

STRADLING YOCCA CARLSON & RAUTH

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May __, 2020

Kenneth A. Domer
Executive Director
Successor Agency to the Fullerton Redevelopment Agency
303 West Commonwealth Avenue
Fullerton, California 92382

Dear Mr. Domer:

We appreciate the opportunity to represent the Successor Agency to the Fullerton Redevelopment Agency (the “**Agency**”) as bond counsel in connection with the proposed refunding of the City of Fullerton Public Financing Authority 2005 Tax Allocation Revenue Bonds. These services will include both drafting all authorizing, legal and closing documents, representing the Agency before the Orange Countywide Oversight Board and providing a final tax and validity opinion with respect to the refunding bonds, all as described in the attached scope of services.

As is traditional for bond counsel matters, our fees will be contingent on the completion of the bond issuance and will be payable from the proceeds of the refunding bonds. Unless otherwise confirmed in writing, the terms of this letter and the enclosed Terms of Retention will govern our bond counsel representation of you in connection with the matters identified above.

We are attaching our normal Terms of Retention, which is an integral part of our retention agreement. If this letter, including the attached Terms of Retention, accurately reflects your understanding of our relationship, please acknowledge your approval and acceptance of these terms by signing and returning this letter to me. Copies of each are enclosed for your files. I would be pleased to answer any questions you might have.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH

Cyrus Torabi

Enclosure

Terms of Retention

May __, 2020

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The undersigned hereby agrees that the terms and conditions in this letter and the accompanying Terms of Retention shall apply to services rendered by Stradling Yocca Carlson & Rauth.

SUCCESSOR AGENCY TO THE FULLERTON
REDEVELOPMENT AGENCY

By: _____
Executive Director

**TERMS OF RETENTION
OF
STRADLING Yocca CARLSON & RAUTH**

1. **Fees and Costs.** Stradling Yocca Carlson & Rauth, a Professional Corporation (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.

Except for bond counsel matters described below, payment is due within thirty days of the date of each fee and costs statement. Overdue statements will be charged interest of 10% per annum, compounded annually. If the Successor Agency to the Fullerton Redevelopment Agency (the “**Agency**”) wishes to question any charge, the Agency agrees to do so within thirty days of the statement date. Please contact the partner in charge of the Agency’s matters with any questions about any of the Agency’s bills.

For bond counsel matters, payment is contingent on the bond issuance and is payable upon closing. A scope of service and the not-to-exceed fixed fee for the proposed bond issuance is set forth in Exhibit A.

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. For bond counsel matters, expenses are included in the fixed amount that is described above.

Services unrelated to specific transactions, including but not limited to post-closing compliance matters, arbitrage rebate compliance, continuing disclosure compliance and representation of the Agency 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 the Firm.** The Firm reserves the absolute right to withdraw from representing the Agency if, among other things, the Agency fails to honor the terms of this agreement or fails to cooperate fully or follow the Firm’s advice on a material matter, or any fact or circumstance occurs that would, in the Firm’s view, render the Firm’s continuing representation unlawful or unethical. If the Firm elects to withdraw, the Agency will take all steps necessary to free the Firm of any obligation to perform further services, including the execution of any documents necessary to complete the Firm’s withdrawal, and the Firm will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on the Agency behalf. Notwithstanding the foregoing, no portion of any contingent bond counsel fee shall be payable in the event that the Firm terminates its representation of the Agency as discussed above prior to closing of the proposed transaction. If necessary in connection with litigation, the Firm will request leave of court to withdraw.

3. **Termination by Agency.** The Firm understands that it serves at the pleasure of the Agency and this agreement may be terminated by the Agency at any time, upon 10 days written notification with or without cause. **In the event that the Firm's services are terminated prior to completion of a bond issuance, no portion of any contingent bond counsel fee shall be payable to the Firm, but actual out-of-pocket expenses will be reimbursed to the Firm by the Agency.**

4. **Date of Termination.** The Firm's representation of the Agency will be considered terminated at the earlier of: (i) the Agency's termination of the Firm's representation; (ii) the Firm's withdrawal from representation of the Agency; or (iii) the substantial completion of the Firm's substantive work for the Agency.

