

To: James L. App, City Manager
From: Mike Compton, Director of Administrative Services
Subject: Disclosure Counsel Services
DATE: April 6, 1999

Need:
For the City Council to consider approval of a contract for bond disclosure counsel services for Measure D bonds.

- Facts:
1. The Council at their March 3, 1998 did approve resolutions authorizing contracts for bond counsel and financial advisory services.
 2. Given the Orange County treasurer debacle a couple of years ago, it is now industry practice to retain disclosure counsel in order to provide bond buyers the assurance that there is independent disclosure of the financial well being of the entity issuing bonds.
 3. The City's financial advisor, Project Finance Associates, and the City's bond counsel, Robert Haight, have recommended that the City retain the services of Lawrence Jensen of Foley & Lardner located in San Francisco.
 4. As with the two contracts noted above, the proposed contract provides for fees to be paid on a contingency fee basis. If no bonds are sold, no matter the effort and/or expenses incurred, no fee is paid.

Analysis and Conclusions:
Since Measure D has been approved by the voters, fact #4 is really a moot point. In fact, the City would not be retaining the services of disclosure counsel unless it was prepared to issue bonds in accordance with Measure D.

Given the current time line to issue the first series of bonds in July, 1999, it is imperative that the City retain disclosure counsel immediately. In fact, staff will be presenting to the Council, at their April 20th meeting, the formal documents necessary to proceed with the sale of general obligation capitalized appreciation bonds in the amount of \$25 million.

Fiscal Impact:
The fee for disclosure services is \$25,000 plus \$1,500 to cover any out-of-pocket expenses except for the fees of providers of statistical data included in the Official Statement. The amount of the fee is consistent with industry standards and reflects fees being collected by other attorneys for similar services on other bond issues. This level of fee was contemplated in the prior fiscal analysis undertaken to estimate the net proceeds from bond sales.

Options:

- a. That the City approve the attached resolution authorizing the City Treasurer to execute a letter of understanding with the firm of Foley of Lardner; or
- b. Amend, modify or reject any of the options above.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF EL PASO DE ROBLES
APPROVING AND AUTHORIZING THE EXECUTION OF A
LETTER OF UNDERSTANDING WITH FOLEY AND LARDNER
TO PROVIDE BOND DISCLOSURE SERVICES

WHEREAS, the electorate approved Measure "D" on the June 2, 1998 election ballot, a measure calling for the issuance of \$38 million general obligation bonds; and

WHEREAS, the issuance of general obligation bonds does requires the retention of disclosure counsel; and

WHEREAS, disclosure counsel must be distinctly different and separate form bond counsel; and

WHEREAS, the City's bond counsel and financial advisor have recommended Lawrence Jensen with Foley & Lardner.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the letter of understanding hereto attached as Exhibit "A" and incorporated herein by reference, between the City of El Paso de Robles and Foley & Lardner, for services by that attorney as Disclosure Counsel for the City of El Paso de Robles, in connection with the authorization and issuance of General Obligation bonds for the acquisition and construction of certain municipal improvements is hereby approved.

BE IT FURTHER RESOLVED that the treasurer of the City of El Paso de Robles is hereby authorized to executive said letter of agreement.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 6th day of April, 1999 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

Attest:

Madelyn Paasch, City Clerk

FOLEY & LARDNER

CHICAGO
DENVER
JACKSONVILLE
LOS ANGELES
MADISON
MILWAUKEE
ORLANDO

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WRITER'S DIRECT LINE
(415) 984-9893

EMAIL ADDRESS
ljensen@foleylaw.com

CLIENT/MATTER NUMBER
039187-0102

March 12, 1999

Mr. Michael Compton
Administrative Services Director
City of El Paso De Robles
1000 Spring Street
Paso Robles, CA 93446

Re: Proposed Fee Agreement

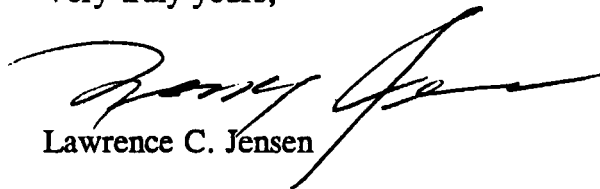
Dear Mr. Compton:

Enclosed is our form of fee agreement letter (2 copies) with respect to our services as disclosure counsel for the City's proposed issue of general obligation bonds.

If acceptable to you, please sign where indicated and return one copy. If you have any questions or need clarification please do not hesitate to call me.

I am looking forward to working with you, Craig and Bob Haight on this particularly interesting financing.

Very truly yours,



Lawrence C. Jensen

Enclosure(s)

cc: Mr. Craig Hill (w/encl.)

