



DATE: May 13, 2009

TO: Chairman and Members, Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH STRADLING YOCCA CARLSON & RAUTH FOR CONSULTING AND BOND COUNSEL SERVICES; AND APPROVAL OF A BUDGET APPROPRIATION IN THE AMOUNT OF \$75,000**

SYNOPSIS

Staff recommends that the Community Development Commission (Commission) approve Amendment 1 in the amount of \$75,000 to the professional services agreement with Stradling Yocca Carlson & Rauth for consulting and bond counsel services; approve an appropriation of \$75,000 from the unallocated fund balance in the Redevelopment Debt Service Fund to be transferred to the 591.304050.5241.58022 account to fund the amendment; and authorize the Executive Director to execute the amendment.

BACKGROUND

The Commission has retained the services of Stradling Yocca Carlson & Rauth since 2006 for bond analysis, advice and legal work for the Redevelopment Agency in connection with the implementation of the various projects and other issues pursuant to the California Community Redevelopment Law.

ANALYSIS

Stradling Yocca Carlson & Rauth has assisted the City in matters including, but not limited to, the issuance of tax allocation bonds, execution and delivery of certificates of participation, the formation of an assessment district pursuant to the Municipal Improvement Act of 1913 and the issuance of bonds pursuant to the Improvement Bond Act of 1915, the formation of a community facilities district and the issuance of bonds pursuant to the Mello-Roos Act, and/or such other financing structures as determined appropriate to meet the objectives of the Redevelopment Agency.

In August 2006 an agreement in the amount of \$50,000 was approved administratively. Because the bond analysis and advice on other issues for the Redevelopment Agency is a continuation of existing work, staff did not go out to bid for other bond counsel services at this time. However, upon completion of this work, staff will go out to bid for bond counsel services. This amendment brings the total compensation to \$125,000.

FISCAL IMPACT

Staff is requesting an appropriation in the amount of \$75,000 from the unallocated fund balance in the Redevelopment Debt Service Fund account (489.3301) to be transferred to the project account (591.304050.5241.58022).

INSURANCE REQUIREMENTS

Through the term of the agreement, Stradling Yocca Carlson & Rauth will maintain the City's normal insurance coverage requirements.

COMMISSION OR COMMITTEE REPORT

The Redevelopment Advisory Committee has reviewed this staff report at its April 22, 2009 meeting and supports the proposed amendment.

CITY ATTORNEY'S ANALYSIS

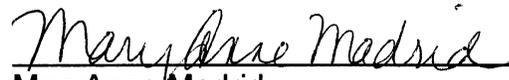
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

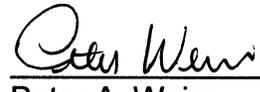
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PREPARED BY:

SUBMITTED BY:



MaryAnne Madrid
Development Specialist



Peter A. Weiss
Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Jane McVey, Economic & Community Development Director
Teri Ferro, Financial Services Director







**CITY OF OCEANSIDE
COMMUNITY DEVELOPMENT COMMISSION**

AMENDMENT NO. 1
PROFESSIONAL SERVICES AGREEMENT

PROJECT: BOND COUNSEL

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this _____ day of May 2009, by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a redevelopment commission organized and existing under the laws of the State of California (herein "Commission") and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (herein "Bond Counsel"):

RECITALS

WHEREAS, COMMISSION and BOND COUNSEL are the parties to that certain Professional Services Agreement dated July 1, 2006, hereinafter referred to as the "Agreement", wherein BOND COUNSEL agreed to provide certain services to the COMMISSION as set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to Section 2, Compensation.

AMENDMENT

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. Increase contract amount stated in Section 2 of the Agreement by \$75,000.
2. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the BOND COUNSEL and the COMMISSION.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of May 2009.

