

Meeting Date: 12/8/2015

Report Type: Consent

Report ID: 2015-01108

Title: Agreement for Bond-Counsel Services with Orrick, Herrington & Sutcliffe and Disclosure-Counsel Agreement with Stradling Yocca Carlson & Rauth (McKinley Village Community Facilities District)

Location: Citywide

Recommendation: Pass a Motion approving an agreement with Orrick, Herrington & Sutcliffe for bond-counsel services and an agreement Stradling Yocca Carlson & Rauth for disclosure-counsel services in connection with the issuance and sale of Mello-Roos bonds through the McKinley Village Community Facilities District.

Contact: Joseph Cerullo, Senior Deputy 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-Bond-Counsel Agreement for McKinley Village
- 3-Disclosure-Counsel Agreement for McKinley Village

City Attorney Review

Approved as to Form
Matthew Ruyak
12/3/2015 10:07:35 AM

Approvals/Acknowledgements

Department Director or Designee: Sandra Talbott - 12/3/2015 8:26:34 AM

Description/Analysis

Issue Detail: The developer of McKinley Village has asked that the City issue special-tax bonds through the McKinley Village Community Facilities District to finance the construction and acquisition of public infrastructure and the payment of certain development-impact fees. Bond-counsel services for this issuance will be provided by Orrick, Herrington, and Sutcliffe (“**Orrick**”), and disclosure-counsel services will be provided by Stradling Yocca Carlson & Rauth (“**Stradling**”). Copies of the agreements for these services are attached to this report.

Policy Considerations: Orrick has extensive statewide experience in issuing special-tax bonds, also known as Mello-Roos bonds, and has served as bond counsel for the City’s issuance of such bonds over the past 20 years. Stradling has served as disclosure counsel for the City on several previous bond issues and thus is knowledgeable about the City’s operations and finances.

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: The bonds will be used to finance the acquisition and construction of public infrastructure and the payment of development-impact fees used to construct public infrastructure, thereby facilitating the growth and development of East Sacramento. The services of experienced bond counsel and disclosure counsel are essential for the bond issuance to succeed.

Financial Considerations: If bonds are sold, then Orrick’s and Stradling’s compensation will be paid from bond proceeds. If, however, bonds are not sold, then Orrick’s and Stradling’s compensation will be paid from funds deposited with the City by the developer of McKinley Village.

Local Business Enterprise (LBE): None

AGREEMENT FOR BOND-COUNSEL SERVICES

CITY OF SACRAMENTO MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2015-04 (IMPROVEMENTS) SPECIAL TAX BONDS, SERIES 2015

This Agreement for Bond-Counsel Services, dated as of October 1, 2015, for reference only, 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 issuance, sale, and delivery through the City of Sacramento McKinley Village Community Facilities District No. 2015-04 (Improvements) (the “CFD”) of a single series of fixed-rate, unrated, uninsured, privately placed bonds (the “Bonds”) for the purpose of financing certain authorized public facilities in and for, and certain authorized governmental fees to be used to finance public facilities in and for, the McKinley Village Project. The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the Bonds 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 as described in this agreement.

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

1. *Legal Services.* The City hereby retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City in connection with the Bonds:
 - (a) Consultation with representatives of the City (including the City Treasurer and the City Attorney), the placement agent and its counsel, and others with respect to the timing, terms, and legal structure of the Bonds.
 - (b) Preparation of documents that are required for the issuance, sale, and delivery of the Bonds and are to be adopted or entered into by the City, including an authorizing resolution and an indenture or similar document (the “Major Legal Documents”). The Major Legal Documents do not include any acquisition agreements, joint community facilities agreements, official statements or other marketing or disclosure documents, term sheets, purchase contracts, and continuing disclosure certificates or agreements, which the placement agent’s counsel or the City’s disclosure counsel will prepare.
 - (c) Attendance at such meetings or hearings of the City Council and at such working-group meetings or conference calls as the City may request, and assistance to the City’s staff in preparation of such explanations or presentations to the City Council as the City may request.
 - (d) Rendering of Orrick’s final approving opinion to the City on the validity of the Bonds and the tax-exempt status of interest on the Bonds, qualified as necessary to reflect the facts and circumstances of this transaction.

