

Meeting Date: 8/23/2016

Report Type: Consent

Report ID: 2016-00865

Title: Declaration of Official Intent to Reimburse the City from Bond Proceeds for Certain Expenditures Related to the Accelerated Meter Installation and Pipe Replacement Program; Designation of Bond Counsel and Disclosure Counsel

Location: Citywide

Recommendation: Pass a Resolution 1) declaring the City's "official intent" to reimburse itself from bond proceeds for certain expenditures related to the Accelerated Meter Installation and Pipe Replacement Program; and 2) designating Orrick, Herrington & Sutcliffe LLP to serve as bond counsel and Stradling Yocca Carlson & Rauth to serve as disclosure counsel for the issuance of water-system revenue bonds.

Contact: John Colville, Interim City Treasurer, (916) 808-8297; Brian Wong, Debt Manager, (916) 808-5811, Office of the City Treasurer

Presenter: None

Department: City Treasurer

Division: City Treasurer

Dept ID: 05001011

Attachments:

- 1-Description/Analysis
- 2-Official Intent Resolution for Reimbursement for Certain Expenditures
- 3-Disclosure Counsel Agreement for 2017 Water Bonds (Signed by SYC&R)
- 4-Bond Counsel Agreement for 2017 Water Bonds (Signed by OH&S)

City Attorney Review

Approved as to Form
Joseph Cerullo
8/17/2016 4:23:23 PM

Approvals/Acknowledgements

Department Director or Designee: John Colville - 8/11/2016 9:38:13 AM

Description/Analysis

Issue Detail: In 2005, the Department of Utilities (“**DOU**”) began one of the most significant capital-improvement projects in its history: undertaking and completing, by January 1, 2025, the installation of water meters on more than 80% of the City’s water-service connections, thereby converting its customers to a metered rate as required by a state mandate (Statutes 2004, chapter 884 (A.B. 2572)). This project is commonly known as the Accelerated Meter Installation and Pipe Replacement Program (the “**Project**”).

Last year, in response to current drought conditions, the City Council moved to accelerate the Project’s completion date by four years, from January 1, 2025, to December 31, 2020 (Resolution No. 2015-0056). This acceleration will also allow the City (a) to defer \$65 million in costs by retrofitting rather than replacing some backyard water mains and (b) to save an additional \$5 million by installing meters in landscaped areas of front yards rather than in sidewalks.

To meet some or all of the Project’s financing needs, DOU proposes that the City issue new water-revenue bonds, perhaps as early as December 2016.* Before the bond proceeds are available, DOU expects to pay certain Project costs from the City’s Water Fund (an enterprise fund) so that the Project can stay on schedule for completion by December 31, 2020. Later, after the bonds have been issued, the Water Fund would be reimbursed for these costs from the proceeds.

The proposed resolution declaring the City’s “official intent” to reimburse itself from the bond proceeds is required by Section 1.150-2 of the Treasury Regulations (“**Section 1.150-2**”) for the bonds to be exempted from federal arbitrage-yield-restriction rules and rebate requirements.

The resolution also designates Orrick, Herrington and Sutcliffe as bond counsel and Stradling Yocca Carlson & Rauth, P.C. as disclosure counsel for the new bonds. These two firms worked on the water-revenue bonds issued in 2013.

Policy Considerations: The resolution is adopted solely to comply with Section 1.150-2. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project.

Environmental Considerations: Not applicable.

Sustainability Considerations: None.

Commission/Committee Action: Not applicable.

* Another potential financing option for some of the Project costs is a loan from the Drinking Water State Revolving Fund, which is managed by the State Water Resources Control Board. DOU is currently investigating the feasibility of such a loan. Importantly, the loan proceeds would not be available until the second quarter of calendar year 2017 at the earliest.

Rationale for Recommendation: Adoption of the proposed resolution enables the City to reimburse itself for qualified Project costs paid any time on or after the 60th day *before the date of adoption* so long as reimbursement occurs no later than three years after the costs are incurred. Without the resolution, Section 1.150-2 restricts reimbursement to qualified Project costs incurred on or after the 60th *before approval of the bonds*.

Financial Considerations: Adoption of the resolution will benefit the City by satisfying Section 1.150-2, thereby allowing the use of bond proceeds to reimburse the Water Fund for all qualified Project costs incurred on or after June 24, 2016, the 60th day before adoption. Importantly, adoption does not entail any financial costs for the City and does not bind the City to make expenditures, incur any indebtedness, or proceed with the Project.