FOLEY & LARDNER

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CLIENT/MATTER NUMBER
039187-102

March 12, 1999

Mr. Michael Compton
Administrative Services Director
City of El Paso De Robles
1000 Spring Street
Paso Robles, CA 93446

Re: 1999 General Obligation Bonds

Dear Mr. Compton:

We are pleased and privileged that our firm will have the opportunity to represent the City as disclosure counsel in connection with the proposed issuance, sale and delivery of the City's 1999 General Obligation Bonds (the "Bonds").

This letter will confirm the terms applicable to all legal services rendered by Foley & Lardner ("Disclosure Counsel") with respect to the Bonds.

Disclosure Counsel provides its services as a recognized independent expert whose primary responsibilities are to provide consulting services to the City with respect to all disclosure matters related to the Bonds, to assemble the Official Statement and prepare the Continuing Disclosure Certificate, and to render a legal opinion with respect to the Official Statement.

The legal opinion will state, to the effect, that, based upon the assumed validity of the documents, records, opinions and other instruments which are a part of the proceedings, statements contained in the Official Statement with respect to the descriptions of the Bonds, security for the Bonds, summaries of the legal documents, tax matters, legal matters, and continuing disclosure obligations are true, accurate and correct in all material respects and are not misleading.

The legal opinion will not include within its scope certain other information contained in the Official Statement (for example, financial, appraisal or statistical information

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or forecasts, property descriptions, numbers, charts, estimates, projections, and assumptions or expressions of opinion, and descriptions of the bond insurer and bond insurance policy, if applicable, the book-entry system and Depository Trust Company and the City of El Paso De Robles) which information is provided by others and into which Disclosure Counsel makes no independent investigation.

In gathering such information in the course of assembling the Official Statement, Disclosure Counsel will include only that which is believed to come from reliable sources. In doing so, Disclosure Counsel will rely on City officers and staff and other consultants to review such information within their respective areas of knowledge and to provide Disclosure Counsel with clarifications and supplemental information as required to assure that the information included in the Official Statement is true, accurate and correct in all material respects.

The fee for our services will be \$25,000 plus \$1,500 to cover all of our out-of-pocket costs and expenses except for the fees of providers of statistical data included in the Official Statement.

The fee will be contingent upon the issuance and sale of the Bonds and payable concurrently with such issuance and sale.

Disclosure Counsel shall not compromise the objectivity of its legal opinion by virtue of the payment provisions hereof, and Disclosure Counsel makes no warranty or representation concerning the feasibility or desirability of the issuance of the Bonds or any portion thereof, it being understood that the City will decide in its sole and absolute discretion whether or not to proceed with any transaction.

The City and no other party shall be the client of Disclosure Counsel. Disclosure Counsel shall be entitled to assume conclusively that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests. Disclosure Counsel does not accept and hereby disclaims any engagement with respect to the Bonds by any party other than the City.

On the date the Bonds are first exchanged for their purchase price, the responsibility of Disclosure Counsel with respect to services related to the Bonds will be concluded, except with respect to the provision of amendments to the Official Statement, if necessary. Disclosure Counsel does not undertake to provide continuing advice except as it may be separately engaged in writing.

California law requires that this letter inform the City that Disclosure Counsel maintains errors and omissions insurance coverage which, subject to the terms of the policies, applies to the services rendered by Disclosure Counsel.

Professional services by Disclosure Counsel for and on behalf of the City hereunder shall at all times be subject to and conditioned upon the rules and regulations of the

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State Bar of California, as amended from time to time, including, but not limited to, the Rules of Professional Conduct of the State Bar of California and sections 6100 *et seq.*, of the California Business and Professions Code. This engagement shall be construed under and shall be deemed governed by the laws of the State of California.

The terms outlined in this letter will continue in effect unless terminated by us or by you in writing. You shall at all times have the right to terminate our services. Likewise, we reserve the right to terminate our services if we determine that to continue would not be in the best interests of either of us. If either party terminates this agreement, we will stop all work for you, consistent with our ethical requirements.

Generally, we keep each client's legal files for 10 years after we close the file. After 10 years, we may destroy those files unless the client expressly requests otherwise. If you want us to keep your files for a longer period of time, please tell us.

This letter sets forth the entire understanding of the City and Disclosure Counsel in connection with the subject matter hereof as of the date hereof. Neither the City nor Disclosure Counsel has made any statement, representation or warranty in connection herewith except as expressly set forth herein which has been relied upon by the other to enter into this engagement.

Very truly yours,



Lawrence C. Jensen

LCJ:dc

ACCEPTED:
CITY OF EL PASO DE ROBLES

By: _____