- (e) After delivery of the Bonds, preparation and delivery to the City of a transcript of the legal proceedings for the Bonds in both loose-leaf and CD-ROM formats.
 - (f) After delivery of the Bonds, telephone consultations with the City's officials and staff to answer questions about the facts and circumstances concerning the Bonds.
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:
- (a) Legal services in connection with any litigation or other legal or administrative proceeding, audit, or investigation involving any of the Bonds or any related matter.
 - (b) Legal services in connection with the preparation, content, or dissemination of any official statement or other marketing or disclosure document or term sheet.
 - (c) Legal services related to compliance with the California Environmental Quality Act.
 - (d) Legal services in connection with arbitrage-rebate compliance respecting the Bonds.
 - (e) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property.
 - (f) Financial analysis or advice.
3. *City Attorney Review.* Orrick and the City acknowledge that the City retains the full-time services of the City Attorney and City Attorney's Office to render day-to-day and ongoing legal services to the City. 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 officers for execution, before those documents and matters are adopted, approved, or executed.
4. *Consideration for Legal Services.*
- (a) As consideration for Orrick's services under this agreement, the City shall pay to Orrick—
 - (1) legal fees in an amount equal to the greater of \$75,000 or 1.0% of the principal amount of the Bonds; plus
 - (2) a flat amount of \$1,500 to reimburse Orrick's expenses, including the costs to prepare and distribute a transcript in loose-leaf and CD-ROM formats.
 - (b) Except as provided in section 5 respecting the City's termination of this agreement, Orrick's legal fees and expense reimbursement will be due and payable as follows:

- (1) If the Bonds are delivered before January 1, 2016, then the legal fees and expense reimbursement will be due and payable when Orrick presents an invoice to the City, which Orrick may do at any time on or after the date of delivery.
 - (2) If the Bonds are not delivered before January 1, 2016, then (A) Orrick may invoice the City at any time on or after that date for the then-accrued legal fees, in an amount not to exceed \$75,000, and the accrued legal fees will be due and payable when Orrick presents the invoice; and (B) Orrick shall invoice the City on or after the date of delivery for the balance of the legal fees owed under section 4(a)(1) but not previously invoiced plus the expense reimbursement owed under section 4(a)(2).
 - (3) If, at any time, Orrick's accrued legal fees equal or exceed \$75,000, and if the Bonds have not been delivered, then, unless the parties agree otherwise in a written amendment to this agreement, Orrick may immediately withdraw from this transaction, and the City shall pay to Orrick a flat amount of \$75,000 for legal fees. The City agrees that it will not be prejudiced by Orrick's election under this section 4(b)(3) to withdraw from this transaction.
- (c) Unless calculated as a percentage of the principal amount of the Bonds, Orrick's legal fees under this section 4 will be calculated at Orrick's standard hourly rates in effect when the services are performed.
 - (d) The City's obligation to pay legal fees and reimburse expenses is not contingent upon the issuance, sale, and delivery of the Bonds.
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 adoption, approval, or execution will, at the option of the City, become the City's property, and Orrick shall deliver them to the City or to any party the City may designate, all subject to the condition that Orrick will have no liability whatsoever for any subsequent use of the documents.
- (a) If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at Orrick's standard hourly rates in effect when the work is performed, with the total payment not to exceed \$75,000 for legal fees, 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.
 - (b) If not sooner terminated, this agreement and all legal services to be rendered under it will terminate upon the earliest to occur of (1) the delivery of the Bonds, except that the City will remain liable for any unpaid fees and expenses due under section 4 above; and (2) the City's constructive termination by the abandonment of the issuance and sale of the Bonds, except that the City will remain obligated to pay Orrick's legal fees in accordance with section 5(a). Upon termination, Orrick will have no future duty of any kind to the City with respect to the Bonds, except as provided in sections 1(e) and 1(f) above.

