

Meeting Date: 9/3/2013

Report Type: Consent

Report ID: 2013-00662

Title: Agreements: Bond Counsel and Disclosure Counsel for Financing the Entertainment and Sports Center

Location: Citywide

Issue: The City needs to retain bond counsel and disclosure counsel now to assist with structuring the parking-revenue bonds in a way most advantageous to the City and to assist with retiring the bonds issued in 1997 to finance Sleep Train Arena.

Recommendation: Pass a Motion authorizing the City Attorney or his designee to sign the attached agreements with Orrick, Herrington & Sutcliffe and Stradling Yocca Carlson & Rauth on the City's behalf.

Contact: Joseph P. Cerullo, Senior Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Presenter: None

Department: City Attorney

Division: City Attorney

Dept ID: 03001011

Attachments:

1-Description/Analysis

2-Agreement for Special Counsel Services - Signed by OHS (JPC 8-21-13 Clean Revision) PL13-3496

3-Disclosure Counsel Agreement (ESC Financing)

City Attorney Review

Approved as to Form
Joseph Cerullo
8/28/2013 6:41:00 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
8/8/2013 10:21:13 AM

Approvals/Acknowledgements

Department Director or Designee: Joseph Cerullo - 8/22/2013 10:49:54 AM

Description/Analysis

Issue Detail: The City plans to finance its contribution to development of the downtown Entertainment and Sports Center (the “**ESC**”) by issuing parking-revenue bonds. In connection with that financing, the City Treasurer’s Office and the City Attorney’s Office have selected the law firms of Orrick, Herrington & Sutcliffe (“**Orrick**”) and Stradling Yocca Carlson & Rauth (“**Stradling**”) to serve as “bond counsel” and “disclosure counsel,” respectively. Orrick, one of the most-respected municipal-bond firms in the country, is intimately familiar with the City and its financing needs, having served as the City’s bond counsel on dozens of financings over the years, including the recent wastewater-revenue bonds and water-revenue bonds. Importantly, Orrick also served as bond counsel for the bonds issued in 1997 to finance Sleep Train Arena (the “**1997 Bonds**”), which were remarketed in 2007 and will be retired (i.e., refinanced) as part of the ESC project. Stradling likewise is well acquainted with the City, having served as the City’s disclosure counsel on the recent wastewater-revenue bonds and water-revenue bonds; Stradling has also worked on many other City bond transactions as underwriter’s counsel (e.g., the annual TRANS).

Policy Considerations: Typically the City Council approves agreements with bond counsel and disclosure counsel when it formally authorizes the issuance of bonds. But the ESC project and the parking-revenue bonds are not typical. Rather, they are unusually complex and will entail many months of planning. As a result, the City Council won’t be able to authorize the bonds until the summer of 2014 at the earliest, after the CEQA analysis for the ESC project has been completed. Meanwhile, that same complexity requires City staff to begin planning early on; indeed, planning for the bond financing has been underway for several months. Because having Orrick and Stradling participate in that planning from the beginning is essential to a successful outcome, staff recommends that the City enter into the attached agreements with Orrick and Stradling now.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (“CEQA”): Not applicable. Approval of the recommendation is not a “project” subject to CEQA because it (a) has no potential to cause a significant effect on the environment and (b) concerns government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs., tit. 14, §§ 15061(b)(3) and 15378(b)(4).) The issuance of the parking-revenue bonds will not occur until after the City has certified an environment-impact report for the ESC project in accordance with CEQA.

Sustainability: N/A

Commission/Committee Action: N/A

Rationale for Recommendation: The City needs to retain bond counsel and disclosure counsel now to assist with structuring the parking-revenue bonds in a way most advantageous to the City and to assist the City in retiring the 1997 Bonds. Orrick and Stradling are well qualified to serve as bond counsel and disclosure counsel, respectively.

Financial Considerations:

Bond Counsel Agreement. The agreement with Orrick expires on December 31, 2014, unless the parties agree to extend it to December 31, 2015. Because of the complex nature of this financing, Orrick's compensation will be based on actual time expended. If the bonds are issued, then Orrick's compensation will be paid exclusively from the bond proceeds. But if for some reason bonds are *not* issued, then compensation will be paid from the multi-year operating project (MYOP) for the Downtown ESC Project (I02000500), subject to the following: for work done before December 31, 2014, compensation will be capped at \$500,000; and for work done between January 1, 2015, and December 31, 2015, compensation will be capped at \$250,000.

