



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 5/15/2012

**Report Type:** Consent

**Title:** Resolution Declaring Official Intent to Reimburse Expenditures from City Water System Revenue Bonds and Wastewater System Revenue Bonds

**Report ID:** 2012-00424

**Location:** Citywide

**Recommendation:** Pass a Resolution: 1) declaring the City's "official intent" to reimburse certain expenditures for the rehabilitation and improvement of utilities infrastructure from the proceeds of City Water System Revenue Bonds issued by the City or the Sacramento City Financing Authority, 2) authorizing the potential refunding of prior debt obligations associated with the City's water program, 3) designating Orrick, Herrington & Sutcliffe LLP to serve as bond counsel and Stradling Yocca Carlson & Rauth, P.C. to serve as disclosure counsel related to the issuance of City Water System Revenue Bonds, 4) declaring the City's "official intent" to reimburse certain expenditures for the rehabilitation and improvement of utilities infrastructure from the proceeds of City Wastewater System Revenue Bonds, 5) authorizing the potential refunding of prior debt obligations associated with the City's wastewater program, and 6) designating Orrick, Herrington & Sutcliffe LLP to serve as bond counsel and Stradling Yocca Carlson & Rauth, P.C. to serve as disclosure counsel related to the issuance of City Wastewater System Revenue Bonds.

**Contact:** Brian Wong, Senior Debt Analyst, (916) 808-5811; Janelle Gray, Debt Manager, (916) 808-8296

**Presenter:** None

**Department:** City Treasurer

**Division:** City Treasurer

**Dept ID:** 05001011

**Attachments:**

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- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Agreement with Orrick Herrington and Sutcliffe
- 5-Agreement with Strading Yocca Carlson and Rauth
- 6-Resolution
- 7-Agreement with Orrick Herrington and Sutcliffe, LLP

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**City Attorney Review**

Approved as to Form  
Joseph Cerullo  
5/1/2012 2:20:51 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
4/27/2012 3:03:29 PM

**Approvals/Acknowledgements**

Department Director or Designee: Russell Fehr - 4/30/2012 11:10:05 AM

## Description/Analysis

**Issue:** On March 27, 2012, the City Council approved the Department of Utilities' proposal to raise water rates for ratepayers by 10% per year in Fiscal Years 2012/13 through 2014/15 and to raise wastewater rates for ratepayers by 16%, 15%, and 14%, respectively, in Fiscal Years 2012/13 through 2014/15. The increase in utilities rates will help to pay debt-service obligations associated with bonds anticipated to be issued for various projects that will rehabilitate and improve the City's water-system infrastructure (the "**Water Projects**") and bonds anticipated to be issued for various projects that will rehabilitate and improve the City's wastewater system infrastructure (the "**Wastewater Projects**"). Given the current design and construction schedules, it is anticipated that bonds would not be issued before late summer or early fall 2012, when the actual construction costs are known. The City expects to pay certain expenditures in connection with the Water Projects and to pay certain expenditures in connection with the Wastewater Projects before bonds are issued and to use a portion of the bond proceeds to reimburse those expenditures. Under Section 1.150-2 of the Treasury Regulations (26 C.F.R. § 1.150-2(c)), the City will not be able to use the future bond proceeds to reimburse certain expenditures unless it has adopted a resolution stating its "official intent" to reimburse. An "official intent" resolution for the Water Projects and an "official intent" resolution for the Wastewater Projects are attached for your consideration.

**Policy Considerations:** The resolutions are adopted solely to comply with Section 1.150-2 of the Treasury Regulations. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Water Projects nor the Wastewater Projects.

**Environmental Considerations:** Not applicable

**Sustainability Considerations:** The resolutions are adopted solely to comply with Section 1.150-2 of the Treasury Regulations; there are no sustainability considerations applicable to this action.

**Commission/Committee Action:** Not applicable

**Rationale for Recommendation:** Without reimbursement resolutions, the City is limited by current federal regulations to reimbursement for capital expenditures and other qualified expenditures paid not more than 60 days before approval of the bond financing(s). With the adoption of a reimbursement resolution for the Water Projects, the City can reimburse itself for any qualified expenditures made no more than 60 days before the adoption of the resolution so long as reimbursement occurs no later than three years after the expenditures associated with the Water Projects. Similarly, with the adoption of a reimbursement resolution for the Wastewater Projects, the City can reimburse itself for any qualified expenditures made no more than 60 days before the adoption of the resolution so long as reimbursement occurs no later than three years after the expenditures associated with the Wastewater Projects.

**Financial Considerations:** Adoption of the reimbursement resolutions does not entail any financial costs for the City and does not bind the City to make expenditures, incur any indebtedness, or proceed with either the Water Projects or Wastewater Projects. Adoption of the resolutions will

benefit the City by satisfying the federal prerequisite for reimbursement of prior expenditures from bond proceeds.

