



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Lisa Soghor, Assistant City Manager

Approved by: Steve McClary, Interim City Manager

Date prepared: June 11, 2021 Meeting date: June 28, 2021

Subject: Amendment to Bond Counsel Agreement with Stradling, Yocca, Carlson & Rauth

RECOMMENDED ACTION: Authorize the Mayor to execute Amendment No. 1 to Bond Counsel Agreement with Stradling, Yocca, Carlson & Rauth.

FISCAL IMPACT: All bond counsel fees in connection with the formation of the proposed Assessment District for Phase Two of the Civic Center Water Treatment Facility (CCWTF) will be paid from proceeds of the Bonds once the Assessment District is formed, assuming it is passed by voters.

WORK PLAN: This item was included as Item 5.a. in the Adopted Work Plan for Fiscal Year 2020-2021 and the Proposed Work Plan for Fiscal Year 2021-2022.

DISCUSSION: On June 27, 2011, the Council approved a Memorandum of Understanding (MOU) between the City and the Regional Water Quality Control Board (RWQCB) and the State Water Resources Control Board (SWRCB) regarding the implementation of the Basin Plan Amendment for the Malibu Civic Center Area Prohibition. Under the MOU, which was amended in December 2014 and February 2017, properties in Phase One of the Prohibition Area (primarily the commercial core of the Civic Center) must connect to a centralized wastewater treatment facility by September 30, 2018. Phase Two (primarily residential properties) must connect to the centralized wastewater treatment facility by November 5, 2024. A third phase may be implemented, depending on the outcome of the first two phases.

At its Regular meeting on January 25, 2016, the City Council formed Assessment District 2015-1 for CCWTF Phase One, following ballot approval by a majority of the impacted property owners in the Civic Center. On April 25, 2016, the City Council approved the Bond Counsel Agreement with Stradling, Yocca, Carlson & Rauth for bond counsel services related to Phase One. In compliance with the Phase One implementation deadlines established in the MOU, the City Council accepted the treatment facility, the pipeline and pump stations, and the injection wells as complete on September 26, 2018.

The MOU stipulates that the City complete the formation of an assessment district for all properties within the Malibu Civic Center Area Phase Two boundary by November 5, 2021. At this time, bond counsel services are needed in order to assist with the formation of the proposed assessment district, the issuance of bonds once approved by the voters and any potential State Water Resources Control Board loans for the CCWTF Phase Two Project.

The design and financing of Phase One and Phase Two of the CCWTF are closely interconnected. Stradling, Yocca, Carlson & Rauth provided bond counsel services for Phase One. Rates for bond counsel services are going to remain identical to those listed in the April 1, 2016 Agreement and this amendment has a not to exceed amount of \$60,000.00. The City's auditors have reviewed their work and found it to be consistent with the type of work expected. City staff have also been pleased with the performance and responsiveness of Stradling, Yocca, Carlson & Rauth. The firm is very familiar with the intricacies of the project and can provide specialized bond counsel services without delay. Bringing in different consultants for this work will cause unnecessary expense and require additional time. The process would not necessarily result in a lower price for these services if the City were to hire new counsel to perform this work as it is anticipated that there would be time and funds spent onboarding the new firm, including the review of all the previous work performed to date. This would result in a net cost increase to the proposed Assessment District for the same services as any new firm would need to spend time getting up to speed on the project. Furthermore, any delays may impact the City's ability to meet the November 5, 2021 deadline to form the Assessment District for Phase Two. Staff is recommending that the scope of the City's existing bond counsel agreement with Stradling, Yocca, Carlson & Rauth be amended to include services to assist the City in financing the CCWTF Phase Two through the issuance of bonds and loans from the State Water Resources Control Board.

ATTACHMENTS: Amendment No. 1 to Bond Counsel Agreement with Stradling, Yocca, Carlson & Rauth

AMENDMENT NO. 1 TO
BOND COUNSEL AGREEMENT
CITY OF MALIBU

(Civic Center Wastewater Treatment Facility – Phase 1 and Phase 2)

THIS AGREEMENT, made as of this ____th day of ____, 2021, amends that certain Bond Counsel Agreement dated as of April 1, 2021 (the “Original Agreement”), by and between the CITY OF MALIBU, a municipal corporation organized and existing under the laws of the State of California (herein “City”) and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (herein “Bond Counsel”):

RECITALS:

A. The City has previously formed an assessment district (the “Phase 1 Assessment District”) and entered into an installment sale agreement with the State Water Resources Control Board and issued limited obligation improvement bonds to finance the design, engineering and construction of the City’s Civic Center Wastewater Treatment Facility – Phase 1 (the “Phase 1 Project”)

B. The City desires to consider the formation of a new assessment district (the “Phase 2 Assessment District”) pursuant to the Municipal Improvement Act of 1913 (Division 12 of the Streets & Highways Code of the State of California) (the “1913 Act”) in order to finance the design, engineering and construction of the City’s Civic Center Wastewater Treatment Facility – Phase 2 (the “Phase 2 Project” and together with the Phase 1 Project, the “Project”); and

C. The City desires to retain Bond Counsel to do the necessary legal work hereinafter outlined, upon the terms and conditions hereinafter set forth, to assist in financing the Phase 2 Project through the issuance of bonds (“Bonds”) and one or more loans (the “State Loans”) from the State Water Resources Control Board (the “State”); 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 the terms and conditions of the Original Agreement shall remain the same except as expressly amended hereby:

The definition of “Project” in the Original Agreement shall be amended to include both the Phase 1 Project and the Phase 2 Project.

References in the Original Agreement as to the Assessment District shall mean either the Phase 1 Assessment District or the Phase 2 Assessment District as the context suggests.

Bond Counsel and the City agree that an estimate of compensation for the Phase 2 Project shall be sixty thousand dollars (\$60,000.00). The City acknowledges that this amount does not guarantee completion of the work required by Bond Counsel for the Phase 2 Project. In the event

additional compensation is needed for Bond Counsel to complete the Phase 2 Project, written approval by the City shall be required prior to any compensation in excess of \$60,000.00 being paid.

This Agreement is executed on this ___th day of _____, 2021, at Malibu, California.

CITY OF MALIBU:

City Manager

ATTEST:

City Clerk
(seal)

STRADLING YOCCA CARLSON & RAUTH

By: _____
BRIAN FORBATH
Title: Shareholder/President

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

City Attorney