OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

107-0222017-002

Agenda Item Nos. **5 (b) & 5 (c)**
Meeting of February 21, 2017

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Interim Executive Director

SUBJECT: Authorizing the Executive Director to execute a First Amendment to the legal services contract with Jones Hall, a Professional Law Corporation, for bond counsel services, to increase the fee related to the issuance of the 2016D bonds by $26,300, from $50,000 to $76,300

Authorizing the Executive Director to execute a First Amendment to the legal services contract with Curls Bartling, P.C., a Professional Law Corporation, for disclosure counsel services, to increase the fee related to the issuance of the 2016D bonds by $15,500, from $29,500 to $45,000

EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure entered into legal services contracts with Jones Hall for bond counsel services and with Curls Bartling for disclosure counsel services, approved by the Commission on April 7, 2015 (Resolutions 20-2015 and 21-2015). The proposed contract amendments would increase the fee for Jones Hall and Curls Bartling, for bond and disclosure counsel services respectively, related to the issuance of the 2016D bonds. The fee increase would fairly compensate Jones Hall and Curls Bartling for expanded scopes of service performed in support of issuing the 2016D bonds. In the Jones Hall contract, staff proposes increasing the fee by $26,300 from $50,000 to $76,300. In the Curls Bartling contract, staff proposes increasing the fee by $15,500, from $29,500 to $45,000. The proposed fee increases would be funded by reallocating unused budget in each of the contracts and therefore can be made within the existing contract not-to-exceed amounts.

Staff recommends approval of Resolutions #5-2017 and #6-2017 authorizing the Executive Director to execute first amendments to the legal services contracts with Jones Hall for bond counsel services and Curls Bartling for disclosure counsel services to increase the fee for bond and disclosure counsel services related to the issuance of the 2016D bonds.

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

DISCUSSION

Contract Background

In FY15-16, OCII planned to issue five series of bonds: two refunding bonds (one in Mission Bay North and one in Mission Bay South), one new money bond to fund infrastructure in Mission Bay South, one subordinate new money bond to fund infrastructure in Mission Bay South, and one new money bond to fund affordable housing under the authority of SB107.

On April 7, 2015, the Commission approved Resolution 20-2015, authorizing the Executive Director to enter into a legal services contract with Jones Hall, in an amount not-to-exceed $470,000, for bond counsel services related to the issuance of the bonds described above. On April 7, 2015, the Commission also approved Resolution 21-2015, authorizing the Executive Director to enter into a legal services contract with Curls Bartling, in an amount not-to-exceed $196,000, for disclosure counsel services related to the issuance of the bonds described above.

In 2016, OCII issued four of the five series of bonds contemplated in the contracts with Jones Hall and Curls Bartling. In March 2016, OCII issued: the Series 2016A bonds, refunding Mission Bay North Series 2005D, 2006B, 2009C and 2011C; the Series 2016C bonds, refunding Mission Bay South Series 2009D and 2011D; and Series 2016B, a new money bond to fund infrastructure in Mission Bay South. In August 2016, OCII issued Series 2016D, a subordinate new money bond series to fund infrastructure in Mission Bay South. OCII deferred issuance of the affordable housing bond authorized by SB107 due the complexity of issuing a bond for the first time under this new credit. As OCII did not issue the SB107 affordable housing bonds as planned, both the Jones Hall and Curls Bartling contracts retain unused budget authority from this issuance ($141,750 and $80,500, respectively).

Proposed Amendment

Due to their subordinate status, OCII originally intended to issue the 2016D bonds as a private placement with a single buyer. A private placement with a single buyer requires relatively simple legal and disclosure documentation. The fee structure for the 2016D bonds in the Jones Hall and Curls Bartling contracts reflect this relatively simple scope of work.

In the course of structuring the 2016D bonds, the financing team, which was composed of a financial advisor (Public Financial Management), bond counsel (Jones Hall), disclosure counsel (Curls Bartling), and an underwriter (Citigroup), determined there was stronger than expected interest for the 2016D bonds. Consequently, lower interest rates might be realized by marketing the bonds to a broader market than originally planned. Marketing the 2016D bonds to a broader audience required more extensive legal and disclosure documentation than originally contemplated in the Jones Hall and Curls Bartling contracts. Both Jones Hall and Curls Bartling performed this expanded scope of service on good faith and completed the expanded scope of services satisfactorily, resulting in the timely issuance of the 2016D bonds under very favorable terms. OCII wishes to amend the contracts with Jones Hall and Curls Bartling to fairly compensate them for the expanded scope of services performed.

Fees

Staff proposes reallocating unused budget for the unissued SB107 affordable housing bonds to increase the fee for services related to the issuance of the 2016D bonds. In the Jones Hall contract, staff proposes increasing the fee by $26,300 from $50,000 to $76,300. The total expenditure under the contract would be $355,050 and would not exceed the contract budget authority of $470,000. In the Curls Bartling contract, staff proposes increasing the fee by $15,500, from $29,500 to $45,000. The total expenditure under the Contract would be $131,000 and would not exceed the contract budget authority of $196,000. The higher fee is based on the additional hours required to complete the expanded scope of work described above.

As the increase in the fee for services related to the issuance of the 2016D bonds is funded by reallocating unused budget in each of the contracts, there is no change to the budget authority amounts. See detail below.

Proposed Fee Reallocation

Jones Hall

	Budget	Paid	Balance	Proposed	Re-Allocation
2016A	$ 106,250	$ 106,250	$ -	$ -	$ -
2016B&2016C	$ 172,500	$ 172,500	$ -	$ -	$ -
2016D	$ 50,000	$ -	$ 50,000	$ 76,300	$ 26,300
SB107	$ 141,250	$ -	$ 141,250	$ -	$ (26,300)
Total	**$ 470,000**	**$ 278,750**	**$ 191,250**	**$ 76,300**	**$ -**

Curls Bartling

	Budget	Paid	Balance	Proposed	Re-Allocation
2016A	$ 41,000	$ 41,000	$ -	$ -	$ -
2016B&2016C	$ 45,000	$ 45,000	$ -	$ -	$ -
2016D	$ 29,500	$ -	$ 29,500	$ 45,000	$ 15,500
SB107	$ 80,500	$ -	$ 80,500	$ -	$ (15,500)
Total	**$ 196,000**	**$ 86,000**	**$ 110,000**	**$ 45,000**	**$ -**

Proceeds from the issuance of the 2016D bonds will fund the fees related to the issuance of the bonds.

California Environmental Quality Act

Contracting for services related to the sale and issuance of the 2016D bonds is a Successor Agency fiscal activity that does not constitute a "Project" as defined by the California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(4), and will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

Recommendation

Staff recommends approval of Resolutions #5-2017 and #6-2017 authorizing the Executive Director to execute first amendments to the legal services contracts with Jones Hall for bond counsel services and Curls Bartling for disclosure counsel services to increase the fee for the issuance of the 2016D bonds.

(John Daigle, Senior Financial Analyst)

Nadia Sesay
Interim Executive Director