Disclosure Counsel Agreement. The agreement with Stradling expires when the bonds are sold or when the bond financing is abandoned. Stradling's compensation will be based on time actually expended, but Stradling will be entitled to compensation only if the bonds are sold, with payment exclusively from the bond proceeds.

Both firms will report quarterly to the City Treasurer and the City Attorney on the fees accrued.

Emerging Small Business Development (ESBD): N/A

AGREEMENT FOR SPECIAL COUNSEL SERVICES

PARKING REVENUE BONDS FOR SACRAMENTO ENTERTAINMENT AND SPORTS CENTER

This agreement for special-counsel services, dated as of June 1, 2013, 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 issuance, sale, and delivery of bonds secured by certain parking revenues and other amounts (the “Bonds”) for the purpose of financing the City’s contribution to development of a new entertainment-and-sports center in downtown Sacramento (the “Project”). Orrick possesses the necessary professional capabilities and resources to provide these services, described more fully below, and has been providing these services since March 2013.

The City and Orrick anticipate that the Bonds will be issued by a joint-powers agency or other eligible issuer (the “Issuer”) in one or more series; that the Bonds will be tax-exempt and taxable, as circumstances dictate; that the Issuer will loan the proceeds of the Bonds to a non-profit corporation (the “Corporation”), which will pay the proceeds to the City in return for the right to operate certain City-owned parking assets under a long-term agreement; and that the City will apply the payment from the Corporation to the Project.

Because the Corporation is expected to be formed as an instrumentality of the City and be wholly controlled by the City, Orrick’s representation of the Corporation will not present a conflict with the City. Because the Issuer is expected to be subject to majority control by the City, and because the issuance, sale, and delivery of the Bonds (the “Bond Financing”) will be for the City’s benefit, Orrick will represent the Issuer only if the Issuer’s governing board adopts a resolution acknowledging that Orrick will represent the Issuer at the City’s direction and under the City’s control.

With these background facts in mind, the parties hereby agree as follows:

1. *Legal Services.* The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City, the Corporation, and the Issuer (upon approval by the Issuer’s governing board) in connection with the Bond Financing:
 - (a) Consult with representatives of the City (including the City Treasurer and the City Attorney), the City’s disclosure counsel, the underwriters and their counsel, and others with respect to the timing, terms, and legal structure of the Bond Financing.
 - (b) Analyze the eligibility of the Project for financing with tax-exempt bonds under federal tax law.
 - (c) Prepare articles and bylaws and other documents required in connection with the formation of the Corporation.

- (d) Prepare documents that are required to authorize and complete the Bond Financing and are to be adopted or entered into by the City, the Issuer, or the Corporation, or by any combination of them, including these “**Major Legal Documents**”: an indenture and any supplemental indenture between the Issuer and a trustee; a loan agreement between the Issuer and the Corporation; and an operating agreement between the City and the Corporation. Except as provided in sections 1(f) and 2(b) below, Orrick will not prepare the official statement, the purchase contract, or the continuing disclosure certificate or agreement, which the City’s disclosure counsel or the underwriter’s counsel will prepare.
- (e) Review the purchase contract; the continuing-disclosure certificate or agreement; the official statement as it relates to summaries of the Major Legal Documents; and the portion of the official statement concerning certain tax matters on which Orrick will render an opinion in accordance with section 1(l).
- (f) Prepare the following for inclusion in the official statement: summaries of the Major Legal Documents and the portion of the official statement concerning certain tax matters on which Orrick will render an opinion in accordance with section 1(l).
- (g) Attend such meetings or hearings of the City and the City Council, the Issuer and its governing board, and the Corporation and its governing board as the City may request; attend such working-group meetings or conference calls as the City may request; and assist the City’s staff in preparation of such explanations or presentations to the City Council and to the Issuer’s and the Corporation’s governing boards as the City may request.
- (h) If necessary, prepare the proceedings for a validation action to validate the Bonds and related obligations of the City, the Issuer, and the Corporation.
- (i) Advise the City on the Project’s impact on the tax-exempt status of outstanding bonds issued by or for the benefit of the City and on any covenants contained in the documents related to those bonds.
- (j) Advise the City on the retirement of the 1997 Lease Revenue Bonds (Arco Arena Acquisition) issued by the Sacramento City Financing Authority and remarketed in 2007.
- (k) Prepare closing documents to be executed by the City, the Issuer, and the Corporation required to complete the Bond Financing and coordinate the closing.
- (l) Render to the Issuer Orrick’s customary form of final approving opinion on the validity of the Bonds and, as applicable, the tax-exempt status of interest on the Bonds. Render to the underwriter Orrick’s customary form of supplemental opinion 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.