**Emerging Small Business Development (ESBD):** Not applicable

## Background

The Department of Utilities (“**DOU**”) intends to finance the rehabilitation and improvement of water-system infrastructure and wastewater system infrastructure using bonds issued by either the City of Sacramento or the Sacramento City Financing Authority, payment of which will be secured by DOU water revenue or DOU wastewater revenue, derived from City utilities ratepayers. In addition, DOU may pursue issuing bonds to refund existing Water-related debt obligations and/or Wastewater-related debt obligations. The infrastructure rehabilitation and improvements consist of the following:

### **Water system infrastructure rehabilitation and improvements (the “Water Projects”)**

Water-meter retrofits, rehabilitation or replacement of transmission and distribution mains and appurtenances; rehabilitation of the Fairbairn and Sacramento River Water Treatment Plants; rehabilitation of the City’s drinking-water wells and appurtenances; rehabilitation of reservoirs and appurtenances; planning, project development, and design; acquisition of land and easements; improvements to and rehabilitation of DOU facilities; information technology; miscellaneous regulatory compliance and asset-management activities; improvements to and rehabilitation of DOU facilities.

### **Wastewater system infrastructure rehabilitation and improvements (the “Wastewater Projects”)**

Improvements to and rehabilitation of the City’s wastewater infrastructure, including rehabilitation or replacement of combined- and separated-system pipes and appurtenances; rehabilitation of sumps and treatment facilities; improvements to combined-system capacity; project development and design; acquisition of land and easements; improvements to and rehabilitation of DOU facilities; information technology; miscellaneous regulatory compliance and asset-management activities.

\* \* \*

To facilitate the successful issuance of bonds associated with the Water Projects and bonds associated with the Wastewater Projects, staff recommends that the City Council authorize the retention of Orrick, Herrington & Sutcliffe LLP as bond counsel and Stradling Yocca Carlson & Rauth, P.C. as disclosure counsel. These two law firms will work with the City Manager, the City Attorney, the City Treasurer, and other City staff to prepare the necessary documents and proceedings for the City Council to consider in connection with the issuance of City Water System Revenue Bonds and City Wastewater System Revenue Bonds.



## RESOLUTION NO. 2012-XXX

Adopted by the Sacramento City Council

May 15, 2012

**DECLARATION OF OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FOR THE REHABILITATION AND IMPROVEMENT OF UTILITIES INFRASTRUCTURE FROM PROCEEDS OF CITY WATER-SYSTEM REVENUE BONDS ISSUED BY CITY OF SACRAMENTO OR SACRAMENTO CITY FINANCING AUTHORITY; AUTHORIZATION TO POTENTIALLY REFUND PRIOR DEBT OBLIGATIONS ASSOCIATED WITH THE CITY'S WATER PROGRAM; DESIGNATION OF ORRICK, HERRINGTON & SUTCLIFFE LLP TO SERVE AS BOND COUNSEL AND STRADLING YOCCA CARLSON & RAUTH, P.C. TO SERVE AS DISCLOSURE COUNSEL FOR THE CITY WATER-SYSTEM REVENUE BONDS**

### BACKGROUND

- A. The City Council has determined to construct and acquire certain public facilities and to finance the construction and acquisition of those facilities using bonds issued by either the City of Sacramento or the Sacramento City Financing Authority (the "**Bonds**"). The facilities consist of the following, all of which are to be located within the City or to serve City Utilities ratepayers, i.e., the residents and business owners in the City (the "**Projects**"): rehabilitation and improvement of the water-system infrastructure, including but not limited to water-meter retrofits; rehabilitation or replacement of transmission and distribution mains and appurtenances; rehabilitation of the Fairbairn and Sacramento River Water Treatment Plants; rehabilitation of City drinking-water wells and appurtenances; rehabilitation of reservoirs and appurtenances; acquisition of land and easements; support activities of the Projects; and planning, project development, and design of the Projects.
- B. The maximum principal amount of Bonds is not expected to exceed \$340 million, and the Bonds will likely be issued over the next three fiscal years beginning in Fiscal Year 2012/13. The Bonds will include "new money" for the Projects and may also include "refunding" bonds for existing water-related debt obligations. Depending on the circumstances, the interest on the Bonds may or may not be exempt from income taxation under the United States Internal Revenue Code.
- C. The City expects to pay certain expenditures in connection with the Projects before the Bonds are issued (the "**Original Expenditures**") from the City's Water Fund (a City enterprise fund) and to use a portion of the proceeds of the Bonds to reimburse itself for the Original Expenditures.
- D. City staff desires to engage Orrick, Herrington & Sutcliffe LLP to serve as bond counsel for issuance of the Bonds.

- E. City staff desires to engage Stradling Yocca Carlson & Rauth, P.C. to serve as disclosure counsel for issuance of the Bonds.
- F. Section 1.150-2 of the United States Treasury Regulations (26 C.F.R. § 1.150-2) requires the City to declare its reasonable “official intent” to reimburse itself for the Original Expenditures with the proceeds of the Bonds.
- G. The City Council is fully advised in this matter.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Council finds that the statements in the Background are true.
- Section 2. The City hereby declares its official intent to use proceeds of an obligation, (i.e., proceeds of the Bonds) to reimburse itself for the Original Expenditures.
- Section 3. Orrick, Herrington & Sutcliffe LLP is hereby designated as bond counsel for the Bonds. The form of an Agreement for Bond Counsel Services relating to the Bonds, now on file with the City Clerk, is hereby approved. The City Attorney is hereby authorized, on the City’s behalf, to sign and deliver the Agreement for Bond Counsel Services with any non-material changes the City Attorney determines to be required.
- Section 4. Stradling Yocca Carlson & Rauth, P.C. is hereby designated as disclosure counsel for the Bonds. The form of an Agreement for Disclosure Counsel Services relating to the revenue bonds, now on file with the City Clerk, is hereby approved. The City Attorney is hereby authorized, on the City’s behalf, to sign and deliver the Agreement for Disclosure Counsel Services with any non-material changes the City Attorney determines to be required.
- Section 5. This resolution is adopted solely for the purpose of establishing compliance with the requirements of Section 1.150-2 of the United States Treasury Regulations. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Projects.
- Section 6. This resolution takes effect when adopted.



