

RESOLUTION NO. 2014-0123

Adopted by the Sacramento City Council

May 20, 2014

**APPROVING AGREEMENT FOR BOND COUNSEL SERVICES CURTIS
PARK VILLAGE COMMUNITY FACILITIES DISTRICT
(CFD) NO. 2014-02 (IMPROVEMENTS), CITY OF SACRAMENTO
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA**

BACKGROUND

- A. The City Council of the City of Sacramento is undertaking proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 to consider the formation of a community facilities district to be known and designated as “Curtis Park Village Community Facilities District (“CFD”) No. 2014-02 (Improvements), City of Sacramento, County of Sacramento, State of California” (the “CFD”); the authorization of a special tax within the CFD; and the authorization and issuance of bonds of the CFD.

- B. 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 Council approves that certain Agreement for Bond Counsel Services, dated May 20, 2014, between the City and Orrick, Herrington & Sutcliffe LLP, marked Exhibit A and attached hereto and incorporated herein, for services of that firm as special bond counsel to the City in connection with the CFD. The City Attorney is authorized to sign the agreement on the City’s behalf, and the City Clerk is authorized to attest its execution.

- Section 3. This resolution takes effect when adopted.

Table of Contents

Exhibit A: Agreement for Bond Counsel Services

Adopted by the City of Sacramento City Council on May 20, 2014, by the following vote:

Ayes: Members Ashby, Cohn, Fong, Hansen, McCarty, Pannell, Schenirer, Warren and Mayor Johnson.

Noes: None

Abstain: None

Absent: None

Attest:

Shirley A. Concolino Digitally signed by Shirley A. Concolino
DN: cn=Shirley A. Concolino, o=City of Sacramento, ou=City
Clerk, email=sconcolino@cityofsacramento.org, c=US
Date: 2014.05.22 14:50:43 -07'00'

Shirley Concolino, City Clerk

Exhibit A
AGREEMENT FOR BOND COUNSEL SERVICES
CITY OF SACRAMENTO
CURTIS PARK COMMUNITY FACILITIES DISTRICT NO. 2014-02

This agreement for bond-counsel services, dated as of May __, 2014, 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 2014 or 2015 of one or more series of Mello-Roos bonds (the “**Mello-Roos Bonds**”) for the Curtis Park Community Facilities District No. 2014-02 (the “**CFD**”) for the purpose of financing the project infrastructure including sewer, water, drainage and traffic improvements, parks, open space, and reimbursement of certain development-related fees or taxes, namely construction excise tax, park development fees, utilities connection fees, and Quimby fees (collectively, the “**Project**”). The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the Mello-Roos 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 CFD and the Mello-Roos Bonds:
 - (a) Consultation with representatives of the City (including the City Attorney), the underwriter and their counsel, and others with respect to the timing, terms, and legal structure of the CFD and the Mello-Roos Bonds.
 - (b) Preparation of documents that are required for the formation of the CFD, including all resolutions, notices, consents, affidavits, certificates, ballots, and ordinances (the “**Formation Documents**”). The Formation Documents do not include the rate and method of apportionment of the special tax, the hearing report, any maps, any charts, any diagrams, any joint community facilities agreements, or any acquisition agreements, which, in each case, will be prepared by representatives of the City or another party designated by the City.
 - (c) Review of the rate and method of apportionment of the special tax, the hearing report, any joint community facilities agreements, and any acquisition agreements.
 - (d) Preparation of documents that are required for the authorization, issuance, sale, and delivery of the Mello-Roos 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 the official statement, purchase contract, and continuing disclosure certificate/agreement, which, except as provided in sections 1(f) and 2(b) below, will be prepared by the City’s disclosure counsel or the underwriter’s counsel.