Local Business Enterprise (LBE): Not applicable

RESOLUTION NO. 2016-_____

Adopted by the Sacramento City Council

August 23, 2016

DECLARATION OF OFFICIAL INTENT TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF AN OBLIGATION AND DESIGNATION OF BOND COUNSEL AND DISCLOSURE COUNSEL, ALL IN CONNECTION WITH THE ACCELERATED METER INSTALLATION AND PIPE REPLACEMENT PROGRAM

BACKGROUND

- A. The City, acting through its Department of Utilities, desires to finance the costs of a project commonly known as the Accelerated Meter Installation and Pipe Replacement Program (the “**Project**”). The City intends to finance the Project or portions of the Project with the proceeds of water-revenue bonds, the interest on which will be exempt from income taxation under the U. S. Internal Revenue Code (the “**Bonds**”). The aggregate maximum principal amount of the Bonds is not expected to exceed \$264,000,000.
- B. The City expects to pay, from the City’s Water Fund, certain expenditures in connection with the Project before the Bonds are issued (the “**Original Expenditures**”) and to use a portion of the proceeds of the Bonds to reimburse itself for the Original Expenditures.
- C. Section 1.150-2 of the United States Treasury Regulations (“**Section 1.150-2**”) requires the City to declare its reasonable “official intent” to reimburse itself with the proceeds of the Bonds (i.e., the “proceeds of an obligation”) for Project expenditures it expects to pay before the Bonds are issued.
- D. In connection with the issuance of the Bonds, the City Council desires to engage Orrick, Herrington & Sutcliffe LLP to serve as bond counsel and Stradling Yocca Carlson & Rauth, P.C. to serve as disclosure counsel.
- E. The City Council is fully advised in this matter.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council finds that the statements in the Background are true.
- Section 2. The City hereby declares its official intent to use proceeds of an obligation, i.e., proceeds of the Bonds, to reimburse itself for the Original Expenditures.

- Section 3. Orrick, Herrington & Sutcliffe LLP is hereby designated as bond counsel for the Bonds. The form of an Agreement for Bond Counsel Services relating to the Bonds, now on file with the City Clerk, is hereby approved. The City Attorney or his designee is hereby authorized, on the City's behalf, to sign and deliver the Agreement for Bond Counsel Services with any non-material changes the City Attorney determines to be required.
- Section 4. Stradling Yocca Carlson & Rauth, P.C. is hereby designated as disclosure counsel for the Bonds. The form of a Disclosure-Counsel Agreement relating to the Bonds, now on file with the City Clerk, is hereby approved. The City Attorney or his designee is hereby authorized, on the City's behalf, to sign and deliver the Disclosure-Counsel Agreement with any non-material changes the City Attorney determines to be required.
- Section 5. This resolution is adopted solely for purposes of (a) establishing compliance with Section 1.150-2 and (b) designating bond counsel and disclosure counsel. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project.
- Section 6. This resolution takes effect when adopted.

DISCLOSURE-COUNSEL AGREEMENT

CITY OF SACRAMENTO WATER SYSTEM REVENUE BONDS

This disclosure-counsel agreement, dated August 1, 2016, 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 issue one or more series of revenue bonds or other obligations in 2016 or 2017 to finance the cost of a water-system commonly known as the Accelerated Meter Installation and Pipe Replacement Program (the “**Bonds**”). To that end, the City desires to retain SYCR, on the terms and conditions set forth below, as disclosure counsel in connection with the issuance, sale, and delivery of the Bonds. SYCR represents that it is ready, willing, and able to perform as disclosure counsel.