6. *Role of Bond Counsel.*

- (a) In general, the role of bond counsel in financings is to prepare or review documents and to coordinate the procedures for authorization of the issuance, sale, and delivery of 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, and delivery of the Bonds and to provide an opinion that represents an objective judgment on the matters addressed therein.
- (b) In performing its services as bond counsel in connection with the Bonds, Orrick shall act as special counsel to the City with respect to issuance, sale, and delivery of the Bonds. In that capacity, Orrick shall assist the City's staff in representing the City, but only with respect to the sufficiency of the legal documents for the issuance, sale, and delivery of the Bonds 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, and delivery of the Bonds, terminates upon the delivery of the Bonds (unless terminated sooner as provided in section 5 above), except as provided in sections 1(e) and 1(f) above. Orrick's services as bond counsel through delivery of the Bonds are limited to those explicitly contracted for in this agreement. Any engagement of Orrick with respect to rebate compliance, disclosure, or any other matter is separate from its engagement as bond counsel through delivery of the Bonds. However, unless otherwise provided, any such post-delivery engagement with respect to the Bonds will continue on the same basis set forth in this section 6.

7. *Conflicts.* The City acknowledges that 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, the Sacramento Municipal Utility District, and the State of California), bond underwriters (such as Stifel, Nicolaus & Company, Incorporated), trustees, rating agencies, insurers, banks, credit-enhancement providers, lenders, contractors, suppliers, financial and other consultants and advisors, accountants, investment providers or brokers, providers or brokers of derivative products, and others who may have a role or interest in the Bonds or who may be involved with, or adverse to, the City in this or some other matter. Orrick shall not represent any such entity (i.e., other private and public entities) in connection with the Bonds 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 Bonds; (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 that Orrick may have had, may have, or may enter into; and (c) consents to any and all such relationships subject to the condition that the City's separate written consent and a separate

conflict-waiver letter will be required to be obtained by Orrick if Orrick concurrently represents the City and any other entity in connection with the issuance, sale, and delivery of the Bonds.

8. *No Third-Party Beneficiaries.* Nothing in this agreement or in any of the documents expressly or impliedly contemplated by this agreement is intended to give, or is to be construed to give, any person or entity other than the City and Orrick any legal or equitable right or claim under, or in respect of, this agreement, and this agreement inures to the sole and exclusive benefit of the City and Orrick.
9. *Assignments.* Orrick may not assign its obligations under this agreement without the express written consent of the City, 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 the express written consent of Orrick. 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. *Notices.* 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:

Office of the City Treasurer
Historic City Hall
915 "I" Street, Third Floor
Sacramento, CA 95814
Attention: City Treasurer

and

Office of the City Attorney
New City Hall
915 "I" Street, Fourth Floor
Sacramento, CA 95812-2608
Attention: City Attorney

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. Delivery of signed counterparts may be accomplished email transmission of a pdf document.

(Signature Page Follows)

City of Sacramento

Orrick, Herrington & Sutcliffe LLP

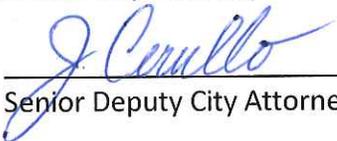
By: _____
James Sanchez, City Attorney

By:  _____
Jenna Magan, Partner

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By:  _____
Senior Deputy City Attorney

DISCLOSURE-COUNSEL AGREEMENT

This Disclosure-Counsel Agreement, dated October 1, 2015, for reference only, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”), and STRADLING YOCCA CARLSON & RAUTH, a California professional corporation (“SYCR”).

Background

The City desires to engage the services of SYCR as disclosure counsel in connection with the City’s authorization, issuance, sale, and delivery of the McKinley Village Community Facilities District No. 2015-04 (Improvements) Special Tax Bonds, Series 2015 (the “Bonds”) for the purpose of financing the acquisition and construction of certain public facilities and financing certain governmental fees for public facilities. Each purchaser of the Bonds will be either an accredited investor (17 C.F.R § 230.501(a)) or a qualified institutional buyer (17 C.F.R § 230.144A(a)(1)), and the sale will either be a direct sale or a private placement. The City and SYCR desire to enter into this agreement to evidence the engagement of SYCR as disclosure counsel and to specify the terms of the engagement. SYCR has the necessary professional capabilities and resources to provide the legal services required by the City as described in this agreement.

