

Garden Grove Housing Authority

**INTER-DEPARTMENT MEMORANDUM**

|          |  |       |                      |
|----------|--|-------|----------------------|
| To:      | Matthew J. Fertal                                  | From: | Economic Development |
| Dept:    | Director   | Dept: |                      |
| Subject: | AGREEMENTS FOR HOUSING<br>AUTHORITY LEGAL SERVICES | Date: | February 28, 2012    |

OBJECTIVE

The purpose of this report is to request that the Garden Grove Housing Authority ("Housing Authority") consider approval of legal services agreements with Stradling, Yocca, Carlson & Rauth and Woodruff, Spradlin and Smart.

BACKGROUND/ANALYSIS

On January 24, 2012, the Housing Authority accepted the rights, powers, assets, liabilities, duties, and obligations associated with housing functions performed by the Garden Grove Agency for Community Development ("Agency"), which was dissolved effective February 1, 2012. In order to accomplish these tasks, the Housing Authority will require continued legal services.

FINANCIAL IMPACT

The financial impact is not yet determined.

RECOMMENDATION

Staff recommends that the Garden Grove Housing Authority

- Approve the attached legal services agreements with Stradling, Yocca, Carlson & Rauth and Woodruff, Spradlin and Smart; and
- Authorize the Authority Director to execute the Agreements on behalf of the Housing Authority and make minor modifications as necessary.



JIM DELLALONGA

Senior Project Manager/Department Administrative Officer

Attachment 1: Agreements for legal services

Recommended for Approval

  
 Matthew Fertal  
 Director

**AGREEMENT FOR PROFESSIONAL SERVICES  
(Housing Authority)**

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is dated as of February 1, 2012 between the **GARDEN GROVE HOUSING AUTHORITY**, a public body corporate and politic, ("Housing Authority") and **STRADLING YOCCA CARLSON & RAUTH**, a professional corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**RECITALS**

- A.** The City of Garden Grove ("City") is California municipal corporation.
- B.** The Garden Grove Housing Authority is a public body corporate and politic, organized and existing pursuant to the California Housing Authorities Law, Health and Safety Code Section 34200, *et seq.* ("HAL").
- C.** On December 29, 2011, in the petition *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the Dissolution Act that dissolved all redevelopment agencies in California as of and on February 1, 2012.
- D.** The Garden Grove Agency for Community Development ("Agency") is now a dissolved community redevelopment agency pursuant to the Dissolution Act.
- E.** By resolution considered and approved by the City Council at an open public meeting the City chose to become and serve as the "successor agency" to the dissolved Agency under the Dissolution Act.
- F.** As of and on and after February 1, 2012 the Successor Agency will perform its functions as the "successor agency" under the Dissolution Act.
- G.** In functioning as the Successor Agency, the City Council and City are serving in a role established by and carrying out functions pursuant to the Dissolution Act which duties are distinct from its powers as a municipal corporation and general law city under California laws and the California Constitution; and, this Agreement is entered into pursuant and subject to the approvals and requirements of the Dissolution Act.
- H.** Prior to dissolution the Agency was engaged in redevelopment activities to execute and implement its redevelopment plans and project areas pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code §33000, *et seq.*) ("CRL").
- I.** Pursuant to Section 34176 added by the Dissolution Act, by resolution adopted January 17, 2012 the City declined to assume the housing assets and

functions of the (former) Agency and selected the Housing Authority to assume the housing assets and functions of the dissolved Agency.

**J.** Further, pursuant to Section 34176, by resolution adopted January 17, 2012 the Housing Authority by resolution assumed the housing assets and functions of the former Agency as of and on and after February 1, 2012.

**K.** Consultant is a law firm that is qualified in the area of public law, including the CRL, the Dissolution Act, the Housing Authorities Law, general municipal law, public finance, and litigation, and other federal and state laws relating to general public law, and possesses professional skills with respect to interpreting such laws, including without limitation representing Successor Agency as legal counsel relating to the Dissolution Act, and the Housing Authority as legal counsel also relating to the Dissolution Act and the CRL and as to the Housing Authorities Law, and other applicable laws and regulations, relating to affordable housing, economic development, and other legal work.

**L.** In addition to the general and specialized counsel legal services provided by the City Attorney, Housing Authority desires general and special legal counsel legal services to advise and represent the Housing Authority relating to the Housing Authorities Law, the CRL, the Dissolution Act, general municipal law, public finance, and litigation, and other federal and state laws relating to general public law, and other legal matters as requested and directed by the Housing Authority, the City, Successor Agency, the City Attorney, City Manager, Authority Director, or other public official or authorized designee.

