



Topic: **Authority Board Agenda Item 4-3**

2018 May 21

Subject: **Bond Counsel Contract**

Requested Action:

Consider approving an award for ***RFP #1703 – Bond Counsel Services*** to Stradling, Yocca, Carlson & Rauth, to approve the contract, and to authorize the General Manager to sign.

Detailed Description/Background:

A request for proposals for Bond Counsel Services was issued to 11 bond counsel firms and posted to the Sites Project website on April 11, 2018. Prepared and submitted Addendum No. 1 in response to RFP questions and clarifications. Six proposals were received and evaluated by staff. Staff recommended the top two firms be interviewed. The two firms were interviewed on May 11. The interview panel voting members, consisting of two Authority Board and two Reservoir Committee members, voted 4 to 0 to selected Stradling Yocca Carlson & Rauth to recommend to the Reservoir Committee and Authority Board for a Bond Counsel Services contract.

Prior Authority Board Action:

None.

Fiscal Impact/Funding Source:

The rebalanced Phase 1 budget includes funding for the contract.

Staff Contact:

Joe Trapasso

Attachments:

Attachment A – Contract

STANDARD FORM OF BOND COUNSEL AGREEMENT

TERMS OF RETENTION OF STRADLING YOCCA CARLSON & RAUTH

1. **Fees and Costs.** Stradling Yocca Carlson & Rauth (the “Firm”) is compensated for its services based primarily on the value of the services and the time spent performing them. Such compensation may include the time spent on client conferences, travel, research, drafting documents, and other activities. The amount of fees charged on a statement is determined by the hours expended by the different attorneys and other professional personnel involved and the applicable rates.

Payment is due within forty-five days of the date of each fee and costs statement. Overdue statements will be charged interest of 10% per annum, compounded annually. If you wish to question any charge, you have agreed to do so within twenty-five days of the statement date. Please contact the partner in charge of your matters if you have any questions about any of your bills.

The hourly rates for the Firm’s personnel are as follows:

Shareholders: \$650 (Senior Shareholder)/\$500 (Junior Shareholder)

Associates: \$400

Paralegals: \$125

The firm also charges for various costs such as copying, telephone charges, computerized legal research, word processing and/or other computer time, overtime costs, messenger services, travel, filing fees and other costs. Bills for some costs are passed on directly, such as bills for certified shorthand reporters, technical consultants, and other professional fees.

Services unrelated to specific transaction, including but not limited to post-closing compliance matters, arbitrage rebate compliance, continuing disclosure compliance and representation of the Authority in connection with Internal Revenue Service, federal or state securities law or other regulatory matters and other post-closing matters, will be billed in accordance with the provisions of the first paragraph above.

2. **Termination by Us.** We reserve the absolute right to withdraw from representing you if, among other things, you fail to honor the terms of our agreement, you fail to cooperate fully or follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on your behalf. Notwithstanding the foregoing, no portion of any contingent special counsel fee shall be payable in the event we terminate our representation of you as discussed above prior to closing of the proposed transaction. If necessary in connection with litigation, we would request leave of court to withdraw.

3. **Termination by Authority.** We understand that we serve at the pleasure of the Authority and this Agreement may be terminated by the Authority at any time, upon 10 days written notification with or without cause.

4. **Date of Termination.** Our representation of you will be considered terminated at the earlier of (i) your termination of our representation, (ii) our withdrawal from our representation of you, or (iii) the substantial completion of our substantive work for you.

5. **Related Activities.** If any claim or action is brought against us or any personnel or agents of the firm based on your negligence or misconduct, or if we are asked to testify as a result of our representation of you or must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting fees, costs, or damages, including our time, even if our representation of you has ended.

6. **No Guarantee of Outcome.** The Firm will provide its services consistent with the level and quality of expertise expected of a nationally recognized firm specializing in securities law and the transactions contemplated by this agreement. We do not and cannot guarantee any outcome in a matter.

7. **Insurance.** We hereby advise you that this firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to you.

8. **Client.** This firm's client for the purpose of our representation is only the person or entity identified in the letter accompanying these Terms of Retention. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any parent, brother-sister, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, or employees.

9. **Payment Notwithstanding Dispute.** In the event of any dispute that relates to our entitlement to any payment from you, all undisputed amounts shall be paid by you. Any amounts in any client trust account held on your behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.