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

1. **Scope of Services.** The City hereby retains SYCR to provide, and SYCR shall provide, the following legal services in connection with the Bonds:
 - (a) Advising the City as to the federal securities laws relating to the sale of the Bonds to purchasers identified by or behalf of the developer of the property within the McKinley Village Community Facilities District No. 2015-04 (Improvements).
 - (b) Attending conferences and consulting with City staff, bond counsel, and representatives of the City Attorney’s Office.
 - (c) Participating in meetings, conferences, and discussions with any financial advisors, underwriters, tax consultants, and other experts the City retains with respect to the Bonds (the “City Consultants”).
 - (d) Reviewing resolutions, notices, rules, and regulations and other legal documents required for the Bonds, and all other documents relating to the security of the Bonds, in consultation with the City, bond counsel, and the City Consultants.
2. **Compensation.** The City shall pay SYCR the amounts set forth in this section 2 as full compensation for all services SYCR renders under this agreement and as full reimbursement of all out-of-pocket expenses SYCR incurs under this agreement. The City’s obligation to pay more than \$20,000 is contingent on the successful closing of the Bonds (the “Closing”), with payment of the amount above \$20,000 to come exclusively from the proceeds of the Bonds at the Closing.

- (a) For the services SYCR renders under this agreement, the City shall pay SYCR at an hourly rate of \$450 for shareholders and an hourly rate ranging from \$275 to \$325 for associates (depending on seniority).
 - (b) The City shall reimburse SYCR for any out-of-pocket expenses SYCR reasonably incurs while rendering services under this agreement, including but not limited to document-reproduction costs, telecommunications charges, printing costs, filing fees, fees for messenger services, fees for overnight-delivery services, and travel expenses.
 - (c) If, for any reason, the Closing does not occur, then the City will not be obligated to pay SYCR more than \$20,000 total for services rendered under this agreement and for out-of-pocket expenses SYCR incurs under this agreement.
 - (d) If the City terminates this agreement under section 4(a), then the City shall pay SYCR forthwith in accordance with this section 2 for all satisfactory work, 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 this agreement terminates under section 4(b), then the City shall pay SYCR the amounts owed within 30 days after SYCR's presentation of an invoice.
3. **Personnel and Contract Administration.** SYCR shall provide services under this agreement primarily through Kevin Civale, Brian Forbath, and Lawrence Chan. If Mr. Civale, Mr. Forbath, or Mr. Chan is unable to provide the services because of death, disability, or other similar event, then, with the City's approval, SYCR may substitute another of its attorneys to provide the services, and the substitution will not affect in any way SYCR's or the City's other obligations under this agreement. The City Attorney or the City Attorney's designee will administer this agreement for the City.
4. **Termination**
- (a) Either party may terminate this agreement with or without cause by giving written notice to the other party, except that the City may not terminate this agreement solely to avoid paying SYCR more than \$20,000 after the Closing. The notice must state the termination date, which must be at least three business days after the date the notice is delivered.
 - (b) Unless terminated sooner under section 4(a), this agreement terminates on the date of the Closing.
5. **Miscellaneous**
- (a) In performing under this agreement, SYCR and its shareholders and employees will be acting in an independent capacity and not as officers or agents of the City or the Issuer.
 - (b) SYCR may not assign this agreement or any part of it without the City's written consent, which the City may withhold for any reason.

- (c) This agreement is for the benefit of the City and SYCR. It is not intended to benefit any third parties other than the Issuer.
- (d) This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It may be modified only by another written agreement signed by both parties.
- (e) The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of signed counterparts may be accomplished email transmission of a pdf document.

(Signature Page Follows)

City of Sacramento

Stradling Yocca Carlson & Rauth

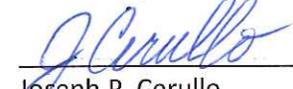
By: _____
James Sanchez, City Attorney

By:  _____
Kevin M. Civale, Shareholder

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By:  _____
Joseph P. Cerullo
Senior Deputy City Attorney