STRADLING YOCCA CARLSON & RAUTH
a Professional Corporation

CITY OF OCEANSIDE
COMMUNITY DEVELOPMENT
COMMISSION

By: 
Robert J. Whalen
Secretary

By: _____
Peter Weiss, Executive Director


Brian Forbath
Vice President

APPROVED AS TO FORM:

General Counsel

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

See Attached Document

~~_____
Signature of Document Signer No. 1~~

~~_____
Signature of Document Signer No. 2 (if any)~~

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this

13 day of April, 2009, by
Date Month Year

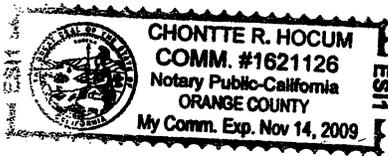
(1) Robert J. Whalan,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and
(2) Brian Faboth,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Chontte R. Hocum
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

| RIGHT THUMBPRINT OF SIGNER #1 |
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| Top of thumb here |

| RIGHT THUMBPRINT OF SIGNER #2 |
|-------------------------------|
| Top of thumb here |

BOND COUNSEL AGREEMENT

COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE

THIS AGREEMENT, made as of this 1st day of November, 2006, by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a redevelopment commission organized and existing under the laws of the State of California (herein "Commission") and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (herein "Bond Counsel"):

RECITALS:

A. The Commission desires to evaluate funding sources for the Downtown Beach Resort Hotel project (the "Hotel Project") and for other projects benefiting the City (collectively, the "Projects"), including, but not limited to, the issuance of tax allocation bonds, execution and delivery of certificates of participation, the formation of an assessment district pursuant to the Municipal Improvement Act of 1913 and the issuance of bonds pursuant to the Improvement Bond Act of 1915, the formation of a community facilities district and the issuance of bonds pursuant to the Mello-Roos Act, and/or such other financing structures as determined appropriate to meet the objectives of the Projects (collectively, the "Funding Sources"); and

B. The Commission desires to retain Bond Counsel to do the necessary legal work hereinafter outlined, upon the terms and conditions hereinafter set forth, to evaluate the Funding Sources and assist in financing the Projects; and

C. The Commission also desires to retain Bond Counsel to provide redevelopment advice and legal work in connection with the implementation of the Projects and other matters pursuant to the California Community Redevelopment Law, constituting Part 1, Division 24, of the California Health and Safety Code (the "Redevelopment Advice"); and

D. Bond Counsel represents that it is ready, willing and able to perform said legal work;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. SCOPE OF SERVICES

A. Services Relating to Evaluation of Funding Sources

The Commission retains Bond Counsel to provide, and Bond Counsel agrees to provide, legal services in connection with evaluating the Funding Sources for the Projects. Bond Counsel's services will include:

- i. Researching applicable laws and ordinances relating to the proposed Funding Sources;

- ii. Attending conferences and consulting with Commission staff and the City Attorney regarding such laws, and the need for amendments thereto, or additional legislation;
- iii. Participating in meetings, conferences or discussions with any financial advisors, underwriters or other experts retained by the Commission with respect to the evaluation of the Funding Sources;
- iv. Supervising and preparing documentation of the steps to be taken with respect to the implementation of any of the Funding Sources and the financing of the Projects.

B. Services Related to Financing the Projects

In the event that the Commission elects to proceed with a financing for any of the Projects, the Commission will notify Bond Counsel of such decision and, following agreement by the Commission and Bond Counsel as to a fee to be paid to Bond Counsel for services to be rendered under this Section 1.B, Bond Counsel will provide, legal services in connection with financing any of the Projects and the issuance, execution or delivery of one or more financing instruments in order to finance any of the Projects (the “Financing Instruments”). Such services shall include the rendering of legal opinions (hereinafter called the “opinions”) pertaining to the issuance, execution or delivery of one or more Financing Instruments to the effect that:

- 1. The Financing Instruments have been properly authorized and issued and are valid and binding obligations; and
- 2. The essential sources of security for the Financing Instruments have been legally provided; and
- 3. To the extent applicable, the interest component of the Financing Instruments is exempt from California personal income taxation and is excluded from gross income for purposes of federal income taxes.

