

**BOND COUNSEL AGREEMENT**

**COUNTY OF SAN BERNARDINO**

(Snowdrop Road)

THIS AGREEMENT, made as of this \_\_\_\_ day of April, 2021, by and between the COUNTY OF SAN BERNARDINO, a public body corporate and politic (herein the “County”) and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (herein “Bond Counsel”):

***RECITALS:***

A. The County has formed the County of San Bernardino Assessment District No. 2018-1 (Snowdrop Road) (the “Assessment District”) and has confirmed an assessment upon the parcels therein pursuant to the Municipal Improvement Act of 1913 and has adopted a resolution declaring its intention to issue bonds pursuant to the Improvement Bond Act of 1915 (the “1915 Act”) to finance the improvements which the Assessment District is authorized to provide; and

B. The County desires to retain Bond Counsel to do the necessary legal work hereinafter outlined, upon the terms and conditions hereinafter set forth, to assist in the issuance of bonds for the Assessment District; and

C. Bond Counsel represents that it is ready, willing and able to perform said legal work;

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

1. SCOPE OF SERVICES

A. Bond Counsel Services. The County retains Bond Counsel to provide, and Bond Counsel agrees to provide, legal services in connection with the issuance by the Assessment District of bonds (the “Assessment District Bonds”) pursuant to the 1915 Act. Such services shall include the rendering of legal opinions (hereinafter called the “opinions”) pertaining to the issuance of the Assessment District Bonds to the effect that:

1. The Assessment District Bonds have been properly authorized and issued and are valid and binding obligations; and
2. The essential sources of security for the Assessment District Bonds have been legally provided; and
3. Interest on the Assessment District Bonds is exempt from California personal income taxation and is excluded from gross income for purposes of federal income taxes.

Bond Counsel’s services will also include:

- i. Researching applicable laws and ordinances relating to the issuance of the Assessment District Bonds;
- ii. Attending conferences and consulting with County staff and County Counsel regarding such laws, and the need for amendments thereto, or additional legislation;
- iii. Participating in meetings, conferences or discussions with any municipal advisors, underwriters or other experts retained by the County with respect to the the issuance of the Assessment District Bonds;
- iv. Supervising and preparing documentation of the steps to be taken with respect to the issuance of the Assessment District Bonds, including:
  - a. Drafting all resolutions, notices, rules and regulations, agreements and other legal documents required for the issuance of the Assessment District Bonds, and all other documents relating to the security of the Assessment District Bonds, in consultation with the County, its counsel, municipal advisor, purchaser and other experts;
  - b. Preparing the record of proceedings for the authorization, sale and issuance of the Assessment District Bonds;
  - c. Reviewing any purchase contract relating to the sale of the Assessment District Bonds and participating in the related negotiations;
  - d. Participating in meetings and other conferences scheduled by the County, or the County's municipal advisor;
  - e. Consulting with the prospective purchaser and its legal counsel;
  - f. Consulting County Counsel concerning any legislation or litigation which may effect the Assessment District Bonds, the security for the Assessment District Bonds, or any other matter related to the issuance of the Assessment District Bonds;
  - g. Consulting with any trustee or fiscal agent for the Assessment District Bonds and its counsel;
  - h. Preparing the form of the Assessment District Bonds, and supervising their production or printing, signing, authentication and delivery;

- i. Rendering the final approving opinion as to the validity of the Assessment District Bonds for use and distribution upon their issuance.

B. Special Services

“Special Services” are defined for purposes of this Agreement as services in addition to the services outlined in Section 1.A above. Special Services will include, but not be limited to, any work after a bond closing related to the amendment of bond documents or agreements and special studies or analyses. Special Services must be authorized in writing by the County Executive Officer or his designee.

2. COMPENSATION

The County agrees to pay Bond Counsel, but only from the sources of funds specified below, the following amounts as compensation for services rendered by Bond Counsel under this Agreement:

A. For the services to be rendered under Section 1.A of this Agreement relating to the issuance of the Assessment District Bonds, it is agreed that Bond Counsel will be paid a fee of \$50,000 for the issuance of each series of Assessment District Bonds, which will be payable only from the Assessment District Bond proceeds.

The fee schedule set forth above assumes that the Assessment District Bonds will be issued within two years from the date of this Agreement. In the event the Assessment District Bonds are not issued within that time, Bond Counsel reserves the right to make such modifications to the foregoing schedule as the County and Bond Counsel agree, as justified by reason of increased cost to Bond Counsel and the then prevailing fee schedule for bonds such as the Assessment District Bonds.

B. In the event Bond Counsel is requested to perform special services as set forth in Section 1.B above, Bond Counsel will be paid fees at the hourly rates set forth in Exhibit A, or in such other manner as is mutually acceptable to the County and Bond Counsel. Such fees will be billed monthly and shall be payable within sixty (60) days following the receipt of each invoice.