## AGREEMENT FOR BOND COUNSEL SERVICES

### CITY OF SACRAMENTO WATER SYSTEM REVENUE BONDS

This agreement for bond-counsel services, dated as of May 1, 2012, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”); and ORRICK, HERRINGTON & SUTCLIFFE LLP, a California limited-liability partnership (“Orrick”).

#### **Background**

The City desires to engage the services of Orrick in connection with the City’s authorization, issuance, sale, and delivery in 2012 or 2013 of one or more series of water-system revenue bonds (the “**Water System Revenue Bonds**”) for the purpose of financing the rehabilitation and improvement of the water-system infrastructure, including water-meter retrofits; rehabilitation or replacement of transmission and distribution mains and appurtenances; rehabilitation of the Sacramento River Water Treatment Plant; rehabilitation of City drinking-water wells and appurtenances; rehabilitation of reservoirs and appurtenances; acquisition of land and easements; support activities of the water system; and planning, project development, and design of the foregoing (collectively, the “**Project**”). The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the Water System Revenue Bonds and to specify the terms of the engagement. Orrick possesses the necessary professional capabilities and resources to provide the legal services required by the City as described in this agreement.

***With these background facts in mind, the City and Orrick hereby agree as follows:***

1. The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City in connection with the Water System Revenue Bonds:
  - (a) Consultation with representatives of the City (including the City Treasurer and the City Attorney), the City’s disclosure counsel, the underwriter and its counsel, and others with respect to the timing, terms, and legal structure of the Water System Revenue Bonds.
  - (b) Preparation of documents that are required for the authorization, issuance, sale, and delivery of the Water System Revenue Bonds and are to be adopted or entered into by the City, including an authorizing ordinance or resolution, an indenture and any supplemental indenture, and such other documents that are needed if a joint-powers agency is used in the financing (the “**Major Legal Documents**”). The Major Legal Documents do not include the official statement, purchase contract, and continuing disclosure certificate/agreement, which, except as provided in sections 1(d) and 2(b) below, will be prepared by the City’s disclosure counsel or the underwriter’s counsel.

- (c) Review of the official statement, purchase contract, and continuing disclosure certificate/agreement.
  - (d) Preparation of summaries of the Major Legal Documents, to be included in the official statement.
  - (e) Attendance at such meetings or hearings of the City and the City Council and working-group meetings or conference calls as the City may request, and assistance to the City's staff in preparation of such explanations or presentations to the City Council as the City may request.
  - (f) Rendering of Orrick's customary form of final approving opinion to the City on the validity of the Water System Revenue Bonds and the tax-exempt status of interest on the Water System Revenue Bonds and of Orrick's customary form of supplemental opinion to the underwriter on the accuracy of summaries of the Major Legal Documents contained in the official statement and of the tax portion of the final legal opinion and certain other matters.
  - (g) Preparation and delivery to the City of a transcript of the legal proceedings for the Water System Revenue Bonds in both loose-leaf and CD ROM formats.
  - (h) After issuance of the Water System Revenue Bonds, telephone consultations with the City's officials and staff to answer questions about the facts and circumstances concerning the Water System Revenue Bonds.
2. The services of Orrick under this agreement do not include the following, although Orrick may provide such services under separate agreement with the City:
- (a) Legal services in connection with any litigation or other legal or administrative proceeding, audit or investigation involving any of the Water System Revenue Bonds, the Project, or any related matter.
  - (b) Legal Services in connection with the preparation, content, or dissemination of the official statement (other than preparation of summaries of the Major Legal Documents and the portion of the official statement provided by Orrick concerning certain tax matters).
  - (c) Legal services related to compliance with the California Environmental Quality Act.
  - (d) Legal services in connection with arbitrage-rebate compliance respecting the Water System Revenue Bonds.
  - (e) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property; or financial analysis or advice.

