or entered into by the City or SPFA, including authorizing resolutions, trust agreements, site leases, facility leases, and a purchase contract (the “**Major Legal Documents**”). The Major Legal Documents do not include any official statement or continuing-disclosure certificate or agreement.
  - (c) At the City’s request, (1) attendance at meetings or hearings of the Sacramento City Council whether sitting as such or as SPFA’s board of directors (the “**City Council**”) and at working-group meetings or conference calls; and (2) assistance to the City’s staff in the preparation of reports and presentations to the City Council.

- (d) Rendering of Orrick's customary form of a final approving opinion to the City and SPFA on the validity of the 2015 Financing and the tax-exempt status of interest on the 2015 Financing.
  - (e) Preparation and delivery to the City of a transcript of the legal proceedings for the 2015 Financing in both loose-leaf and CD-ROM formats.
  - (f) After issuance of the 2015 Financing, telephone consultations with the City's officials, staff, and consultants to answer questions about the facts and circumstances concerning the 2015 Financing.
2. *Excluded Services.* Orrick's services under this agreement do not include the following, although Orrick may provide these services under a separate agreement with the City or SPFA:
- (a) Legal services in connection with any litigation or other legal or administrative proceeding, audit, or investigation involving any of the 2015 Financing or any related matter.
  - (b) Legal services related to compliance with the California Environmental Quality Act.
  - (c) Legal services in connection with arbitrage-rebate compliance respecting the 2015 Financing.
  - (d) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property.
  - (e) Financial analysis or advice.
3. *Circulation and Review of Documents.* The City retains the full-time services of the Sacramento City Attorney and the City Attorney's Office for day-to-day and ongoing legal services. Orrick shall circulate documents to, and coordinate its services with, the City Attorney to the extent requested by the City or the City Attorney. Orrick may assume that the City Attorney or one of the attorneys in the City Attorney's Office has reviewed all documents and matters submitted to the City Council for adoption or approval, or to the City's or SPFA's officers for execution, before those documents and matters are adopted, approved, or executed.
4. *Compensation.* As consideration for the services set forth in section 1, the City shall pay to Orrick the following fees and disbursements:
- (a) As legal fees, the City shall compensate Orrick for legal services rendered based on the time expended by Orrick's attorneys and paralegals at their hourly rates in effect from time to time. As of the effective date of this agreement, the standard hourly rates for the attorneys and paralegals most likely to work on the 2015 Financing are Jenna Magan (\$795), Brandon Dias (\$705), Chas Cardall (\$910), John Stanley (\$705), and

Melissa Warr (\$270). Any increase in these rates will be effective as of the date Orrick gives the City written notice of the increase in accordance with section 10 below.

- (b) As reimbursement of expenses (disbursements), including preparation and distribution of a transcript in loose-leaf and CD-ROM formats, a flat amount of \$1,500.
  - (c) On January 1, 2016, and on each April 1, July 1, October 1, and January 1 thereafter, Orrick shall provide the City with a summary of the total legal fees and expenses accrued up to the date of the summary for services rendered under this agreement.
  - (d) Except as provided in section 5 regarding the City's termination of this agreement, payment of legal fees and reimbursement of expenses is contingent upon the issuance, sale, execution, and delivery of the 2015 Financing and will be exclusively from the proceeds of the 2015 Financing. The amounts owed will be due and payable forthwith upon Orrick's presentation of an invoice after the issuance, sale, execution, and delivery.
5. *Termination.* Either party may, at any time, terminate this agreement and all legal services to be rendered under it, with or without cause, by giving written notice to the other party. In that event, all finished and unfinished documents that Orrick has prepared for the City's or SPFA's adoption, approval, or execution will, at the City's option, become the City's property, and Orrick shall deliver them to the City or to any person or entity the City may designate, all subject to the condition that Orrick will have no liability whatsoever for any subsequent use of the documents. If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at Orrick's hourly rates specified in section 4(a) above, subject to the following: if the City terminates for cause, then any compensation is to be adjusted in the light of the facts and circumstances involved in the termination. If not sooner terminated, then this agreement and all legal services to be rendered under it will terminate upon issuance, sale, execution, and delivery of the 2015 Financing, except that the City will remain liable for any unpaid fees and expenses due under section 4 above. Upon termination, Orrick will have no future duty of any kind to the City or SPFA with respect to the 2015 Financing, except as provided in sections 1(e) and 1(f) above.
6. *Role of Bond Counsel.*
- (a) The role of bond counsel in financings, generally, is to prepare or review documents and to coordinate the procedures for authorization of the issuance, sale, execution, and delivery of the bonds and to provide an expert legal opinion with respect to the validity of the bonds and other subjects addressed by the opinion. Consistent with the historical origin and unique role of bond counsel, and the reliance thereon by the public-finance market generally, Orrick's role as bond counsel under this agreement is not the partisan role of an advocate. Instead, Orrick's role is to provide legal documents needed for the issuance, sale, execution, and delivery of the 2015 Financing and to provide an opinion that represents Orrick's objective judgment on the matters addressed therein.