**M.** The City and Agency have previously engaged, and currently has under contract, Consultant to provide special counsel legal services to the former Agency, the City, and to the Garden Grove Housing Authority for certain legal matters, including advisory and transactional work and public finance work, and now desires to enter into this separate Agreement for legal services relating to the to the Dissolution Act, the CRL, the Housing Authorities Law, other public law matters as so directed by Housing Authority.

**NOW, THEREFORE,** Housing Authority wishes to engage Consultant as legal counsel on the terms set forth below.

**1. Term.** This Agreement shall commence as of February 1, 2012 and shall remain and continue in effect until June 30, 2015, unless sooner terminated pursuant to the provisions of this Agreement; further, such term and the provisions hereof may be extended by action and approval of the Authority Director and/or City Attorney, in writing.

**2. Services.** Consultant shall provide legal services relating to the Dissolution Act, the CRL, the Housing Authorities Law, other public law matters, public finance, litigation and other legal matters at the hourly rates set forth in Exhibit A, attached hereto and

incorporated herein as though set forth in full. This Agreement is entered into pursuant and subject to the approvals and requirements of the Dissolution Act.

**3. Performance.** Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent perform all legal services as assigned and directed by authorized representatives of Housing Authority. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

**4. Management.** The Authority Director is hereby authorized to and shall represent Housing Authority in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to assign tasks to be performed or change the compensation due to Consultant. The Authority Director shall be authorized to act on Housing Authority's behalf and to execute all necessary documents that assign or modify tasks to be performed or change Consultant's compensation, subject to Section 5 hereof. Further, the City Attorney is also authorized to act on Housing Authority's behalf and to execute all necessary documents that assign or modify the tasks to be performed or change Consultant's compensation, subject to Section 5 hereof.

## **5. Payment**

(a) The Housing Authority agrees to pay Consultant, in accordance with the payment rates, terms and schedule of payment as set forth in **Exhibit A** based upon actual time spent on the tasks to be performed, as assigned by the Authority Director, City Attorney, City Council, or other authorized persons during the term of the Agreement. If Housing Authority requests and Consultant provides other special counsel legal services, if any, then the hourly rates set forth in **Exhibit A** shall apply as set forth for herein unless separately negotiated and established in writing by the Authority Director and Consultant.

(b) Consultant will submit invoices to Housing Authority for actual services performed. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If Housing Authority disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

## **6. Suspension or Termination of Agreement without Cause**

(a) Housing Authority may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If Housing Authority suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) Consultant reserves the right to withdraw from representation of Housing Authority if, among other events, Housing Authority fails to honor the terms of this Agreement, Housing Authority fails to cooperate fully or follow Consultant's advice on a material matter, or any fact or circumstance occurs that would, in Consultant's view, render continuing representation unlawful or unethical. If Consultant elects to withdraw, Housing Authority will take all steps necessary to free Consultant of any obligation to perform further legal services, including the execution of any documents necessary to complete Consultant's withdrawal, and Consultant will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on Housing Authority's behalf. If necessary in connection with litigation, Consultant would request leave of court to withdraw.

(c) In the event this Agreement is terminated pursuant to this Section 6, Housing Authority shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to Housing Authority. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to Housing Authority pursuant to Section 5.

**7. Date of Termination.** Consultant's representation of Housing Authority will be considered terminated at the earlier of (i) Housing Authority's termination of Consultant's representation or (ii) Consultant's withdrawal from representation of Housing Authority.

**8. Related Activities.** If any claim or action is brought against Consultant or any personnel or agents of Consultant based on Housing Authority's negligence or misconduct, or if Consultant is asked to testify as a result of Consultant's representation of Housing Authority or must defend the confidentiality of Housing Authority's communications in any proceeding, Housing Authority agrees to pay Consultant for any resulting fees, costs, or damages, including our time, even if Consultant's representation of Housing Authority has ended.

**9. No Guarantee of Outcome.** Consultant does not and cannot guarantee any outcome in a matter.

**10. Insurance.** In accordance with the requirements of California Business and Professions Code §6148, Consultant advises Housing Authority that its firm maintains professional liability insurance coverage applicable to the services to be rendered to Housing Authority. Further, Consultant maintains and shall continue to maintain general liability coverage, hired automobile coverage, and workers' compensation insurance.

**11. Payment Notwithstanding Dispute.** In the event of any dispute that relates to Consultant's entitlement to payment from Housing Authority, all undisputed amounts shall be paid by Housing Authority. Any amounts in a client trust account, if any, held on Housing Authority's behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.

## **12. Default Of Consultant**

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, Housing Authority subject to Section 6 above, shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the Authority Director or his authorized representative determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he shall cause to be served upon the Consultant a written notice of the default. Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, Housing Authority shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## **13. Ownership of Documents**

(a) Consultant shall maintain complete and accurate records with respect to information required by Housing Authority that relate to the performing legal services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Subject to applicable laws and rules of professional conduct, Consultant shall provide free access to the representatives of Housing Authority, or its designees at reasonable times to such books and records; shall give Housing Authority the right to examine and audit said books and records; shall permit Housing Authority to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Subject to applicable laws and rules of professional conduct, upon completion, termination or suspension of this Agreement, all documents prepared in the course of providing the services to be performed pursuant to this Agreement, with the exception of computer models previously developed by Consultant, shall become the sole property of Housing Authority and may be used, reused or otherwise disposed of by Housing Authority without the permission of the Consultant. With respect to computer files, Consultant shall make available to Housing Authority, at the Consultant's office and upon reasonable written request by Housing Authority, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files, but excluding access to Consultant's computer models.

#### **14. Independent Consultant**

(a) Consultant is and shall at all times remain as to Housing Authority a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Housing Authority and its officers, employees, or agents shall have no control over the conduct of Consultant or any of Consultant's shareholders, officers, employees, or agents; except as set forth in this Agreement. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against Housing Authority, or bind Housing Authority in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Housing Authority shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Housing Authority.

#### **15. Legal Responsibilities**

Consultant shall keep itself informed of State and Federal laws and regulations that affect those employed by it or affect the performance of its service pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations.

#### **16. Undue Influence**

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of Housing Authority in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement or financial inducement. No officer or employee of Housing Authority will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling Housing Authority to any and all remedies at law or in equity.

#### **17. No Benefit to Arise to Local Employees**

No member, officer, or employee of Housing Authority, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to legal services provided hereunder during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceed thereof, for work to be performed in connection therewith.

#### **18. Release of Information / Conflicts of Interest**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Housing Authority's prior written authorization. Consultant, its shareholders, officers,

employees, agents or subconsultants, shall not without written authorization from the Authority Director or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the city boundaries. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Housing Authority notice of such court order or subpoena.

**(b)** Consultant shall promptly notify Housing Authority should Consultant, its shareholders, officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. Housing Authority retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with Housing Authority and to provide the opportunity to review any response to discovery requests provided by Consultant. However, Housing Authority's right to review any such response does not imply or mean the right by Housing Authority to control, direct, or rewrite said response.

## **19. Notices**

Any notices that any party may desire to give to any other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Housing Authority:      City Hall  
   11222 Acacia Parkway  
   Garden, Grove 92840  
   Attention: Authority Director

To Consultant:                Stradling Yocca Carlson & Rauth  
   660 Newport Center Drive Suite 1600  
   Newport Beach, CA 92660  
   Attention: Celeste Stahl Brady, Esq.

## **20. Assignment**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of Housing Authority.

## **21. Licenses**

At all times during the term of this Agreement, Consultant shall have in full force



and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**22. Governing Law**

Housing Authority and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior court of the County of Orange or in the federal district court with jurisdiction over the City, unless the Dissolution Act requires otherwise.

**23. Entire Agreement**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**24. Modification**

No modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of the parties hereto.

**25. Authority to Execute This Agreement**

The Authority Director on behalf of the Housing Authority is hereby authorized to execute this Agreement on behalf of Housing Authority. The persons executing this Agreement each warrant and represent that he/she has the authority to execute this Agreement on behalf of the party and has the authority to bind such party(ies) to the performance of its obligations hereunder.

**26. Interpretation**

In the event of conflict or inconsistency between this Agreement and any other document or Exhibit A this Agreement shall control unless a contrary intent is clearly stated.

**[Signatures on following page.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Professional Services to be executed the day and year first above written.

***Consultant***

**STRADLING YOCCA CARLSON &  
RAUTH**, a professional corporation

\_\_\_\_\_  
Celeste Stahl Brady, Shareholder

***Housing Authority***

**GARDEN GROVE HOUSING  
AUTHORITY**, a public body corporate  
and politic

\_\_\_\_\_  
Authority Director

**ATTEST:**

\_\_\_\_\_  
Authority Secretary

**APPROVED AS TO FORM**

\_\_\_\_\_  
Authority General Counsel

## EXHIBIT A

### SERVICES AND COMPENSATION RATES

**1. Specific Legal Services for Housing Authority shall be as requested and directed by the Authority Director, the City Attorney, and authorized officials and staff:**

- Legal research, writing, document preparation, conference calls, meetings, communications and correspondence by and among Housing Authority officials, staff, consultants, developers, owner representatives, developer's and owner's counsels and consultants, and other legal entities and persons involved with and related to the CRL, the Dissolution Act, the Housing Authorities Law, federal, state, and/or local funding and implementation of projects and/or programs related to affordable housing, general municipal law, public finance, and litigation, and other federal and state laws relating to general public law.