3. Orrick and the City acknowledge that the City retains the full-time services of the City Attorney and City Attorney's Office to render day-to-day and ongoing legal services to the City. Orrick shall circulate documents to, and coordinate its services with, the City Attorney to the extent requested by the City or the City Attorney. Orrick may assume that the City Attorney or one of the attorneys in the City Attorney's Office has reviewed all documents and matters submitted to the City Council for adoption or approval, or to the City's officers for execution, before those documents and matters are adopted, approved, or executed.
4. As consideration for the services set forth in section 1, the City shall pay to Orrick the following fees and disbursements:
  - (a) As legal fees, the City shall compensate Orrick for legal services rendered based on the time expended by Orrick's attorneys and paralegals at their hourly rates in effect from time to time. As of the date of this agreement, the standard hourly rates for the attorneys and paralegals most likely to work on the Water System Revenue Bonds are Jenna Magan (\$750), Brandon Dias (\$650), Chas Cardall (\$850), John Stanley (\$650), and Jennifer Neuner (\$225).
  - (b) As payment of disbursements, including preparation and distribution of a transcript in loose-leaf and CD ROM formats, a flat amount of \$2,500.
  - (c) On October 1, 2012, and on each January 1, April 1, July 1, and October 1 thereafter, Orrick shall provide the City with a summary of the total legal fees and disbursements accrued up to the date of the summary for services rendered under this agreement.
  - (d) Except as provided in section 5 respecting termination of this agreement by the City, payment of legal fees and expense reimbursement are contingent upon the issuance, sale, and delivery of the Water System Revenue Bonds, and the amounts owed will be due and payable forthwith upon presentation of an invoice by Orrick following such issuance, sale, and delivery.
5. Either party may, at any time, terminate this agreement and all legal services to be rendered under it, with or without cause, by giving written notice to the other party. In that event, all finished and unfinished documents that Orrick has prepared for the City's adoption, approval, or execution will, at the option of the City, become the City's property, and Orrick shall deliver them to the City or to any party the City may designate, all subject to the condition that Orrick will have no liability whatsoever for any subsequent use of such documents. If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at its hourly rates specified in section 4(a) above, subject to the following: if the City terminates for cause, then any compensation is to be adjusted in the light of the facts and circumstances involved in the termination. If not sooner terminated, this agreement and all legal services to be rendered under it will terminate upon issuance and sale of the Water System Revenue Bonds, except that the City will remain liable for any unpaid fees and expenses due under section 4 above. Upon termination, Orrick will have no future duty of any kind to the City with respect to the Water System Revenue Bonds, except as provided in

sections 1(g) and 1(h) above.

6. Role of Bond Counsel.

- (a) The role of bond counsel in financings, generally, is to prepare or review documents and to coordinate the procedures for authorization of the issuance, sale, and delivery of the Water System Revenue Bonds and to provide an expert legal opinion with respect to the validity of the Water System Revenue Bonds and other subjects addressed by the opinion. Consistent with the historical origin and unique role of bond counsel, and the reliance thereon by the public-finance market generally, Orrick's role as bond counsel under this agreement is not the partisan role of an advocate. Instead, Orrick's role is to provide legal documents needed for the issuance, sale, and delivery of the Water System Revenue Bonds and to provide an opinion that represents an objective judgment on the matters addressed therein.
- (b) In performing its services as bond counsel in connection with the Water System Revenue Bonds, Orrick shall act as special counsel to the City with respect to issuance of the Water System Revenue Bonds. In that capacity, Orrick shall assist the City staff in representing the City, but only with respect to the sufficiency of the legal documents for the issuance, sale, and delivery of the Water System Revenue Bonds and in a manner not inconsistent with the role of bond counsel described in section 6(a) above.
- (c) Orrick's function and responsibility under this agreement, and as bond counsel with respect to the issuance of the Water System Revenue Bonds, terminates upon the issuance, sale, and delivery of the Water System Revenue Bonds (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through issuance, sale, and delivery of the Water System Revenue Bonds are limited to those contracted for explicitly in this agreement. Any engagement of Orrick with respect to rebate compliance, disclosure, or any other matter is separate and distinct from its engagement as bond counsel through issuance of the Water System Revenue Bonds. However, unless otherwise provided, any such post-issuance engagement with respect to the Water System Revenue Bonds will continue on the same basis set forth in this section 6.

7. The City acknowledges that Orrick regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, Orrick has represented, is representing, and expects to represent in the future other public entities (such as the County of Sacramento, the Sacramento Municipal Utility District, and the State of California), bond underwriters (such as Goldman Sachs), trustees, rating agencies, insurers, banks, credit-enhancement providers, lenders, contractors, suppliers, financial and other consultants and advisors, accountants, investment providers/brokers, providers/brokers of derivative products, and others who may have a role or interest in the Water System Revenue Bonds or the Project or who may be involved with, or adverse to, the City in this or some other matter. Orrick shall not represent any such entity (i.e., other private and public entities) in connection with the Water System Revenue Bonds without the City's express

written consent. Given the special, limited role of bond counsel described in section 6 above, the City (a) acknowledges that no conflict of interest exists or would exist in connection with any matter other than the Water System Revenue Bonds; (b) waives any such conflict of interest that might appear actually or potentially to exist, now or in the future, by virtue of this agreement or any such other attorney-client relationship that Orrick may have had, may have, or may enter into; and (c) consents to any and all such relationships subject to the condition that a separate conflict-waiver letter will be prepared with respect to Orrick's concurrent representation of the City and any other entity in connection with the issuance, sale, and delivery of the Water System Revenue Bonds.

8. Nothing in this agreement or in any of the documents expressly or impliedly contemplated by this agreement is intended to give, or is to be construed to give, any person or entity other than the City and Orrick any legal or equitable right or claim under, or in respect of, this agreement, and this agreement inures to the sole and exclusive benefit of the City and Orrick. Orrick may not assign its obligations under this agreement without the express written consent of the City, except to a successor partnership or corporation to which all or substantially all of the assets and operations of Orrick are transferred. The City may not assign its rights and obligations under this agreement without the express written consent of Orrick. All references to Orrick and the City in this agreement refer to their respective successors and assignees and will bind and inure to the benefit of their successors and assignees whether so expressed or not.
9. The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
10. To be effective, notices pertaining to this agreement must be sent by the U.S. Postal Service, first class, postage prepaid, addressed as follows:

*If to the City:*

City of Sacramento  
915 "I" Street  
Historic City Hall, Third Floor  
Sacramento, CA 95814-2704  
Attention: City Treasurer

*and*

City Attorney's Office  
P.O. Box 1948  
Sacramento, CA 95812-1948  
Attention: Joseph Cerullo

*If to Orrick:*

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, CA 95814  
Attention: Jenna Magan

11. This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

*(Signature Page Follows)*

**City of Sacramento**

**Orrick, Herrington & Sutcliffe LLP**

By: \_\_\_\_\_  
Sandra G. Talbott, Interim City Attorney  
Date: May \_\_\_\_, 2012

By: \_\_\_\_\_  
Jenna Magan, Partner  
Date: May \_\_\_\_, 2012

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney

## DISCLOSURE COUNSEL AGREEMENT

This agreement, dated May \_\_, 2012, for reference only, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”), and STRADLING YOCCA CARLSON & RAUTH, a California professional corporation (“SYCR”).

### Background

The City desires to issue one or more series of revenue bonds or other obligations to finance and refinance improvements to its water and wastewater systems (the “Bonds”). To that end, the City desires to retain SYCR, on the terms and conditions set forth below, as disclosure counsel in connection with the issuance, sale, and delivery of the Bonds. SYCR represents that it is ready, willing, and able to perform as disclosure counsel.

***With these background facts in mind, the City and SYCR agree as follows:***

1. **Scope of Services.** The City hereby retains SYCR to provide, and SYCR shall provide, the following legal services in connection with the issuance, sale, and delivery of the Bonds:
  - (a) Preparation of a preliminary official statement and a final official statement for the issuance, sale, and delivery of the Bonds (collectively, the “**Official Statement**”). In connection with the preparation of the Official Statement, SYCR’s services will also include the following:
    - (1) researching applicable laws and ordinances relating to the issuance, sale, and delivery of the Bonds;
    - (2) attending conferences and consulting with City staff, bond counsel, and representatives of the City Attorney’s Office;
    - (3) providing disclosure training to City staff involved in the financing, describing the obligations of the City under federal securities laws;
    - (4) participating in meetings, conferences, or discussions with any financial advisors, underwriters, engineering consultants, feasibility consultants, or other experts the City retains with respect to the issuance, sale, and delivery of the Bonds (the “**City Consultants**”);
    - (5) reviewing resolutions, notices, rules, and regulations and other legal documents required for the issuance, sale, and delivery of the Bonds, and all other documents relating to the security of the Bonds, in consultation with the City, bond counsel, and the City Consultants; and
    - (6) rendering a 10b-5 letter in customary form regarding the Official Statement to the City and the underwriters of the Bonds.

- (b) Preparation of a continuing-disclosure certificate of the City in connection with the issuance, sale, and delivery of the Bonds, to comply with Rule 15c2-12.
2. **Compensation.** The City shall pay SYCR the amounts set forth in sections 2(a) and 2(b) as full compensation for services SYCR renders under this agreement. The City's obligation to pay these amounts is contingent on the successful issuance, sale, and delivery of the Bonds (the "**Closing**"), with payment to come exclusively from the proceeds of the Bonds at the Closing.
- (a) For the services SYCR renders under this agreement, the City shall pay SYCR at an hourly rate of \$450 for shareholders and an hourly rate ranging from \$275 to \$325 for associates (depending on seniority). If, for any reason, the Closing does not occur, then the City will not be obligated to compensate SYCR for any services rendered under this agreement.
- (b) The City shall reimburse SYCR for any out-of-pocket expenses SYCR reasonably incurs while rendering services under this agreement, including but not limited to document-reproduction costs, telecommunications charges, printing costs, filing fees, fees for messenger services, fees for overnight-delivery services, and travel expenses.
- (c) On October 1, 2012, and on each January 1, April 1, July 1, and October 1 thereafter, SYCR shall provide the City with a summary of the total legal fees and out-of-pocket expenses accrued up to the date of the summary for services rendered under this agreement.
3. **Personnel and Contract Administration.** SYCR shall provide services under this agreement primarily through Kevin Civale. If Mr. Civale is unable to provide the services because of death, disability, or other similar event, then, with the City's approval, SYCR may substitute another of its attorneys to provide the services, and such substitution will not affect in any way SYCR's or the City's other obligations under this agreement. The City Attorney or the City Attorney's designee will administer this agreement for the City.
4. **Termination**
- (a) Either party may terminate this agreement with or without cause by giving written notice to the other party. The notice must state the termination date, which must be at least three business days after the date the notice is delivered.
- (b) Unless terminated sooner under section 4(a), this agreement terminates on the date of the Closing.

