OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

107-0712017-002

Agenda Item **No. 5(b)**
Meeting of June 20, 2017

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Interim Executive Director

SUBJECT: Authorizing an amendment to the legal services contract with the Law Offices of Alexis Chiu for disclosure counsel services to revise the scope of services to remove Series 2017B and add Series 2017D and 2017E and to increase the contract not-to-exceed amount by $36,000 from $50,000 to $86,000

EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure (OCII) proposes issuing two series of refunding bonds: 2017D and 2017E. In order to issue these bonds, OCII must contract with disclosure counsel to draft the Official Statement.

The Commission previously approved Resolution 36-2016 (Aug. 2, 2016), authorizing a legal services contract with The Law Offices of Alexis Chiu ("Chiu") for disclosure counsel services for the 2017B Transbay Infrastructure bonds. During the issuance process, OCII, with the consent of counsel, reassigned Chiu from the 2017B bonds to future planned refundings.

OCII is now prepared to issue refunding bonds 2017D and 2017E and must amend the legal services contract with Chiu to reflect the above described reassignment and increase the contract not-to-exceed amount commensurate with the change in the scope of service. Resolution 22-2017 authorizes an amendment to the legal services contract with Chiu to revise the scope of service to remove 2017B and add 2017D and 2017E and to increase the contract not-to-exceed contract total by $36,000, from $50,000 to $86,000.

Staff recommends the Commission approve Resolution 22-2017 to facilitate the issuance 2017D and 2017E.

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DISCUSSION

OCII's FY16-17 budget contemplated the issuance of a number of bonds: 2017A Housing bonds, 2017B Transbay Infrastructure bonds, and refunding bonds.

Each bond issuance must have a disclosure counsel. Disclosure counsel drafts the Official Statement, which provides investors with the details regarding the planned bonds. In order to select a disclosure counsel for the FY16-17 bond issuances, OCII issued an RFP to the City's Bond Counsel pool and selected Curls Bartling and Chiu as the most responsive applicants. On August 2, 2016, the OCII Commission approved Resolution 37-2016, authorizing a legal services contract with Curls Bartling for disclosure counsel services for the 2017A Housing bonds and approved Resolution 36-2016, authorizing a legal services contract with Chiu for disclosure counsel services for the 2017B Transbay Infrastructure bonds.

During the issuance process, the financing team determined that the 2017A Housing bonds and the 2017B Transbay infrastructure bonds could issue the same credit and Official Statement. To reflect this change in structure, OCII modified the disclosure counsel assignments. With the agreement of counsel, OCII assigned Curls Bartling to 2017A and 2017B and assigned Chiu to future planned refundings. At the time, OCII amended the legal services contract with Curls Bartling to reflect this reassignment, but deferred amending the contract with Chiu until the time of issuance of the planned refunding bonds..

Contract Amendments

OCII is now prepared to issue refunding bonds 2017D and 2017E and must amend the legal services contract with Chiu in order to complete the issuance. Resolution 22-2017 amends the legal services contract with Chiu to revise the scope of service and to increase the contract not-to-exceed amount.

As described above, OCII, with agreement from Counsel, reassigned Chiu from 2017B to 2017D and 2017E. Resolution 22-2017 revises the scope of service to remove 2017B and add 2017D and 2017E.

Resolution 22-2017 also increases the contract not-to-exceed amount commensurate with the change in the scope of service. At the time the Commission approved the legal services contract with Chiu, the estimated par amount of 2017B was up to $37 million. The estimated par amount of 2017D and 2017E is $145 million. Reassigning Chiu from 2017B to 2017D and 2017E increases the scope-of-work and therefore the fee for services. Additionally, because Chiu completed some disclosure counsel services related to 2017B prior to re-assignment, the revised budget also compensates Chiu for time spent on 2017B. Resolution 22-2017 increases the contract not-to-exceed amount by $36,000, from $50,000 to $86,000.

Consistent with Chiu's original proposal, the fee for service includes both a fixed and a variable fee. The fixed fee is a standard fee for providing disclosure counsel services to draft an Official Statement. The variable fee reflects the additional work generated by each additional refunding bond. The proposed variable fee is $3,500 per refunded bond. The amended contract not-to-exceed amount of $86,000 assumes nine refunded bonds, the maximum number of bonds eligible for refunding. Refunding nine bonds would result in a maximum variable fee of $31,500. The current refunding plan anticipates refunding only six bonds. Under this expected scenario, the variable fee would be total $21,000. OCII will pay the variable fee commensurate to the number of bonds actually refunded.

A detailed table of the revised budget is included as "Exhibit A" to the contract amendment ("Attachment A") to Resolution 22-2017.

PROPOSED ACTION

Resolution 22-2017 authorizes an amendment to the legal services with Chiu, revising the scope of service to remove 2017B and add 2017D and 2017E and to increase the contract not-to-exceed amount by $36,000 from $50,000 to $86,000.

Staff recommends the Commission approve Resolution 22-2017 in support of 2017D and 2017E.

California Environmental Quality Act

Authorization of bonds and contracting for services related to the sale and issuance of bonds is a Successor Agency fiscal activity that does not constitute a "Project," as defined by the California Environmental Quality Act ("CEQA") in 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.

(Originated by John Daigle, Senior Financial Analyst)

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