With these background facts in mind, the City and SYCR 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 issuance, sale, and delivery of the Bonds:
 - (a) Preparation of a preliminary official statement and a final official statement for the issuance, sale, and delivery of the Bonds (collectively, the “**Official Statement**”). In connection with the preparation of the Official Statement, SYCR’s services will also include the following:
 - (1) researching applicable laws and ordinances relating to the issuance, sale, and delivery of the Bonds;
 - (2) attending conferences and consulting with City staff, bond counsel, and representatives of the City Attorney’s Office;
 - (3) providing disclosure training to City staff involved in the financing, describing the obligations of the City under federal securities laws;
 - (4) participating in meetings, conferences, or discussions with any financial advisors, underwriters, engineering consultants, feasibility consultants, or other experts the City retains with respect to the issuance, sale, and delivery of the Bonds (the “**City Consultants**”);
 - (5) reviewing resolutions, notices, rules, and regulations and other legal documents required for the issuance, sale, and delivery of the Bonds, and all other documents relating to the security of the Bonds, in consultation with the City, bond counsel, and the City Consultants; and

- (6) rendering a 10b-5 letter in customary form regarding the Official Statement to the City and the underwriters of the Bonds.
 - (b) Preparation of a continuing-disclosure certificate of the City in connection with the issuance, sale, and delivery of the Bonds, to comply with Rule 15c2-12.
- 2. **Compensation.** The City shall pay SYCR the amounts set forth in sections 2(a) and 2(b) as full compensation for services SYCR renders under this agreement. The City's obligation to pay these amounts is contingent on the successful issuance, sale, and delivery of the Bonds (the "**Closing**"), with payment 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), with the total compensation under this section 2(a) not to exceed \$50,000 unless the parties agree otherwise in writing. If, for any reason, the Closing does not occur, then the City will not be obligated to compensate SYCR for any services rendered under this agreement.
 - (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.
- 3. **Personnel and Contract Administration.** SYCR shall provide services under this agreement primarily through Kevin Civale. If Mr. Civale 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 such 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. 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.
 - (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 solely for the benefit of the City and SYCR. It is not intended to benefit any third parties.
- (d) This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- (e) 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.
- (f) 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.

(Signature Page Follows)

City of Sacramento

Stradling Yocca Carlson & Rauth

By: _____
James Sanchez, City Attorney
Date: August __, 2016

By:  _____
Kevin M. Civale, Shareholder
Date: August 17, 2016

Attest
City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

AGREEMENT FOR BOND COUNSEL SERVICES

CITY OF SACRAMENTO WATER SYSTEM REVENUE BONDS

This agreement for bond-counsel services, dated as of August 1, 2016, 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 City’s authorization, issuance, sale, and delivery in 2016 or 2017 of one series of fixed rate water-system revenue bonds (the “Water System Revenue Bonds”) for the purpose of financing the costs (or a portion of the costs) of a water-system project commonly known as the Accelerated Meter Installation and Pipe Replacement Program (the “Project”). The Water System Revenue Bonds will constitute additional bonds issued under the Indenture dated as of March 1, 2013 (the “Indenture”), and payable on a parity basis with the City’s Water Revenue Bonds, Series 2013. The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the Water System Revenue 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 City and Orrick hereby agree as follows:

1. The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City in connection with the Water System Revenue Bonds:
 - (a) Consultation with representatives of the City (including the City Treasurer and the City Attorney), the City’s municipal advisor, the City’s disclosure counsel, the underwriter and its counsel, and others with respect to the timing, terms, and legal structure of the Water System Revenue Bonds.
 - (b) Preparation of documents that are required for the authorization, issuance, sale, and delivery of the Water System Revenue Bonds and are to be adopted or entered into by the City, including an authorizing resolution and a supplemental indenture, supplementing the Indenture as previously supplemented (the “Major Legal Documents”). The Major Legal Documents do not include the official statement, purchase contract, and continuing disclosure certificate/agreement, which, except as provided in sections 1(d) and 2(b) below, will be prepared by the City’s disclosure counsel or the underwriter’s counsel.
 - (c) Review of the official statement, purchase contract, and continuing disclosure certificate/agreement.