C. In addition to the fees set forth in paragraphs A and B above, Bond Counsel shall be reimbursed for the actual cost of any out-of-pocket expenses reasonably incurred by Bond Counsel in the course of its employment, such as document reproduction, telecommunications charges, printing costs, filing fees, long-distance telephone calls, messenger services, overnight delivery services, travel and similar items of expense. Expenses related to the services described in Section 1.B above will be billed monthly, with the fees and all expenses incurred in connection with services rendered under Section 1.A will be billed upon the issuance of each series of Assessment District Bonds; provided, in no event will the expenses related to the issuance of the Assessment District Bonds exceed \$1,500.

3. PERSONNEL AND CONTRACT ADMINISTRATION

County agrees to accept and Bond Counsel agrees to provide the aforementioned services primarily through Robert J. Whalen, Carol L. Lew and Reed T.C. Glycer. If any one of the

above attorneys is unable to provide such services due to death, disability or similar event, Bond Counsel reserves the right to substitute another of its attorneys, upon approval by the County Executive Officer, or his designee, to provide such services; and such substitution shall not alter or affect in any way Bond Counsel's or the County's other obligations under this Agreement.

This Agreement will be administered by the County Executive Officer, or his designee.

#### 4. CONFLICTS OF INTEREST

Bond Counsel represents many of the underwriters and purchasers of California municipal bonds, including Western Alliance Bank, the expected purchaser of the first series of Assessment District Bonds. The County hereby agrees that Bond Counsel's representation of Western Alliance Bank or another purchaser of the Bonds on matters not related to the Assessment District is not a conflict of interest that requires written consent, but the County, nonetheless, provides its informed written consent to such representation on matters not related to the Assessment District.

#### 5. TERMINATION

A. This Agreement may be terminated without cause by the County or Bond Counsel upon thirty (30) days' advance written notice to the other party. Such notification shall state the effective date of the termination of this Agreement.

B. Bond Counsel reserves the absolute right to withdraw from representing the County if, among other things, the County fails to honor the terms of this Agreement, the County fails to cooperate fully or follow Bond Counsel's advice on a material matter, or any fact or circumstance occurs that would, in Bond Counsel's view, render its continuing representation unlawful or unethical. If Bond Counsel elects to withdraw, the County will take all steps necessary to free Bond Counsel of any obligation to perform further services, including the execution of any documents necessary to complete such withdrawal, and Bond Counsel will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on the County's behalf in accordance with the payment terms set forth in Section 2 above. If necessary in connection with litigation, Bond Counsel would request leave of court to withdraw.

C. Bond Counsel's representation of the County will be considered terminated at the earlier of (i) the County's termination of its representation, (ii) Bond Counsel's withdrawal from its representation of the County, or (iii) the substantial completion by Bond Counsel of its substantive work for the County. Unless Bond Counsel has been specifically engaged to perform Special Services related to the Bonds after their execution and delivery, Bond Counsel's representation of District with respect to the Assessment District Bonds shall terminate on the date of execution and delivery of the Assessment District Bonds and in no event will exceed a five year term ending March 30, 2026.

#### 6. ARBITRATION

IN THE EVENT OF A DISPUTE REGARDING FEES, COSTS, OR ANY OTHER MATTER ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO BOND COUNSEL'S RELATIONSHIP WITH THE COUNTY, OR BOND COUNSEL'S OR THE

COUNTY'S PERFORMANCE OF THIS AGREEMENT, INCLUDING THE QUALITY OF THE SERVICES WHICH BOND COUNSEL RENDERS, EITHER PARTY MAY ELECT TO SUBMIT THE DISPUTE TO NON-BINDING CONFIDENTIAL ARBITRATION IN THE COUNTY OF SAN BERNARDINO, CALIFORNIA. ANY AWARD SHALL BE NON-BINDING UNLESS THE PARTIES AGREE TO TREAT IT AS A FINAL, BINDING AND CONCLUSIVE RESOLUTION UPON THE PARTIES, AND A JUDGMENT RENDERED THEREON MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

Arbitration may be elected by the sending of written notice to the other party. If arbitration is elected, within 20 days of the demand the County shall present a list of five qualified individuals who would be willing to serve that the County would find acceptable to act as arbitrator. To serve as arbitrator, the individual must be a retired judge having served on any federal court or the California Superior Court or higher court in the State of California. Within 20 days of receiving the County's list, Bond Counsel may at its sole discretion (i) select any individual from that list and that individual shall serve as the arbitrator, or (ii) propose its own list of five individuals for arbitrator. If Bond Counsel chooses to present a separate list, the County may within 20 days select any individual from that list and that person shall serve as arbitrator. If no arbitrator can be agreed upon at the end of this process, the County and Bond Counsel each shall select one individual from its own list and those two persons shall jointly select the arbitrator. The arbitration shall be conducted pursuant to the procedures set forth in the California Code of Civil Procedure §§ 1280 et seq., and in that connection you and we agree that § 1283.05 thereof is applicable to any such arbitration. Nothing herein shall limit the right of the parties to stipulate and agree to conduct the arbitration pursuant to the then-current rules of the American Arbitration Association, the Judicial Arbitration & Mediation Services, or any other agreed-upon arbitration services provider.