**2. Other Special Counsel Legal Services, as and if requested and directed by the Authority Director and/or City Attorney:**

As may be required from time to time by Housing Authority and its officers, Consultant may be requested to provide other legal services on matters that may include, but not be limited to: (i) relocation, property acquisition, and brownfields matters; (iii) negotiating, drafting, and/or reviewing affordable housing agreements, purchase/sale agreements, disposition agreements, and other contracts; (iv) conflict of interest and other legal matters, as commenced upon request by and as required at the direction of the Authority Director or City Attorney and/or authorized officers or staff of Housing Authority.

Further, at the request of the Authority Director, City Attorney, or authorized officers or staff, Consultant may provide such further legal services as and if requested or directed, including without limitation, litigation services, rendering public finance advisory services, bond counsel services, bond counsel opinions related to preparing bond offerings; rendering of advice and other services on environmental, eminent domain, corporate, intellectual property, securities, employment, health care, or other legal matters.

### 3. Compensation:

Consultant shall be entitled to the following hourly rates during the term of the Agreement. Rates are subject to annual adjustment based on Consumer Price Index (CPI) for the prior year and such increase, if any, shall be applied to the hourly rates unless otherwise negotiated between the Authority Director and Consultant; further, as to future or other special legal matters other fees and rates may be established in writing.

|  |       |
|--|-------|
| Shareholders/Partners<br>(who include Celeste Stahl Brady and<br>Thomas P. Clark, Jr.) | \$325 |
| Public Finance<br>Shareholders/Partners  | \$400 |
| Senior Associates  | \$275 |
| Associates   | \$250 |
| Paralegals   | \$140 |

In the instance of a fixed fee arrangement for bond counsel services such fees shall be in accordance with a schedule established between Consultant and the Authority Director from time-to-time in connection with one or more bond issues.

In addition to the fees herein above set forth, Consultant shall be reimbursed for all expenses incurred and paid by Consultant, such as long distance telephone calls, telecommunications, overnight and messenger delivery charges, postage, telecopies, reproduction of documents, electronic research, word processing, secretarial overtime, travel at the request of Housing Authority, court fees, and other expenses that may be necessary in connection with the legal services and scope of work to be undertaken by Consultant for and on behalf of Housing Authority.

### 4. Principal Attorneys:

*Celeste Stahl Brady* and *Thomas P. Clark, Jr.* shall be primarily responsible for providing Consultant's services pursuant to this Agreement. Senior Associate *Vanessa Locklin* and other attorneys may be assigned as deemed necessary by Consultant to meet the needs of Housing Authority. *E. Kurt Yeager*, and, as necessary and directed by Housing Authority, shall be primarily responsible for providing Consultant's services that relate to public finance or bond issuance matters; and, as necessary and directed, *Allison E. Burns* shall be primarily responsible for providing Consultant's services that relate to litigation matters.

**AGREEMENT FOR LEGAL SERVICES**

This Agreement for Legal Services is made to be effective February 1, 2012 by and between the Garden Grove Housing Authority ("Housing Authority"), a public agency, and Woodruff, Spradlin & Smart, a professional corporation ("Consultant").

RECITALS

A. The Housing Authority has assumed the housing assets and functions of the Garden Grove Agency for Community Development, which redevelopment agency was dissolved effective February 1, 2012 pursuant to Assembly Bill x1 26 ("Dissolution Act"). In order to carry out these functions, the Housing Authority requires legal services; and

B. Consultant desires to perform such legal services for Housing Authority.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Housing Authority hereby retains and employs Consultant to provide legal services to Housing Authority.

2. Consultant shall provide such legal services to the Housing Authority on the same terms and conditions as are in the current legal services agreement, including any amendments thereto, between Consultant and the City of Garden Grove, the terms and conditions of which are incorporated herein by this reference.

3. This Agreement and the obligations contained herein shall be subject to any applicable approvals and requirements of the Dissolution Act.

GARDEN GROVE HOUSING AUTHORITY

By: \_\_\_\_\_  
Authority Director

WOODRUFF, SPRADLIN & SMART

By: \_\_\_\_\_  
Thomas F. Nixon

ATTEST:

\_\_\_\_\_  
Housing Authority Secretary