- (d) Preparation of summaries of the Major Legal Documents, to be included in the official statement.
 - (e) Attendance at such meetings or hearings of the City and the City Council and 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.
 - (f) Rendering of Orrick's customary form of final approving opinion to the City on the validity of the Water System Revenue Bonds and the tax-exempt status of interest on the Water System Revenue Bonds and of Orrick's customary form of supplemental opinion to the underwriter on the accuracy of summaries of the Major Legal Documents contained in the official statement and of the tax portion of the final legal opinion and certain other matters.
 - (g) Preparation and delivery to the City of a transcript of the legal proceedings for the Water System Revenue Bonds in both loose-leaf and CD ROM formats.
 - (h) After issuance of the Water System Revenue Bonds, telephone consultations with the City's officials and staff to answer questions about the facts and circumstances concerning the Water System Revenue Bonds.
2. The services of Orrick under this agreement do not include the following, although Orrick may provide such services under 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 Water System Revenue Bonds, the Project, or any related matter.
 - (b) Legal Services in connection with the preparation, content, or dissemination of the official statement (other than preparation of summaries of the Major Legal Documents and the portion of the official statement provided by Orrick concerning certain tax matters).
 - (c) Legal services related to compliance with the California Environmental Quality Act.
 - (d) Legal services in connection with arbitrage-rebate compliance respecting the Water System Revenue Bonds.
 - (e) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property; or financial analysis or advice.
3. 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. 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, assuming delivery of the Bonds occurs no later than February 28, 2017, and assuming a single series of unenhanced fixed-rate bonds, a flat amount equal to \$95,000. If municipal-bond insurance or a surety bond is used, an additional \$7,500 will be added to the fee for each. If the closing occurs after February 28, 2017, then Orrick and the City shall negotiate in good faith on a new flat amount of legal fees.
 - (b) As payment of disbursements, including preparation and distribution of a transcript in loose-leaf and CD ROM formats, a flat amount of \$2,500.
 - (c) Except as provided in section 5 respecting termination of this agreement by the City, payment of legal fees and expense reimbursement are contingent upon the issuance, sale, and delivery of the Water System Revenue Bonds, and the amounts owed will be due and payable forthwith upon presentation of an invoice by Orrick following such issuance, sale, and delivery.
5. 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 such documents. If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at the following hourly rates, to be billed in tenths of an hour: \$715 to \$980 for partners; \$660 to \$845 for senior counsel, of counsel, or special counsel; \$650 to \$685 for senior associates; \$565 to \$600 for managing associates; and \$235 to \$525 for associates; and \$245 to \$300 for paralegal services. Orrick's compensation under this section 5 will not exceed \$95,000. If, moreover, the City terminates this agreement 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, this agreement and all legal services to be rendered under it will terminate upon issuance and sale of the Water System Revenue Bonds, 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 with respect to the Water System Revenue Bonds except as provided in sections 1(g) and 1(h) 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, and delivery of the

Water System Revenue Bonds and to provide an expert legal opinion with respect to the validity of the Water System Revenue 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 Water System Revenue 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 Water System Revenue Bonds, Orrick shall act as special counsel to the City with respect to issuance of the Water System Revenue Bonds. In that capacity, Orrick shall assist the City staff in representing the City, but only with respect to the sufficiency of the legal documents for the issuance, sale, and delivery of the Water System Revenue 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 of the Water System Revenue Bonds, terminates upon the issuance, sale, and delivery of the Water System Revenue Bonds (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through issuance, sale, and delivery of the Water System Revenue Bonds 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 of the Water System Revenue Bonds. However, unless otherwise provided, any such post-issuance engagement with respect to the Water System Revenue Bonds will continue on the same basis set forth in this section 6.
7. 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 (including Bank of America Merrill Lynch), trustees, rating agencies, insurers, banks, credit-enhancement providers, lenders, contractors, suppliers, financial and other consultants and advisors, accountants, investment providers/brokers, providers/brokers of derivative products, and others who may have a role or interest in the Water System Revenue Bonds or the Project 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 Water System Revenue 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 Water System Revenue 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 such 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 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, and delivery of the Water System Revenue Bonds.

8. 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. 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.
9. 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.
10. 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 of Sacramento
915 "I" Street
Historic City Hall, Third Floor
Sacramento, CA 95814-2704
Attention: City Treasurer

and

City Attorney's Office
P.O. Box 1948
Sacramento, CA 95812-1948
Attention: Joseph Cerullo

If to Orrick:

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

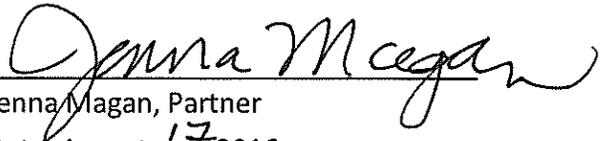
11. This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

(Signature Page Follows)

City of Sacramento

Orrick, Herrington & Sutcliffe LLP

By: _____
James Sanchez, City Attorney
Date: August __, 2016

By: 
Jenna Magan, Partner
Date: August 17, 2016

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney