



CITY COUNCIL AGENDA REPORT

MEETING DATE: August 6, 2013

ITEM NUMBER:

**SUBJECT: RETENTION OF ENTERPRISE COUNSEL GROUP FOR SPECIAL COUNSEL
LEGAL SERVICES**

DATE: JULY 30, 2013

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: Thomas P. Duarte

FOR FURTHER INFORMATION CONTACT: Thomas P. Duarte, 714-446-1400

RECOMMENDATION:

Authorize City CEO/Executive Director to execute a Retainer Agreement with the Enterprise Counsel Group (ECG) for special counsel legal services in connection with litigation (1) to challenge the State Department of Finance's (DOF) actions denying certain prior payments on, and the enforceability of, the loan between the former Costa Mesa Redevelopment Agency (now the Successor Agency) and City of Costa Mesa (City/Agency loan) under Section 34171(d) of the Dissolution Laws; and, (2) to implement reinstatement of the City/Agency loan pursuant to Section 34191.4(b) of the Dissolution Laws.

BACKGROUND:

During the period 1971 to 1973 when the former Costa Mesa Redevelopment Agency (former Agency) was created and the one redevelopment project area was adopted, the City first loaned money to the former Agency and established the City/Agency loan. The original Redevelopment Plan and the Community Redevelopment Law authorized the former RDA to enter into the City/Agency loan that was evidenced by a series of promissory notes, which notes were renewed and/or refinanced from the early 1970s and in the years following. The former Agency had been making annual fixed payments on the City/Agency loan of about \$1.3M since the loan became fully amortized in the early 1990s. At the time of dissolution of the former Agency, principal and accrued interest due to the City on the City/Agency loan was about \$12,000,000. In the second Recognized Obligation Payment Schedule (ROPS), the Successor Agency listed and the DOF approved the FY 12-13 annual payment of about \$1.4M on the City/Agency loan as an enforceable obligation; however, for ROPS 13-14A the DOF denied the next annual payment due. Further, in connection with the other available funds/non-housing due diligence review, the DOF disallowed two prior payments on the City/Agency loan made in March 2011 for FY 10-11 and in November 2011 for FY 11-12, and the DOF ordered repayment of about \$2.5M and determined that the City/Agency loan is not an enforceable obligation. Under protest, the City paid the County Auditor-Controller about \$2.5M, which funds were disbursed to the affected taxing entities pursuant to the Dissolution Laws.

The ECG is recommended to provide special counsel litigation services to challenge the DOF's actions in the Superior Court, County of Sacramento (court required by statute); further, the ECG will work cooperatively with Jones & Mayer/City Attorney and special counsel Celeste Brady of Stradling Yocca Carlson & Rauth to implement a strategy for reinstatement of the City/Agency loan.

ANALYSIS:

The Retainer Agreement outlines the scope of Enterprise Counsel Group's representation of the City and Successor Agency relating to the City/Agency loan as described above. ECG will represent the City and Successor Agency in the disputes with the State and County concerning the City/Agency loan and seeking to enforce repayment of the loan as an enforceable obligation of the Successor Agency. Additionally, ECG will provide legal services in cooperation with Jones & Mayer and Stradling to coordinate a strategy on how best to utilize the provisions of Section 34191.4(b) to reinstate the City/Agency loan for repayment from residual funds pursuant to such statutory authority. ECG legal services for the litigation will be provided an hourly rate of \$295.00 for the attorneys working on this matter, and \$135.00/hour for paralegal services.

ECG will issue periodic billing statements (generally, monthly) that will be processed for payment after review by the City Attorney and subject to the provisions of the Retainer Agreement. ECG will also invoice for actual costs incurred, such as court filing fees, discovery and deposition costs, and travel at the direction of the City or Successor Agency. Colleen O'Donoghue, Assistant Finance Director for the City, will be the primary point of contact for ECG.

ALTERNATIVES CONSIDERED:

The City Council/Successor Agency Board could choose not to approve the Retainer Agreement, in which case, Enterprise Counsel Group's work on behalf of the City and Successor Agency would simply not commence.

FISCAL REVIEW:

Under the Retainer Agreement the fees for Enterprise Counsel Group legal services will be charged at \$295.00 an hour for attorneys and \$135.00 an hour for paralegals. Because ECG's representation of the City and Successor Agency has not yet commenced, the costs associated with this Retention Agreement are not known at this date. The City will initially pay for such costs, and seek reimbursement from the Successor Agency where applicable and permitted.

LEGAL REVIEW:

The City Attorney's office has reviewed and approved the Retention Agreement as to form.

CONCLUSION:

The City Council/Successor Agency Board is requested to approve the Retainer Agreement and authorize the City CEO/Executive Director to sign it on behalf of the City and Successor Agency, and authorize the City CEO/Executive Director to pay the fees and costs billed by the Enterprise Counsel Group in connection for legal services provided pursuant to the Retention Agreement.

THOMAS R. HATCH
CEO/Executive Officer

THOMAS P. DUARTE
City Attorney

BOBBY YOUNG
Director of Finance and IT Director

Attachment: [Retainer Agreement](#)

DISTRIBUTION: CEO/Executive Director
 City Attorney
 Director of Finance
 City Clerk
 Staff