



# STAFF REPORT

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**DATE:** March 22, 2021  
**TO:** Sacramento Regional Transit Board of Directors  
**FROM:** Brent Bernegger, VP, Finance/CFO  
**SUBJ:** APPROVING THE FIRST AMENDMENT TO THE CONTRACT FOR BOND COUNSEL AND DISCLOSURE COUNSEL WITH KUTAK ROCK LLP

RECOMMENDATION

Adopt the Attached Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the attached Resolution will increase the total contract consideration and amend the scope of work to include additional legal work necessary to incorporate a secondary pledge for the 2012 Farebox Revenue Refunding Bonds transaction.

FISCAL IMPACT

There is an increase in cost of \$42,500 for the additional legal work necessary to include a pledge of Local Transportation Funds (LTF) revenues in the bond indenture document and all other required disclosures. There is also legal work required on the US Bank Line of Credit (LOC) agreement to allow the parity pledge of the LTF revenues.

Original Bond/Disclosure Firm Fixed Fee	\$95,000
Direct Costs and Public Finance	
Legal Advisory Services	<u>\$30,000</u>
Original Total Contract Value	\$125,000
Firm Fixed Fee Increase for Scope Change	<u>\$42,500</u>
Amended Total Contract Value	\$167,500

The cost of \$137,500 (\$95,000+\$42,500) is not an operating cost and will be paid from bond refunding proceeds. The additional \$35,000 is for ongoing legal costs, and is included in the approved FY 2021 Operating Budget.

DISCUSSION

In February 2020, SacRT solicited proposals for firms to serve as bond counsel and/or disclosure counsel for the anticipated Refunding of Farebox Revenue Bonds transaction (to be performed on a Firm Fixed Fee basis contingent on closing plus direct costs) and for additional general public finance legal advisory services (to be performed on an hourly-rate basis). At that time, it was anticipated and written into the scope of services that fare

revenues would be the sole source of pledged funds associated with the refunding. Beginning in March 2020, the COVID-19 pandemic significantly affected SacRT's ridership and fare revenue. As of March 2021, SacRT's ridership and fare revenue have not recovered to pre-pandemic levels, making a sole source pledge of fare revenues inadequate to have a successful refunding of the bonds.

To create the optimal refunding opportunity and generate the maximum savings on the bond refunding, SacRT Staff worked with US Bank to allow a secondary revenue source on the bonds. US Bank agreed to allow SacRT to increase its pledge on the Revenue Bonds by adding LTF as a secondary source, with a parity pledge to the US Bank Line of Credit (LOC). The change in pledge and resulting change to the credit agreement with US Bank, has changed the scope of work that was originally agreed to between SacRT and Kutak Rock, the selected Bond and Disclosure Counsel. Kutak Rock has requested an addition of \$42,500 to firm-fixed-fee for the modified work.

It is in SacRT's best interest to amend the scope of services and increase the total consideration of the Contract with Kutak Rock as the firm has already performed the background work for the refunding, performed research on the allowability of pledging LTF, performed a review of the US Bank LOC agreement, and has provided support and feedback for the recently-completed Moody's Rating Assessment Service. Further, Kutak Rock is a very well qualified law firm with extensive experience with California transit agency debt arrangements. Attempting to resolicit the work, hire a new Bond and Disclosure Counsel, and bring the firm up to speed would slow down the refunding, drive reductions to the refunding savings, and cause duplicative work for a new legal team to perform all the background work associated with the refunding. SacRT staff has determined that the price is fair and reasonable based on historical data from a 2012 contract for similar services. It is in SacRT's best interest to amend the Contract for Bond Counsel and Disclosure Counsel with Kutak Rock LLP to include work for the additional pledge in the bond counsel and disclosure counsel scope of work and to increase the total consideration.

RESOLUTION NO. 21-03-0019

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

March 22, 2021

**APPROVING THE FIRST AMENDMENT TO THE CONTRACT FOR BOND COUNSEL AND DISCLOSURE COUNSEL WITH KUTAK ROCK LLP**

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, pursuant to Section 1.505 of the Procurement Ordinance, the Board has determined that there was not improper procurement splitting and that approving an amendment to the Contract for Bond Counsel and Disclosure Counsel without additional competition is in the best interest of SacRT because Kutak Rock was deemed to be the most-qualified firm in a competitive solicitation and has already performed substantial work for the refunding transaction.

THAT, the First Amendment to Contract for Bond and Disclosure Counsel between Sacramento Regional Transit District, therein referred to as "SacRT," and Kutak Rock, LLP therein referred to as "Consultant," whereby Consultant agrees to perform additional legal work necessary to incorporate a secondary pledge in SacRT Farebox Revenue Bond refunding and the total consideration is increased by \$42,500 to a not to exceed amount of \$167,500, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the First Amendment.

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STEVE MILLER , Chair

A T T E S T:

HENRY LI, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary