

COUNTY COUNSEL
LOUIS B. GREEN

CHIEF ASS'T. COUNTY COUNSEL
EDWARD L. KNAPP

PRINCIPAL ASS'T COUNTY COUNSEL
PATRICIA E. BECK

DEPUTY COUNTY COUNSEL
JUDITH M. KERR
REBECCA C. SUDTELL
PAULA F. FRANTZ
MICHAEL J. CICOZZI

**EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL**



COUNTY GOVERNMENT
CENTER
330 FAIR LANE
PLACERVILLE, CA
95667
(530) 621-5770
FAX# (530) 621-2937

DEPUTY COUNTY COUNSEL
BETH A. MCCOURT
DAVID A. LIVINGSTON
SCOTT C. STARR
TERI M. MONTEROSSO
LESLEY B. GOMES

November 29, 2007

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

**Re: Approval of Retroactive Contract for Bond Counsel Services with
Sidley Austin LLP Relative to Missouri Flat Master Circulation and
Financing Plan and Budget Transfer of \$90,000**

Honorable Supervisors:

Recommendation:

County Counsel recommends that: (1) the Board find that it is more economic and feasible to provide these services through an outside contractor; (2) the Board approve a retroactive contract for legal services with Sidley Austin LLP in connection with preparation to issue bonds and filing a validation action with regard to bonds to be issued pursuant to the Missouri Flat Master Circulation and Financing Plan; and, (3) the Board approve a \$90,000 budget transfer to fund the contract from the Missouri Flat MC&FP account.

Reasons for Recommendation:

The Missouri Flat Master Circulation and Financing Plan originally called for the issuance of about \$14,000,000 of Mello-Roos bonds for financing of a portion of the Missouri Flat improvements. With the initial failure of the Sundance Plaza project to materialize, the available bonding capacity was substantially reduced to about \$6,630,000 net of reserves and issuance cost.

Staff wishes to proceed to posture ourselves to be able to issue the bonds in coming years for use in financing Missouri Flat improvements. It is necessary to bring a validation

action to establish the validity of the bond sale due to unique aspects of the project such as the commitment of incremental tax revenues to the project. To do so, it is necessary to authorize the issuance of bonds. This does not necessarily mean the immediate sale of the bonds. This contract covers the necessary work to get to the point of authorizing issuance. It does not include the actual detail work of the sale such as the preparation of the official statement and other documents necessary for the sale. Those documents will be prepared at the time of the actual sale of the bonds either under an amendment to this contract or a new contract.

The contract also covers the filing of the validation action and completion of the action if unopposed. If there is opposition filed to the action, we would return to the board with an evaluation of the opposition and a budget for handling a contested matter.

This contract is requested to be made retroactive to January 3, 2006. Back in January of 2006, we asked Sidley Austin to do some of the preliminary research and work associated with bringing this validation action on the assumption that it was covered under their existing contract for setting up the Mello-Roos contract. After they had performed some work, it was discovered that this work was not covered under the existing contract. Work was immediately ceased with the idea that the cost of the work would be covered under a retroactive contract. Unfortunately, that contract has been deferred for various reasons, including the fact that the bond sale was several years down the road, until now. The contract is being made retroactive to pick up that initial work which was all performed in the January-March, 2006 timeframe. We have *not* had Sidley Austin working on the project in the intervening time frame.

The contract is being funded out of the account which holds the incremental tax revenues which are being held for debt service on the bonds to be issued to fund the Missouri Flat project and other project related purposes. The fund currently has a balance of \$2.7 million where \$1.5 million of this amount is committed to establishing a supplemental reserve fund for the bond issuance. A portion of the difference of \$1.2 million is therefore available to fund this contract. A budget transfer in the amount of \$90,000 is included in the packet.

The contract contains a non-standard indemnity clause and a provision for waiver of conflicts in the event a client of the firm is adverse to the county in unrelated matters. It is recommended that the contract be approved with these clauses.

Fiscal Impact:

There is no net county cost increase. Funds are available in the Missouri Flat MC&FP account.

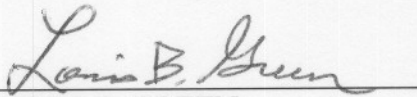
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Actions to Be Taken After Approval:

Staff will work with Sidley Austin to prepare the necessary documents for Board approval and for the filing of the validation action.

We would be pleased to respond to any questions the Board might have.

Respectfully submitted,



LOUIS B. GREEN
County Counsel

LBG/stl

cc: Chief Administrative Officer
County Auditor
Dir. of Transportation

S://Bd of Supervisors/Correspondence/Sidley Austin Legal Services Contract trans V2