10. **Arbitration.** We appreciate the opportunity to serve as your attorneys and anticipate a productive and harmonious relationship. If you should feel for any reason that there is a problem with the services we have performed or with our charges, we encourage you to bring that to our attention immediately. If we perceive a problem with your representation, we likewise will endeavor to discuss it with you. Most problems should be rectified by communication and discussion. However, a dispute might arise between us which could not be resolved by negotiation. We believe that such attorney-client disputes are most satisfactorily resolved through final and binding arbitration rather than by litigation. Both the United States Supreme Court and the California Supreme Court have endorsed arbitration as an accepted and favored method of resolving disputes, because it is economical and expeditious.

In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and less rigid than the rules which apply in Court. Arbitration usually results in a decision much more quickly than proceedings in Court, and the attorneys' fees and other costs incurred by both sides may be substantially less. You are free to discuss the

advisability of arbitration with us, or with your own independent counsel or any of your other advisors, and to ask any questions which you may have.

By signing this Terms of Retention, we agree that, in the event of any dispute or claim arising out of or relating to our engagement, our relationship, our charges, or our services (including but not limited to disputes or claims regarding our charges, professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or violation of any statute), SUCH DISPUTE OR CLAIM SHALL BE RESOLVED BY SUBMISSION TO FINAL AND BINDING ARBITRATION IN ORANGE COUNTY, CALIFORNIA, BEFORE A RETIRED JUDGE OR JUSTICE. BY AGREEING TO ARBITRATE, YOU WAIVE ANY RIGHT YOU HAVE TO A COURT OR JURY TRIAL. Venue with regard to any ancillary proceedings arising out of such dispute or claim shall also be in Sacramento County. If we are unable to mutually agree on a retired judge or justice, then each side will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. The fees of the arbitrator will be paid initially equally by both the Firm and you. However, the arbitrator shall have the right to order either party to pay all fees and costs as part of his award.

In arbitration, we shall both be entitled to conduct discovery in accordance with the provisions of the California Code of Civil Procedure, but either of us may request that the arbitrator limit the amount or scope of such discovery and, in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

Under California law, you have the right, if you desire, to request arbitration of any fee dispute before an arbitrator or panel of arbitrators selected by a local bar association or the State Bar ("Bar Arbitration") and a trial de novo in court if dissatisfied with the result. If you do request a Bar Arbitration, the law provides that evidence of any claim of malpractice or professional misconduct is admissible only concerning the fees or costs in dispute and that the Bar Arbitrators shall not award any affirmative relief in the form of damages, offset or otherwise on account of such claim. By signing this Terms of Retention, you agree that if a Bar Arbitration is conducted, that Bar Arbitration or any trial de novo in Court thereafter shall determine only the issue of the amount of fees properly chargeable to you, if any, and that such Bar Arbitration or trial de novo in Court thereafter shall have no effect on the provisions set forth above which require arbitration before a retired judge or justice of any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of conduct, breach of fiduciary duty, fraud or violation of any statute. Any such claims shall be solely determined in an arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration or trial de novo thereafter.

11. **No Representation of Other Parties.** The Firm has represented, and may represent in the future, underwriting firms from time-to-time in connection with other specific municipal finance offerings. In addition, the Firm has in the past, and may in the future, represent other water agencies as bond counsel and/or disclosure counsel on municipal finance offerings unrelated to the Authority financings. The Firm confirms that it is not representing any other party in connection with the financing and refinancing which is the subject of this engagement.

12. **Authority Counsel.** The Authority has a separate general counsel and municipal advisor. The firm as Bond Counsel is serving in a neutral capacity in performing the scope of services set forth in the Authority's Request for Proposal for Bond Counsel Services (RFP No. 17-03), a copy of which is attached (without exhibits) and incorporated by this reference. The Firm is

not providing any municipal advisory or other similar services. The scope of services as Bond Counsel do not include advice as to (i) whether or not the Authority should incur the proposed debt for the project or to enter into the refinancing or (ii) as to the size of the borrowing (except as the sizing may be restricted by federal income tax laws), both of which the Authority is relying on the advice of other professionals involved in the transaction.

13. **Primary Attorney.** The primary attorney with responsibility for this representation will be Douglas S. Brown. The parties agree that the Firm is being retained based on the unique skill, experience, and expertise of Mr. Brown and no change will be made in the primary attorney without the prior, written consent of the Authority. The Firm will not substitute another primary attorney without the prior, reasonable, approval of the Authority.

Dated: May ____, 2018

Stradling Yocca Carlson & Rauth

By _____

Douglas S. Brown

Sites Project Authority

By _____

James C. Watson