



Legislation Text

File #: 2020-245, Version: 1

Report to City Council and Successor Agency

Tuesday, April 21, 2020

Consent

SUBJECT:

APPROVE AND AUTHORIZE THE CITY MANAGER/EXECUTIVE DIRECTOR OR CITY ATTORNEY/AGENCY COUNSEL TO CONSENT TO NIXON PEABODY CONFLICT OF INTEREST WAIVER LETTER (CITY COUNCIL AND SUCCESSOR AGENCY)

I. SUMMARY

Conflict waivers are occasionally necessary when the City's legal team represents a client that has business before the City or one of its agencies. This is unlikely to arise with the City Attorney's firm, Aleshire & Wynder, because it only represents public agencies, but the City sometimes hires specialized outside counsel, such as disclosure counsel on bond issues. Nixon Peabody has been the Disclosure Counsel on a number of recent City bond issues, such as the Pension Obligation Bonds and the Measure R/Measure M Bonds, and part of the team preparing the 2007 Tax Allocation Bonds and the 2010 Housing Bonds of the Successor Agency.

Nixon Peabody also represents Bridge Development, which is part of the development team that the Carson Reclamation Authority ("Authority") is negotiating with on Cells 3, 4 and 5. Given that the City could be involved in the project from the land use approval perspective and a Development Agreement, and the Successor Agency is still petitioning the State to allow the 2020 Series C Tax Allocation Bond (for which Nixon Peabody is also the Disclosure Counsel), it is necessary to bring a conflict waiver letter for the City Council/Successor Agency to approve.

II. RECOMMENDATION

1. Acting as the City Council:

APPROVE and AUTHORIZE the City Manager or City Attorney to consent to Nixon Peabody conflict of interest waiver letter in Exhibit 1.

2. Acting as the Successor Agency:

APPROVE and AUTHORIZE the Executive Director or Agency Counsel to consent to Nixon Peabody conflict of interest waiver letter in Exhibit 1.

III. ALTERNATIVES

DO not approve the conflict waiver.

IV. BACKGROUND

The Carson Reclamation Authority has recently entered negotiations with a development team which includes Bridge Development to be the developer of Cells 3, 4 and 5 of the Former Cal Compact Landfill (157 Acre) property. Bridge has proposed a mix of industrial development and a restaurant/retail/entertainment plaza on the parcels.

Bridge will soon be negotiating relevant contracts with the City and the Authority, including an Acquisition Agreement. Bridge has approached the City and its related entities because it desires to use an attorney at Nixon Peabody, LLP as its Counsel. Nixon Peabody is currently disclosure counsel on several of the City's or Successor Agency Bond issues: (a) Pension Bonds; (b) Successor Agency 2020 Series A&B Bonds that is a refunding of two housing bond issues and the 2007 Redevelopment Bonds, funds of which were used to remediate part of the 157 Acre Parcel, and (c) the 2020 Series C Bonds that would be new Successor Agency Bonds generating approximately \$90,000,000 to remediate the 157 Acre Property.

Nixon Peabody was also disclosure counsel on the City's Measure M/Measure R Bonds issued last year. Daniel Kim, for Nixon Peabody, LLP, acts as the City's disclosure counsel. Justin Thompson would be the attorney at Nixon Peabody who would act for Bridge Development. The City Attorney would act as counsel for the City. Nixon has requested the City and its related entities sign a waiver letter consenting to the representation as required by the ethical rules applicable to lawyers and their clients. The Waiver Letter is attached as Exhibit 1.

The ethical rules require informed consent to oppose a current client, even on an unrelated matter. Therefore, Nixon is requesting the waiver.

Nixon's current duties with the City are as follows: As disclosure counsel, Nixon ensures that the City/Successor Agency discloses all significant risks related to the Bonds and complies with relevant securities laws. Such representation generally has no relevance, control or influence over the amount of money designated for developer or similar issues, or issues which would affect the Bridge negotiations.

In its waiver letter, Nixon states that the Bridge Transaction and the existing matters in which Nixon represents the City are wholly unrelated and will be handled by different

lawyers at Nixon. For these reasons, Nixon is confident that there is no material risk that its commitment and dedication to City's interests will be adversely affected, and Nixon is confident that it is able to continue to provide competent and diligent representation to the City. Should this ever change during the Transaction, Nixon will immediately notify the City and its related entities and seek further direction. To the extent of an actual conflict later, Nixon may need to withdraw from both clients.

Neither Staff nor the City Attorney expects the dual representation to be a problem under the current circumstances.

V. FISCAL IMPACT

There is no fiscal impact to the City or Agency.

VI. EXHIBITS

Exhibit 1. Letter from Nixon Peabody, LLP (pgs. 4-6)

Prepared by: John S. Raymond, Assistant City Manager.