5. **Related Activities.** If any claim or action is brought against us or any personnel or agents of the Firm based on the Agency's negligence or misconduct, or if the Firm is asked to testify as a result of its representation of the Agency or must defend the confidentiality of the Agency's communications in any proceeding, the Agency agrees to pay the Firm for any resulting fees, costs or damages, including the Firm's time, even if the Firm's representation of the Agency 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 transaction contemplated by this agreement. The Firm does not and cannot guarantee any outcome in a matter.

7. **Insurance.** It is agreed that the Firm shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

A. **Workers Compensation and Employer's Liability:** The Firm shall maintain Workers' compensation insurance as required by California statutes and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). The Firm shall submit to the Agency, upon request, along with the certificate of insurance, a waiver of subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

B. **Commercial General Liability:** The Firm shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The Firm's general liability policies shall be primary and shall not seek contribution from the Agency's coverage and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that the Agency and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent) is also required.

Any failure to comply with reporting provisions of the policies by the Firm shall not affect coverage provided the Agency.

Coverage shall state the Firm's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Coverage shall contain a waiver of subrogation in favor of the Agency.

C. Professional Liability Insurance: The Firm shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with these Terms of Retention, in the minimum amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and the Firm agrees to maintain continuous coverage through a period no less than three years after completion of the services required of this agreement.

D. All Coverages: All required insurance shall be placed with insurers acceptable to the Agency with current Best's ratings of no less than B+, Class X. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the Agency, insurance provided by non-admitted or surplus carriers with a minimum Best's rating of no less than A-, Class X, may be accepted.

Any deductible or self-insured retention shall be declared to and approved by the Agency.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days' prior written notice has been given to the Agency.

The Firm shall furnish the Agency with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. All certificates and endorsements must be received and approved by the Agency before work commences. The Agency reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

8. Client. The Firm's client for the purpose of its representation is only the person or entity identified in the letter accompanying these Terms of Retention. Unless expressly agreed, the Firm is not undertaking the representation of any related or affiliated person or entity, nor any parent, subsidiary or affiliated corporation or entity, nor any of the Agency's or their officers, directors, agents, or employees.

9. Payment Notwithstanding Dispute. In the event of any dispute that relates to the Firm's entitlement to any payment from the Agency, all undisputed amounts shall be paid by the Agency. Any amounts in any client trust account held on the Agency 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. The Firm appreciates the opportunity to serve as the Agency's attorneys and anticipates a productive and harmonious relationship. If the Agency should feel for any reason that there is a problem with the services that the Firm has performed or with the Firm's charges, the Firm encourages the Agency to bring such matters to the Firm's attention immediately. If the Firm

perceives a problem with representation of the Agency, the Firm will likewise endeavor to discuss it with the Agency. Most problems should be rectified by communication and discussion. However, a dispute might arise between the Firm and the Agency which could not be resolved by negotiation. The Firm believes 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 courts. Arbitration usually results in a decision much more quickly than proceedings in courts, and the attorneys' fees and other costs incurred by both sides may be substantially less. The Agency is free to discuss the advisability of arbitration with the Firm or with the Agency's own independent counsel or any of the Agency's other advisors, and to ask any questions which the Agency may have.

By signing this Terms of Retention, the Firm and the Agency agree that, in the event of any dispute or claim arising out of or relating to the Firm's engagement, relationship, charges or services (including but not limited to disputes or claims regarding the Firm's 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, THE AGENCY WAIVES 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 Orange County. If the Firm and the Agency 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 the Agency. However, the arbitrator shall have the right to order either party to pay all fees and costs as part of his award.