5. **Miscellaneous**

- (a) In performing under this agreement, SYCR and its shareholders and employees will be acting in an independent capacity and not as officers or agents of the City.
- (b) SYCR may not assign this agreement or any part of it without the City's written consent, which the City may withhold for any reason.
- (c) This agreement is solely for the benefit of the City and SYCR. It is not intended to benefit any third parties.
- (d) This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- (e) This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It may be modified only by another written agreement signed by both parties.
- (f) The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

*(Signature Page Follows)*

**City of Sacramento**

**Stradling Yocca Carlson & Rauth**

By: \_\_\_\_\_  
Sandra G. Talbott, Interim City Attorney  
Date: May \_\_\_\_, 2012

By: \_\_\_\_\_  
Kevin M. Civale, Shareholder  
Date: May \_\_\_\_, 2012

Attest  
City Clerk

By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney



## RESOLUTION NO. 2012-XXX

Adopted by the Sacramento City Council

May 15, 2012

**DECLARATION OF OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FOR THE REHABILITATION AND IMPROVEMENT OF UTILITIES INFRASTRUCTURE FROM PROCEEDS OF CITY WASTEWATER-SYSTEM REVENUE BONDS ISSUED BY CITY OF SACRAMENTO OR SACRAMENTO CITY FINANCING AUTHORITY; AUTHORIZATION TO POTENTIALLY REFUND PRIOR DEBT OBLIGATIONS ASSOCIATED WITH THE CITY'S WASTEWATER PROGRAM; DESIGNATION OF ORRICK, HERRINGTON & SUTCLIFFE LLP TO SERVE AS BOND COUNSEL AND STRADLING YOCCA CARLSON & RAUTH, P.C. TO SERVE AS DISCLOSURE COUNSEL FOR THE CITY WASTEWATER-SYSTEM REVENUE BONDS**

### BACKGROUND

- A. The City Council has determined to construct and acquire certain public facilities and to finance the construction and acquisition of those facilities using bonds issued by either the City of Sacramento or the Sacramento City Financing Authority (the "**Bonds**"). The facilities consist of the following, all of which are to be located within the City or to serve City Utilities ratepayers, i.e., the residents and business owners in the City (the "**Projects**"): rehabilitation and improvement of the wastewater infrastructure, including but not limited to rehabilitation or replacement of combined- and separated-system pipes and appurtenances; rehabilitation of sumps and treatment facilities; combined-system capacity improvements; support activities of the Projects; and planning, project development, and design of the Projects.
- B. The maximum principal amount of Bonds is not expected to exceed \$60 million, and the Bonds will likely be issued over the next three fiscal years beginning in Fiscal Year 2012/13. The Bonds will include "new money" for the Projects and may also include "refunding" bonds for existing wastewater-related debt obligations. Depending on the circumstances, the interest on the Bonds may or may not be exempt from income taxation under the United States Internal Revenue Code.
- C. The City expects to pay certain expenditures in connection with the Projects before the Bonds are issued (the "**Original Expenditures**") from the City's Wastewater Fund (a City enterprise fund) and to use a portion of the proceeds of the Bonds to reimburse itself for the Original Expenditures.
- D. City staff desires to engage Orrick, Herrington & Sutcliffe LLP to serve as bond counsel for issuance of the Bonds.

- E. City staff desires to engage Stradling Yocca Carlson & Rauth, P.C. to serve as disclosure counsel for issuance of the Bonds.
- F. Section 1.150-2 of the United States Treasury Regulations (26 C.F.R. § 1.150-2) requires the City to declare its reasonable “official intent” to reimburse itself for the Original Expenditures with the proceeds of the Bonds.
- G. The City Council is fully advised in this matter.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Council finds that the statements in the Background are true.
- Section 2. The City hereby declares its official intent to use proceeds of an obligation, (i.e., proceeds of the Bonds) to reimburse itself for the Original Expenditures.
- Section 3. Orrick, Herrington & Sutcliffe LLP is hereby designated as bond counsel for the Bonds. The form of an Agreement for Bond Counsel Services relating to the Bonds, now on file with the City Clerk, is hereby approved. The City Attorney is hereby authorized, on the City’s behalf, to sign and deliver the Agreement for Bond Counsel Services with any non-material changes the City Attorney determines to be required.
- Section 4. Stradling Yocca Carlson & Rauth, P.C. is hereby designated as disclosure counsel for the Bonds. The form of an Agreement for Disclosure Counsel Services relating to the revenue bonds, now on file with the City Clerk, is hereby approved. The City Attorney is hereby authorized, on the City’s behalf, to sign and deliver the Agreement for Disclosure Counsel Services with any non-material changes the City Attorney determines to be required.
- Section 5. This resolution is adopted solely for the purpose of establishing compliance with the requirements of Section 1.150-2 of the United States Treasury Regulations. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Projects.
- Section 6. This resolution takes effect when adopted.



## AGREEMENT FOR BOND COUNSEL SERVICES

### CITY OF SACRAMENTO WASTEWATER REVENUE BONDS

This agreement for bond-counsel services, dated as of May 1, 2012, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”); and ORRICK, HERRINGTON & SUTCLIFFE LLP, a California limited-liability partnership (“Orrick”).