Bond Counsel’s services will also include:

- i. Researching applicable laws and ordinances relating to the proposed structure of the financing and the issuance, execution or delivery of the Financing Instruments;
- ii. Attending conferences and consulting with Commission staff and the City Attorney regarding such laws, and the need for amendments thereto, or additional legislation;
- iii. Participating in meetings, conferences or discussions with any financial advisors, underwriters or other experts retained by the Commission with respect to the proposed structure of the financing and the issuance, execution or delivery of the Financing Instruments;
- iv. Supervising and preparing documentation of the steps to be taken with respect to the proposed structure of the financing and the

issuance, execution or delivery of the Financing Instruments, including:

- a. Drafting all resolutions, notices, rules and regulations, agreements and other legal documents required for the proposed structure of the financing and the issuance, execution or delivery of the Financing Instruments, and all other documents relating to the security of the Financing Instruments, in consultation with the Commission, the City Attorney, financial advisor, underwriter and other experts;
- b. Preparing the record of proceedings for the authorization, sale and issuance of the Financing Instruments;
- c. Assisting in the drafting and preparation of the official statement or placement memorandum in connection with the proposed financing;
- d. Reviewing the purchase contracts or the bidding documents in connection with the proposed financing and participating in the related negotiations;
- e. Participating in meetings and other conferences scheduled by the Commission, the Commission's financial advisor or the underwriter;
- f. Consulting with prospective purchasers, their legal counsel and rating agencies;
- g. Consulting with the City Attorney concerning any legislation or litigation which may effect the Financing Instruments, the security for the Financing Instruments, or any other matter related to the proposed structure of the financing and the issuance, execution or delivery of the Financing Instruments;
- h. Consulting with any trustee or fiscal agent for the Financing Instruments and their counsel;
- i. Preparing the form of the Financing Instruments, and supervising their production or printing, signing, authentication and delivery;
- j. Rendering the final approving opinion as to the validity of the Financing Instruments for use and distribution upon their issuance; and
- k. Rendering a legal opinion to the underwriter or purchaser of the Financing Instruments as to the applicability of the registration requirements of federal securities laws and the

fair and accurate nature of certain portions of the Official Statement summarizing our final opinion and the Bonds.

C. Services Related to Providing Redevelopment Advice

The Commission retains Bond Counsel to provide, and Bond Counsel agrees to provide, legal services in connection with providing the Redevelopment Advice, including, but not limited to, legal work relating to redevelopment plan adoptions or amendments, implementation of redevelopment plans and projects, compliance with the Commission's low and moderate income housing requirements, eminent domain and redevelopment litigation and prevailing wage issues.

D. Special Services

"Special Services" are defined for purposes of this Agreement as services in addition to the services outlined in Sections 1.A, 1.B and 1.C above. Special Services will include, but not be limited to, any work after a closing of the financing related to the amendment of Financing Instruments or agreements and special studies or analyses. Special Services must be authorized in writing by the Economic Development and Redevelopment Director or the Executive Director of the Commission.

2. COMPENSATION

The Commission agrees to pay Bond Counsel the following amounts as compensation for services rendered by Bond Counsel under this Agreement:

A. For the services to be rendered under Section 1.A of this Agreement relating to the evaluation of the Funding Sources, it is agreed that Bond Counsel will be paid a fee based on the hourly rates set forth in Exhibit A hereto for time expended related to the evaluation of the Funding Sources. For services to be rendered under Section 1.C of this Agreement relating to Redevelopment Advice, it is agreed that Bond Counsel will be paid a fee based on the hourly rates set forth in Exhibit B hereto to time related to Redevelopment Advice. Such fees pursuant to Sections 1.A and 1.C of this Agreement will be billed monthly and shall be payable by the Commission within thirty (30) days following the receipt of each invoice and shall not exceed \$50,000 without amendment to this agreement approved by the Commission and Bond Counsel. For the services to be rendered under Section 1.B of this Agreement relating to the financing of the Projects and the issuance, execution or delivery of any Financing Instruments, Bond Counsel and the Commission agree to negotiate in good faith a fee for such services at the time the Commission decides to proceed with financing any of the Projects.

