



For Agenda Of:

June 7, 2006

**ITEM # 15**

To: Sacramento Transportation Authority

**Subj: Selection of Consulting Attorneys to Provide Bond Counsel and Disclosure Counsel Services Associated with Implementation of the *New* Measure A Plan of Finance**

RECOMMENDATION

1. Certify that the firms identified below are most qualified to provide bond counsel or disclosure counsel services to the Authority.
2. Authorize staff to execute the attached contracts with *Orrick Herrington & Sutcliffe* to serve as bond counsel and *Nossaman Guthner Knox & Elliot* to serve as disclosure counsel related to debt financing of the *New* Measure A transportation sales tax program.

BACKGROUND

On April 13<sup>th</sup>, your Board authorized the distribution of a Request for Proposals (RFP) to consulting attorneys for bond counsel and disclosure counsel services associated with implementation of the pending Plan of Finance for the *New* Measure A transportation sales tax program. Proposals were due from interested consulting firms on May 17, 2006. We received submissions from ten very impressive firms:

Best Best & Krieger, LLP	Hawkins Delafield & Wood, LLP
Holland & Knight, LLP	Kutak & Rock, LLP
Nixon Peabody, LLP	Nossaman Guthner Knox & Elliot, LLP
Orrick Herrington & Sutcliffe, LLP	Quateman LLP
Squire Sanders & Dempsey, LLP	Stradling Yocca Carlson & Rauth

Nine firms submitted a combined proposal for both bond and disclosure counsel. Quatemann wishes to be considered solely for disclosure counsel. The RFP stated that the Authority's intent is to select a separate firm for each function.

The proposals were reviewed by STA's lead consulting financial advisor, the special legal counsel, and the executive director. We assessed each proposal relative to the information set forth in the RFP, and used the following specific screening criteria to identify a list of particularly qualified firms:

- Experience and expertise with local transportation financings in California.
- Relevant experience with local transportation sales tax issuers.
- Relevant experience securitizing local or regional development mitigation fee revenues.
- Demonstrated understanding of the STA's needs and of the financial challenges facing transportation agencies in Sacramento County.

## DISCUSSION

The review panel convened on May 26<sup>th</sup>, and recommended that the following consulting teams be certified as having the most relevant experience to serve as the Authority's bond or disclosure counsel, respectively:

### Bond

Nossaman Guthner Knox & Elliot  
Orrick Herrington & Sutcliffe  
Squire Sanders & Dempsey

### Disclosure

Hawkins Delafield & Wood  
Nossaman Guthner Knox & Elliot  
Orrick Herrington & Sutcliffe  
Squire Sanders & Dempsey

The panel subsequently screened this short list according to the following criteria:

- Demonstrated understanding of issues and complications associated with any effort to leverage New Measure A sales tax and development fee revenues prior to commencement of the revenue streams in 2009.
- Presence in Sacramento
- Fee proposal.

Based on these criteria, we recommend that your Board select Orrick Herrington & Sutcliffe as the preferred proposer for bond counsel. Orrick has represented eight local transportation authorities with sales tax revenue bonds, and has served as underwriter's counsel on the sales tax financings of three additional local transportation authorities. In addition, their proposal demonstrates a unique understanding of the complexities of securitizing development mitigation fee revenues. The proposed contract (attached) calls for compensation in an amount not to exceed \$75,000 for each issuance.

We further recommend that your Board select Nossaman Guthner Knox & Elliot as the preferred proposer for disclosure counsel. Nossaman has represented numerous local transportation authorities—as either bond or disclosure counsel—on various financings secured by local sales taxes, and they serve as general counsel to two of those entities. The firm has also worked successfully with several counties to implement financing programs backed by countywide development mitigation fee revenues. The proposed contract (attached) calls for compensation not to exceed \$65,000 for each issuance.

Staff anticipates that the Authority will issue revenue bonds approximately five times between 2009 and 2017, in addition to revenue anticipation notes in 2007 and 2008. Both contracts allow for additional compensation—subject to mutual agreement of both parties—for more complex issuance involving variable rates, swaps, and/or credit enhancements.

Please note that the firms are reviewing the contracts' indemnity clause, and may suggest different language. Any related changes must be approved by the Authority's legal counsel. If it is unable to reach mutual agreement with Orrick and/or Nossaman on the contract terms, staff will initiate contract talks with another certified firm(s). Alternative contracting arrangement(s) will be brought back to your Board for review.

Respectfully Submitted,

Brian A. Williams  
Executive Director

Attachments

C: Mary Collins—Orrick Herrington & Sutcliffe, LLP  
Barney Allison—Nossaman Guthner Knox & Elliot, LLP