#### **Background**

The City desires to engage the services of Orrick in connection with the City’s authorization, issuance, sale, and delivery in 2012 or 2013 of one or more series of wastewater revenue bonds (the “**Wastewater Revenue Bonds**”) for the purpose of financing the rehabilitation and improvement of the City’s wastewater infrastructure, including rehabilitation or replacement of combined- and separated-system pipes and appurtenances; rehabilitation of sumps and treatment facilities; improvements to combined-system capacity; support activities of the City’s wastewater system; and planning, project development, and design of the foregoing (collectively, the “**Project**”). The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the Wastewater Revenue Bonds and to specify the terms of the engagement. Orrick possesses the necessary professional capabilities and resources to provide the legal services required by the City as described in this agreement.

***With these background facts in mind, the City and Orrick hereby agree as follows:***

1. The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City in connection with the Wastewater Revenue Bonds:
  - (a) Consultation with representatives of the City (including the City Treasurer and the City Attorney), the City’s disclosure counsel, the underwriter and its counsel, and others with respect to the timing, terms, and legal structure of the Wastewater Revenue Bonds.
  - (b) Preparation of documents that are required for the authorization, issuance, sale, and delivery of the Wastewater Revenue Bonds and are to be adopted or entered into by the City, including an authorizing ordinance or resolution, an indenture and any supplemental indenture, and such other documents that are needed if a joint-powers agency is used in the financing (the “**Major Legal Documents**”). The Major Legal Documents do not include the official statement, purchase contract, and continuing disclosure certificate/agreement, which, except as provided in sections 1(d) and 2(b) below, will be prepared by the City’s disclosure counsel or the underwriter’s counsel.
  - (c) Review of the official statement, purchase contract, and continuing disclosure certificate/agreement.

- (d) Preparation of summaries of the Major Legal Documents, to be included in the official statement.
  - (e) Attendance at such meetings or hearings of the City and the City Council and working-group meetings or conference calls as the City may request, and assistance to the City's staff in preparation of such explanations or presentations to the City Council as the City may request.
  - (f) Rendering of Orrick's customary form of final approving opinion to the City on the validity of the Wastewater Revenue Bonds and the tax-exempt status of interest on the Wastewater Revenue Bonds and of Orrick's customary form of supplemental opinion to the underwriter on the accuracy of summaries of the Major Legal Documents contained in the official statement and of the tax portion of the final legal opinion and certain other matters.
  - (g) Preparation and delivery to the City of a transcript of the legal proceedings for the Wastewater Revenue Bonds in both loose-leaf and CD ROM formats.
  - (h) After issuance of the Wastewater Revenue Bonds, telephone consultations with the City's officials and staff to answer questions about the facts and circumstances concerning the Wastewater Revenue Bonds.
2. The services of Orrick under this agreement do not include the following, although Orrick may provide such services under separate agreement with the City:
- (a) Legal services in connection with any litigation or other legal or administrative proceeding, audit or investigation involving any of the Wastewater Revenue Bonds, the Project, or any related matter.
  - (b) Legal Services in connection with the preparation, content, or dissemination of the official statement (other than preparation of summaries of the Major Legal Documents and the portion of the official statement provided by Orrick concerning certain tax matters).
  - (c) Legal services related to compliance with the California Environmental Quality Act.
  - (d) Legal services in connection with arbitrage-rebate compliance respecting the Wastewater Revenue Bonds.
  - (e) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property; or financial analysis or advice.
3. Orrick and the City acknowledge that the City retains the full-time services of the City Attorney and City Attorney's Office to render day-to-day and ongoing legal services to the City. Orrick shall circulate documents to, and coordinate its services with, the City Attorney to the extent requested by the City or the City Attorney. Orrick may assume that the City

Attorney or one of the attorneys in the City Attorney's Office has reviewed all documents and matters submitted to the City Council for adoption or approval, or to the City's officers for execution, before those documents and matters are adopted, approved, or executed.

4. As consideration for the services set forth in section 1, the City shall pay to Orrick the following fees and disbursements:
  - (a) As legal fees, the City shall compensate Orrick for legal services rendered based on the time expended by Orrick's attorneys and paralegals at their hourly rates in effect from time to time. As of the date of this agreement, the standard hourly rates for the attorneys and paralegals most likely to work on the Wastewater Revenue Bonds are Jenna Magan (\$750), Brandon Dias (\$650), Chas Cardall (\$850), John Stanley (\$650), and Jennifer Neuner (\$225).
  - (b) As payment of disbursements, including preparation and distribution of a transcript in loose-leaf and CD ROM formats, a flat amount of \$2,500.
  - (c) On October 1, 2012, and on each January 1, April 1, July 1, and October 1 thereafter, Orrick shall provide the City with a summary of the total legal fees and disbursements accrued up to the date of the summary for services rendered under this agreement.
  - (d) Except as provided in section 5 respecting termination of this agreement by the City, payment of legal fees and expense reimbursement are contingent upon the issuance, sale, and delivery of the Wastewater Revenue Bonds, and the amounts owed will be due and payable forthwith upon presentation of an invoice by Orrick following such issuance, sale, and delivery.
5. Either party may, at any time, terminate this agreement and all legal services to be rendered under it, with or without cause, by giving written notice to the other party. In that event, all finished and unfinished documents that Orrick has prepared for the City's adoption, approval, or execution will, at the option of the City, become the City's property, and Orrick shall deliver them to the City or to any party the City may designate, all subject to the condition that Orrick will have no liability whatsoever for any subsequent use of such documents. If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at its hourly rates specified in section 4(a) above, subject to the following: if the City terminates for cause, then any compensation is to be adjusted in the light of the facts and circumstances involved in the termination. If not sooner terminated, this agreement and all legal services to be rendered under it will terminate upon issuance and sale of the Wastewater Revenue Bonds, except that the City will remain liable for any unpaid fees and expenses due under section 4 above. Upon termination, Orrick will have no future duty of any kind to the City with respect to the Wastewater Revenue Bonds, except as provided in sections 1(g) and 1(h) above.
6. Role of Bond Counsel.