B. In the event Bond Counsel is requested to perform special services as set forth in Section 1.D above, Bond Counsel will be paid fees at the hourly rates set forth in Exhibit A. Such fees will be billed monthly and shall be payable by the Commission within thirty (30) days following the receipt of each invoice.

C. In addition to the fees set forth in paragraphs 2.A and 2.B above, Bond Counsel shall be reimbursed for the actual cost of any out-of-pocket expenses reasonably incurred by Bond Counsel in the course of its employment, such as document reproduction, telecommunications charges, printing costs, filing fees, long-distance telephone calls, messenger services, overnight delivery services, travel and similar items of expense. Expenses related to the services described in

Sections 1.A and 1.C above will be billed monthly, and all expenses incurred in connection with services rendered under Section 1.B related to the issuance, execution or delivery of Financing Instruments will be billed upon the issuance, execution or delivery of any of the Financing Instruments.

3. PERSONNEL AND CONTRACT ADMINISTRATION

Commission agrees to accept and Bond Counsel agrees to provide the aforementioned services primarily through Robert J. Whalen, Kurt Yeager, Brian Forbath, Carol L. Lew, Mark Huebsch and Tom Clark. It is agreed that Mr. Whalen, Mr. Yeager, Mr. Forbath and Ms. Lew shall be the attorneys who will provide the primary services under Sections 1.A and 1.B. It is agreed that Mr. Clark and Mr. Huebsch shall be the attorneys who will provide the primary services under Section 1.C. If any one of the above attorneys is unable to provide such services due to death, disability or similar event, Bond Counsel reserves the right to substitute another of its attorneys, upon approval by the Economic Development and Redevelopment Director or her designee, to provide such services; and such substitution shall not alter or affect in any way Bond Counsel's or the Commission's other obligations under this Agreement.

This Agreement will be administered by the Economic Development and Redevelopment Director, or her designee.

4. TERMINATION

A. This Agreement may be terminated without cause by the Commission or Bond Counsel upon thirty (30) days' advance written notice to the other party. Such notification shall state the effective date of the termination of this Agreement.

B. Bond Counsel reserves the absolute right to withdraw from representing the Commission if, among other things, the Commission fails to honor the terms of this Agreement, the Commission fails to cooperate fully or follow Bond Counsel's advice on a material matter, or any fact or circumstance occurs that would, in Bond Counsel's view, render its continuing representation unlawful or unethical. If Bond Counsel elects to withdraw, the Commission will take all steps necessary to free Bond Counsel of any obligation to perform further services, including the execution of any documents necessary to complete such withdrawal, and Bond Counsel will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on the Commission's behalf in accordance with the payment terms set forth in Section 2 above. If necessary in connection with litigation, Bond Counsel would request leave of court to withdraw.

C. Bond Counsel's representation of the Commission will be considered terminated at the earlier of (i) the Commission's termination of its representation, (ii) Bond Counsel's withdrawal from its representation of the Commission, or (iii) the substantial completion by Bond Counsel of its substantive work for the Commission. Unless Bond Counsel has been specifically engaged to perform Special Services related to the financing of the Project after the financing of the Project, Bond Counsel's representation of Commission with respect to the Project shall terminate on the date of issuance of the Financing Instruments that finance the Project.

5. DISPUTE RESOLUTION

IN THE EVENT OF A DISPUTE REGARDING FEES, COSTS, OR ANY OTHER MATTER ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO BOND COUNSEL'S RELATIONSHIP WITH THE COMMISSION, OR BOND COUNSEL'S OR THE COMMISSION'S PERFORMANCE OF THIS AGREEMENT, INCLUDING THE QUALITY OF THE SERVICES WHICH BOND COUNSEL RENDERS, SUCH DISPUTE SHALL BE FIRST SUBMITTED TO MEDIATION, THE COST OF WHICH SHALL BE BORNE EQUALLY BY THE PARTIES, AND RESOLVED BY CONFIDENTIAL ARBITRATION IN THE COUNTY OF ORANGE, CALIFORNIA.