In arbitration, the Firm and the Agency shall both be entitled to conduct discovery in accordance with the provisions of the California Code of Civil Procedure, but either the Firm or the Agency 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, the Agency has the right, if desired, to request arbitration of any fee dispute before an arbitrator or panel of arbitrators selected by a local bar association or the State Bar (a "**Bar Arbitration**") and a trial de novo in court if dissatisfied with the result. If the Agency does 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 agreement, the Agency agrees 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 the Agency, 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. **Other Clients.** As a law firm with many diverse clients and practice areas, the Firm seeks to retain the ability to accept unrelated matters for all of the Firm's clients. We may thus request your informed written consent in the event that the Firm seeks to represent any other client in any future matter that is not substantially related to this matter and does not involve material confidential information that the Firm obtained while representing the Agency in this matter. Such matters could arise during our representation of the Agency in this matter. The Agency may determine to consent or not consent to such request and should feel free to consult independent counsel of the Agency's choice before deciding whether to grant any consent should it be requested.

The Firm represents various municipalities and redevelopment successor agencies throughout California on bond counsel matters. The Firm has not represented and will not represent such municipalities or redevelopment successor agencies on any matter adverse to the Agency while engaged by the Agency on this matter.

The Firm represents various investment banks, placement agents and underwriters from time to time on transactions for public agencies other than transactions for the Agency. The Firm is not representing any investment bank, placement agent or underwriter (or any other party other than the Agency) on this transaction.

12. **Primary Attorneys.** The primary attorneys with responsibility for this representation will be, Cyrus Torabi, Vanessa Legbandt and Carol L. Lew. The parties agree that the Firm is being retained based on the unique skill, experience, and expertise of such attorneys and no change will be made in the primary attorneys without the prior, written consent of the Agency.

EXHIBIT A

SCOPE OF SERVICES

As bond counsel, Stradling Yocca Carlson & Rauth, a Professional Corporation (the “**Firm**”), will undertake the following Scope of Services on the proposed transaction:

1. **Preparation of Legal Documents on Behalf of Agency.** Provide bond counsel services to the Successor Agency to the Fullerton Redevelopment Agency (the “**Agency**”) in connection with the proposed refunding of the City of Fullerton Public Financing Authority 2005 Tax Allocation Revenue Bonds (the “**2005 Bonds**”), including but not limited to:

- advice and consultation with the Executive Director of the Agency, the Administrative Services Director of the City of Fullerton, the City of Fullerton City Attorney/Agency General Counsel and the Board of Directors of the Agency regarding the proposed issuance of bonds by the Agency, proposed financial covenants and the financing process;
- preparation of all legal proceedings of the Agency in connection with the proposed bond issuance;
- drafting various resolutions, documents and agreements for consideration by the Board of Directors of the Agency;
- participating in meetings, hearings or negotiations with Agency and City of Fullerton staff, the City Council, the Board of Directors of the Agency, the Agency’s municipal advisor, underwriter, underwriter’s counsel, disclosure counsel, the bond trustee and other financing team members as the circumstances require;
- review and negotiate a bond purchase contract prepared by counsel to the underwriter;
- prepare final closing documents to be executed by the Agency to effect delivery of bonds and coordinate the adoption and execution of all documents and of the closing;
- represent the Agency before the Orange Countywide Oversight Board; and
- deliver a final approving opinion with respect to the proposed obligations and a supplemental opinion to the underwriter with respect to the enforceability of the bond purchase contract and the accuracy of the summaries of certain transaction documents contained under specified captions in the official statement.

2. **Fixed Fee Proposed.** The Firm proposes an all-inclusive not-to-exceed fee of **\$35,000** to serve as bond counsel (including the preparation of a transcript and the delivery of standard closing tax and validity opinions) in connection with the refunding of the 2005 Bonds.

The above fee quotation will in all cases be contingent upon the issuance of the bonds. Moreover, the above fee quotation is inclusive of costs. The Firm does not propose to charge the Agency any amounts in addition to those set forth above for costs in connection with the bond

Successor Agency to the Fullerton Redevelopment Agency
May __, 2020
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financing, including travel to and from the Agency's offices for appearances at Agency Board meetings or working group conferences, except as set forth in the Terms of Retention.