- (a) The role of bond counsel in financings, generally, is to prepare or review documents and to coordinate the procedures for authorization of the issuance, sale, and delivery of the Wastewater Revenue Bonds and to provide an expert legal opinion with respect to the validity of the Wastewater Revenue Bonds and other subjects addressed by the opinion. Consistent with the historical origin and unique role of bond counsel, and the reliance thereon by the public-finance market generally, Orrick's role as bond counsel under this agreement is not the partisan role of an advocate. Instead, Orrick's role is to provide legal documents needed for the issuance, sale, and delivery of the Wastewater Revenue Bonds and to provide an opinion that represents an objective judgment on the matters addressed therein.
  - (b) In performing its services as bond counsel in connection with the Wastewater Revenue Bonds, Orrick shall act as special counsel to the City with respect to issuance of the Wastewater Revenue Bonds. In that capacity, Orrick shall assist the City staff in representing the City, but only with respect to the sufficiency of the legal documents for the issuance, sale, and delivery of the Wastewater Revenue Bonds and in a manner not inconsistent with the role of bond counsel described in section 6(a) above.
  - (c) Orrick's function and responsibility under this agreement, and as bond counsel with respect to the issuance of the Wastewater Revenue Bonds, terminates upon the issuance, sale, and delivery of the Wastewater Revenue Bonds (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through issuance, sale, and delivery of the Wastewater Revenue Bonds are limited to those contracted for explicitly in this agreement. Any engagement of Orrick with respect to rebate compliance, disclosure, or any other matter is separate and distinct from its engagement as bond counsel through issuance of the Wastewater Revenue Bonds. However, unless otherwise provided, any such post-issuance engagement with respect to the Wastewater Revenue Bonds will continue on the same basis set forth in this section 6.
7. The City acknowledges that Orrick regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, Orrick has represented, is representing, and expects to represent in the future other public entities (such as the County of Sacramento, the Sacramento Municipal Utility District, and the State of California), bond underwriters (such as Goldman Sachs), trustees, rating agencies, insurers, banks, credit-enhancement providers, lenders, contractors, suppliers, financial and other consultants and advisors, accountants, investment providers/brokers, providers/brokers of derivative products, and others who may have a role or interest in the Wastewater Revenue Bonds or the Project or who may be involved with, or adverse to, the City in this or some other matter. Orrick shall not represent any such entity (i.e., other private and public entities) in connection with the Wastewater Revenue Bonds without the City's express written consent. Given the special, limited role of bond counsel described in section 6 above, the City (a) acknowledges that no conflict of interest exists or would exist in connection with any matter other than the Wastewater Revenue Bonds; (b) waives any such conflict of

interest that might appear actually or potentially to exist, now or in the future, by virtue of this agreement or any such other attorney-client relationship that Orrick may have had, may have, or may enter into; and (c) consents to any and all such relationships subject to the condition that a separate conflict-waiver letter will be prepared with respect to Orrick's concurrent representation of the City and any other entity in connection with the issuance, sale, and delivery of the Wastewater Revenue Bonds.

8. Nothing in this agreement or in any of the documents expressly or impliedly contemplated by this agreement is intended to give, or is to be construed to give, any person or entity other than the City and Orrick any legal or equitable right or claim under, or in respect of, this agreement, and this agreement inures to the sole and exclusive benefit of the City and Orrick. Orrick may not assign its obligations under this agreement without the express written consent of the City, except to a successor partnership or corporation to which all or substantially all of the assets and operations of Orrick are transferred. The City may not assign its rights and obligations under this agreement without the express written consent of Orrick. All references to Orrick and the City in this agreement refer to their respective successors and assignees and will bind and inure to the benefit of their successors and assignees whether so expressed or not.
9. The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
10. To be effective, notices pertaining to this agreement must be sent by the U.S. Postal Service, first class, postage prepaid, addressed as follows:

*If to the City:*

City of Sacramento  
915 "I" Street  
Historic City Hall, Third Floor  
Sacramento, CA 95814-2704  
Attention: City Treasurer

*and*

City Attorney's Office  
P.O. Box 1948  
Sacramento, CA 95812-1948  
Attention: Joseph Cerullo

*If to Orrick:*

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 3000  
Sacramento, CA 95814  
Attention: Jenna Magan

11. This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

*(Signature Page Follows)*

**City of Sacramento**

**Orrick, Herrington & Sutcliffe LLP**

By: \_\_\_\_\_  
Sandra G. Talbott, Interim City Attorney  
Date: May \_\_\_\_, 2012

By: \_\_\_\_\_  
Jenna Magan, Partner  
Date: May \_\_\_\_, 2012

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph P. Cerullo  
Senior Deputy City Attorney