- (b) In performing its services as bond counsel under this agreement, Orrick will act as special counsel to the City and SPFA with respect to issuance, sale, execution, and delivery of the 2015 Financing. In that capacity, Orrick shall assist the City staff in representing the City and SPFA, but only with respect to the sufficiency of the legal documents for the issuance, sale, execution, and delivery of the 2015 Financing and in a manner not inconsistent with the role of bond counsel described in section 6(a) above.
  - (c) Orrick's function and responsibility under this agreement, and as bond counsel with respect to the issuance, sale, execution, and delivery of the 2015 Financing, terminates upon the issuance, sale, execution, and delivery of the 2015 Financing (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through issuance, sale, execution, and delivery of the 2015 Financing are limited to those contracted for explicitly in this agreement. Any engagement of Orrick with respect to rebate compliance, disclosure, or any other matter is separate and distinct from its engagement as bond counsel through issuance, sale, execution, and delivery of the 2015 Financing. Unless otherwise provided, any post-issuance engagement with respect to the 2015 Financing will continue on the same basis set forth in this section 6.
7. *Conflicts.* Orrick regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, Orrick has represented, is representing, and expects to represent in the future other public entities such as the County of Sacramento (which was involved in the 2002 COPs and will be involved with 2015 Financing to the extent agreed to by the City and the County); bond underwriters such as Stifel, Nicolaus & Company, Incorporated; banks such as the purchaser of the 2015 Financing; trustees, rating agencies, insurers, credit-enhancement providers, and lenders; contractors, suppliers, financial and other consultants and advisors, accountants, investment providers or brokers, and providers or brokers of derivative products; and others who may have a role or interest in the 2015 Financing or who may be involved with, or adverse to, the City in this or some other matter. Except as the 2015 Financing relates to the County of Sacramento, Orrick shall not represent any other private and public entities in connection with the 2015 Financing without the City's express written consent. Given the special, limited role of bond counsel described in section 6 above, the City (a) acknowledges that no conflict of interest exists or would exist in connection with any matter other than the 2015 Financing; (b) waives any such conflict of interest that might appear actually or potentially to exist, now or in the future, by virtue of this agreement or any other attorney-client relationship Orrick may have had, may have, or may enter into; and (c) consents to all such relationships subject to the condition that a separate conflict-waiver letter will be prepared with respect to Orrick's concurrent representation of the City and any other entity in connection with the issuance, sale, execution, and delivery of the 2015 Financing.
8. *Third-Party Rights.* This agreement is for the benefit of the City and Orrick and is not intended to benefit any third parties other than SPFA. Nothing in this agreement or in any of the documents expressly or impliedly contemplated by this agreement gives any person or entity

other than the City, SPFA, and Orrick any legal or equitable right or claim under, or in respect of, this agreement. This agreement inures to the sole and exclusive benefit of the City, SPFA, and Orrick.

9. *Assignment.* Orrick may not assign its obligations under this agreement without the City's express written consent, except to a successor partnership or corporation to which all or substantially all of the assets and operations of Orrick are transferred. The City may not assign its rights and obligations under this agreement without Orrick's express written consent. All references to Orrick and the City in this agreement refer to their respective successors and assignees and will bind and inure to the benefit of their successors and assignees whether so expressed or not.
10. *Notice.* To be effective, notices pertaining to this agreement must be sent by the U.S. Postal Service, first class, postage prepaid, addressed as follows:

*If to the City:*

City Treasurer's Office  
915 "I" Street  
Historic City Hall, Third Floor  
Sacramento, CA 95814-2704  
Attention: Brian Wong

*and*

City Attorney's Office  
915 "I" Street, Fourth Floor  
Sacramento, CA 95814  
Attention: Joseph Cerullo

*If to Orrick:*

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, CA 95814  
Attention: Jenna Magan

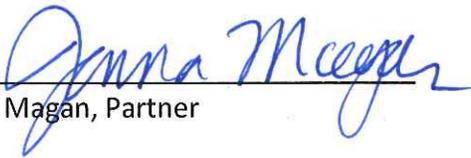
11. *Counterparts.* The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

*(Signature Page Follows)*

**City of Sacramento**

**Orrick, Herrington & Sutcliffe LLP**

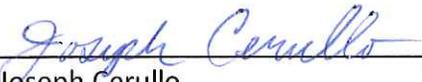
By: \_\_\_\_\_  
James Sanchez, City Attorney

By:  \_\_\_\_\_  
Jenna Magan, Partner

Attest:  
Sacramento City Clerk

By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

By:  \_\_\_\_\_  
Joseph Cerullo  
Senior Deputy City Attorney