- (e) Review of the official statement as it relates to summaries of the Major Legal Documents and the portion of the official statement concerning certain tax matters on which Orrick will render an opinion in accordance with section 1(h).
 - (f) Preparation of the following for inclusion in the official statement: summaries of the Major Legal Documents and the portion of the official statement concerning certain tax matters on which Orrick will render an opinion in accordance with section 1(h).
 - (g) 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.
 - (h) Rendering of Orrick's customary form of final approving opinion to the City on the validity of the Mello-Roos Bonds and the tax-exempt status of interest on the Mello-Roos Bonds.
 - (i) Rendering 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.
 - (j) After formation of the CFD, preparation and delivery to the City of a transcript of the legal proceedings for the formation of the CFD in loose-leaf format.
 - (k) After issuance of the Mello-Roos Bonds, preparation and delivery to the City of a transcript of the legal proceedings for the issuance of the Mello-Roos Bonds in both loose-leaf and CD ROM formats.
 - (l) After formation of the CFD and issuance of the Mello-Roos Bonds, telephone consultations with the City's officials and staff to answer questions about the facts and circumstances concerning the CFD or the Mello-Roos 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 the CFD, the Mello-Roos Bonds, or any related matter.
 - (b) Legal services in connection with the preparation, content, or dissemination of the official statement (except as provided in section 1(f)).
 - (c) Legal services in connection with any change proceeding or annexation for the CFD.
 - (d) Legal services related to compliance with the California Environmental Quality Act.
 - (e) Legal services in connection with arbitrage-rebate compliance respecting the Mello-Roos Bonds.
 - (f) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property.
 - (g) 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) The City shall compensate Orrick for legal services rendered for the formation of the CFD in the amount of \$25,000. This fee assumes: (1) that the voters in the required election for the formation of the CFD and issuance of the Mello-Roos Bonds will be the landowners within the CFD; (2) that 100% of the landowners within the CFD sign consent and waiver forms shortening the time periods and waiving certain other requirements with respect to the election; (3) that the CFD will not contain multiple improvement areas; (4) that the formation of the CFD will be completed by September of 2014; and (5) review of any joint community facilities agreements or acquisition agreements will be done in connection with an issue of Mello-Roos Bonds rather than in connection with the formation of the CFD. If any of these assumptions proves to be incorrect, then Orrick and the City shall agree on a mutually acceptable increase in the amount of compensation specified in this section 4(a).
 - (b) As payment of disbursements in connection with the formation of the CFD, the City shall (1) reimburse Orrick for any filing, publication, printing, or other third-party costs paid by Orrick on behalf of the City in connection with the formation of the CFD and (2) pay to Orrick a flat amount of \$2,500 for the cost of preparation and distribution of a transcript of the CFD formation proceedings in loose-leaf format.
 - (c) The City shall compensate Orrick for legal services rendered for the issuance of the Mello-Roos Bonds in the amount of 1% of the par amount of each issue of Mello-Roos Bonds but in each case, not less than \$65,000 per issue of Mello-Roos Bonds.
 - (d) As payment of disbursements in connection with each issue of Mello-Roos Bonds, including preparation and distribution of a transcript of the issue of Mello-Roos Bonds in loose-leaf and CD-ROM formats, the City shall pay to Orrick a flat amount of \$2,500.
 - (e) Except as provided in section 5 respecting termination of this agreement by the City, payment of legal fees and expense reimbursement for the formation of the CFD will be due and payable upon presentation of an invoice by Orrick following either completion of the formation of the CFD or the abandonment of the formation of the CFD. Except as provided in section 5 respecting termination of this agreement by the City, payment of legal fees and expense reimbursement for an issue of the Mello-Roos Bonds are contingent upon the issuance, sale, and delivery of the issue of Mello-Roos 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 its standard hourly rates in effect from time to time, 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. As of the date of this agreement, the standard hourly rates for the attorneys and paralegals most likely to work on the CFD formation and Mello-Roos Bonds are Jenna Magan (\$770), Brandon Dias (\$685), Chas Cardall (\$880), John Stanley (\$685), Nina Santo (\$350), and Tricia Aguirre (\$265). If not sooner terminated, this agreement and all legal services to be rendered under it will terminate upon issuance and sale of the final issue of Mello-Roos 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 CFD or the Mello-Roos Bonds, except as provided in sections 1(j), 1(k), and 1(l) 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 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 Mello-Roos 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 Mello-Roos Bonds, Orrick shall act as special counsel to the City with respect to issuance of the Mello-Roos 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 Mello-Roos 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, as bond counsel with respect to the issuance of the Mello-Roos Bonds, terminates upon the issuance, sale, and delivery of the final issue of Mello-Roos Bonds (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through issuance, sale, and delivery of the Mello-Roos 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 Mello-Roos Bonds. However, unless otherwise provided, any such post-issuance engagement with respect to the Mello-Roos 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 (such as Stifel, Nicolaus & Company, Incorporated and Piper Jaffray & Co.), 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 Mello-Roos 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 Mello-Roos 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 Mello-Roos 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 Mello-Roos 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

If to Orrick:

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

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

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:

By:

James Sanchez, City Attorney

Jenna Magan, Partner

Date: May __, 2014

Date: May __, 2014

Approved as to Form
Sacramento City Attorney

By:

Senior Deputy City Attorney