6. INDEMNIFICATION AND INSURANCE

Bond Counsel agrees to defend, indemnify and hold the Commission and its officers, agents, and employees harmless from any and all claims which arise from or are directly connected with the Bond Counsel's negligence or failure to perform the work or other obligations under this Agreement, and all expenses of investigating and defending against same; provided, however, that this duty to defend, indemnify, and hold harmless shall not include any claim based upon the alleged errors or omissions of Bond Counsel related to the rendering of or the failure to render professional services hereunder so long as Bond Counsel maintains in effect errors and omissions insurance as required by this paragraph, or arising from the sole negligence or willful misconduct of the Commission, its officers, agents or employees. Bond Counsel agrees to maintain errors and omissions insurance in an amount not less than twenty-five million dollars (\$25,000,000) per claim period in excess of the applicable self-insured retention throughout the term of this Agreement.

7. MISCELLANEOUS

A. Bond Counsel and the employees of Bond Counsel, in performance of the Agreement, shall act in an independent capacity and not as officers or agents of the Commission.

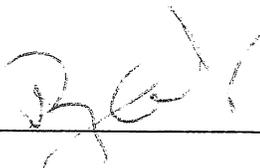
B. Without the written consent of the Commission, this Agreement is not assignable by Bond Counsel in whole or in part.

C. No alteration or variation of the terms of this Agreement shall be valid unless in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

D. In accordance with the requirements of California Business and Professions Code § 6148, Bond Counsel advises the Commission that the firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to the Commission.

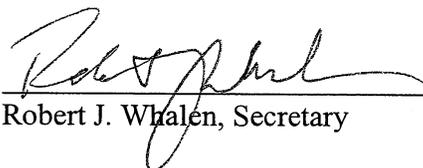
COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF OCEANSIDE

By: _____


Barry E. Martin, Interim Executive Director

STRADLING YOCCA CARLSON & RAUTH
a Professional Corporation

By: _____


Robert J. Whalen, Secretary

By: _____


Brian Forbath, Vice President

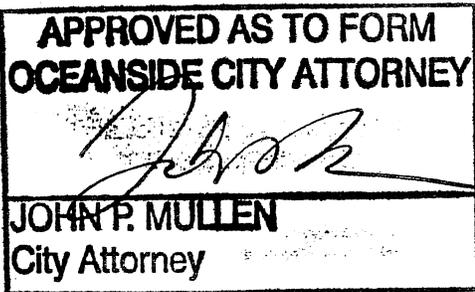


EXHIBIT A

| | |
|--------------|-------|
| Shareholders | \$360 |
| Associates | \$250 |
| Paralegals | \$120 |

EXHIBIT B

| | |
|--------------|-------|
| Shareholders | \$300 |
| Associates | \$230 |
| Paralegals | \$120 |

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

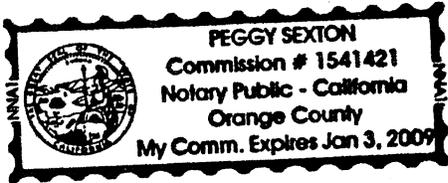
State of California

County of Orange

On Dec. 4, 2006 before me, Peggy Sexton, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Brian Forbach & Robert J. Whalen
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Peggy Sexton
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

| | |
|--|--|
| <p>CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p>TITLE(S)</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER: _____</p> <p>_____</p> <p>_____</p> <p>SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)</p> <p>_____</p> <p>_____</p> | <p>DESCRIPTION OF ATTACHED DOCUMENT</p> <p>_____</p> <p>TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p>NUMBER OF PAGES</p> <p>_____</p> <p>DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p> |
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