## 7. INDEMNIFICATION AND INSURANCE REQUIREMENTS

### 7.1 Indemnification

#### A. Indemnification - Professional Malpractice.

Bond Counsel is skilled in the professional calling necessary to the services and duties agreed to be performed and County relies upon the skills and knowledge of Bond Counsel. Bond Counsel shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Bond Counsel agrees to indemnify and hold harmless the County, its officers and employees, from any and all liability, losses, damages, costs and expenses resulting from any professional malpractice of Bond Counsel, its officers, employees, agents or subcontractors determined by a court of law to have occurred in the performance of services under this Agreement. Notwithstanding the foregoing, nothing herein shall (i) serve to expand Bond Counsel's scope of professional responsibilities as set forth in the laws and canons of ethics, (ii) extend any statute of limitations governing any claim arising from Bond Counsel's acts or omissions, or (iii) waive any claims or defenses Bond Counsel may have against the county or any other party.

#### B. Indemnification - Personal Injury or Death, or Property Damage.

Bond Counsel shall defend, indemnify and hold harmless county, its officers, agents and employees, against any claim, loss or liability regarding the personal injury or death of any person, or property damage, caused by Bond Counsel, its officers, agents or employees while engaged in performance of this Agreement, due to the willful or negligent acts (active or passive) or omissions

by Bond Counsel's officers, employees or agents. The acceptance of said services and duties by County shall not operate as a waiver of such right of indemnification.

## 7.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County, and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

## 7.3 Waiver of Subrogation Rights

Bond Counsel shall require the carriers of required coverages to waive all rights of subrogation against the County, District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Bond Counsel and its employees or agents from waiving the right of subrogation prior to a loss or claim. Bond Counsel hereby waives all rights of subrogation against the County.

## 7.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

## 7.5 Severability of Interests

County agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Bond Counsel and the County or between the County and any other insured or additional insured under the policy.

## 7.6 Proof of Coverage

Bond Counsel shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Bond Counsel shall maintain such insurance from the time Bond Counsel commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Bond Counsel shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

## 7.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

#### 7.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

#### 7.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Bond Counsel or County payments to the Bond Counsel will be reduced to pay for County purchased insurance.

#### 7.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Bond Counsel agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

7.11 Bond Counsel agrees to provide insurance set forth in accordance with the requirements herein. If Bond Counsel uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Bond Counsel agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Bond Counsel shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

7.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Bond Counsel and all risks to such persons under this contract.

If Bond Counsel has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code

and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

7.11.2 Commercial/General Liability Insurance – Bond Counsel shall carry General Liability Insurance covering all operations performed by or on behalf of Bond Counsel providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

7.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Bond Counsel is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Bond Counsel owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

7.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

7.11.5 Professional Liability –

a. Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or



Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

#### 8. ATTORNEYS’ FEES AND COSTS:

If any legal action is instituted to enforce or declare any party’s rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and reasonable attorneys’ fees. This paragraph shall not apply to those costs and attorneys’ fees directly arising from any third party legal action against a party hereto and payable under Paragraph 7, INDEMNIFICATION.

#### 9. VENUE

The parties acknowledge and agree that this agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this agreement will be the San Bernardino District of San Bernardino County. Each party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party, the parties agree to use their best efforts to obtain a change of venue to the San Bernardino District of San Bernardino County.

#### 10. APPLICABLE LAW

This Agreement shall be interpreted and construed according to the laws of the State of California.

#### 11. MISCELLANEOUS

A. Bond Counsel and the employees of Bond Counsel, in performance of the Agreement, shall act in an independent capacity and not as officers or agents of the County.

B. Without the written consent of the County, this Agreement is not assignable by Bond Counsel in whole or in part.

C. No alteration or variation of the terms of this Agreement shall be valid unless in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

D. In accordance with the requirements of California Business and Professions Code § 6148, Bond Counsel advises you that the firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to the County.

12. Contract Execution

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

COUNTY OF SAN BERNARDINO



Curt Hagman, Chairman, Board of Supervisors

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

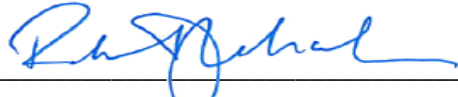
Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By \_\_\_\_\_  
*Deputy*

STRADLING YOCCA CARLSON & RAUTH, a  
Professional Corporation

By



  
(Authorized signature - sign in blue ink)

Name Robert J. Whalen  
(Print or type name of person signing contract)

Title Vice President  
(Print or Type)

Dated: March 11, 2021

Address 660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660

## **EXHIBIT A**

Shareholders	\$550
Associates	\$365
Paralegals	\$130