- (m) Prepare and deliver to the City of a transcript of the legal proceedings for the Bond Financing in both loose-leaf and CD ROM formats.
 - (n) After issuance of the Bonds, consult by telephone with the City's officials and staff to answer questions about the facts and circumstances concerning the Bonds.
2. *Legal Services Not Included.* 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) Except as provided in section 1(h) above, legal services in connection with any litigation or other legal or administrative proceeding, audit, or investigation involving any of the 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 Bonds.
 - (e) Legal services relating to state blue-sky laws, land use, environmental, public contracting, real estate, insurance, or similar laws or matters; to title to real or personal property; to the recording, filing, or perfection of security interests in real or personal property; or to financial analysis or advice or data or mathematical verification.
 - (f) Legal services relating to the development, construction, or operations of the Project except as necessary to advise the City about the effect of such activities on the tax-exempt status of the Bonds and except as provided in section 1(i) above.
3. *City Attorney's Role.* 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 and, as applicable, to the Issuer and the Corporation. 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 (or to the Issuer's or the Corporation's governing board) for adoption or approval, or to the City's (or the Issuer's or the Corporation's) officers for execution, before those documents and matters are adopted, approved, or executed.
4. *Compensation.* 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 Bond Financing are Jenna Magan (\$750), Brandon Dias (\$650), Larry Sobel (\$850), Chas Cardall (\$850), Thomas Mitchell (\$825), Steve Malvey (\$850), Andrea Ball (\$657), John Stanley (\$650), and Melissa Warr (\$255). Orrick shall notify the City in advance of any rate changes.

- (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, 2013, 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) Given the complex nature of this financing, payment of all fees and disbursements under this agreement is not contingent upon the issuance of the Bonds. The City's payment of legal fees and disbursements will be due and payable forthwith upon Orrick's presentation of an invoice after the earlier of (1) the successful closing of the Bond Financing or (2) the early termination of this agreement under section 5.
5. *Termination.* This agreement and all legal services to be rendered under will terminate as follows:
- (a) If the Bond Financing successfully closes before midnight at the end of December 31, 2014, or before the end of an extension under section 5(c), then termination will occur upon the City's payment in full to Orrick of the fees and disbursements due under section 4.
 - (b) If the Bond Financing has not successfully closed by midnight at the end of December 31, 2014, then termination will occur at that time on that date unless the parties agree under section 5(c) to extend this agreement. Upon such termination, the City shall pay Orrick forthwith for all satisfactory work at the hourly rates specified in section 4(a) above, but Orrick's compensation will not exceed \$500,000.
 - (c) The parties may agree in writing before midnight at the end of December 31, 2014, to extend this agreement to midnight at the end of December 31, 2015. If the Bond Financing has not successfully closed by midnight at the end of December 31, 2015, then termination will occur at that time on that date. Upon such termination, the City shall pay Orrick forthwith for all satisfactory work at the hourly rates specified in section 4(a) above, but Orrick's compensation will not exceed \$500,000 for work done before midnight at the end of December 31, 2014, and will not exceed \$250,000 for work done after midnight at the beginning of January 1, 2015, and before midnight at the end of December 31, 2015.
 - (d) 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. The City shall pay Orrick at the hourly rates specified in section 4(a) above for all satisfactory work done before such early termination, subject to the following:

- (1) Orrick's compensation will not exceed \$500,000 for work done before midnight at the end of December 31, 2014, and will not exceed \$250,000 for work done after midnight at the beginning of January 1, 2015, and before midnight at the end of December 31, 2015.
 - (2) If the City terminates for cause, then Orrick's compensation will be adjusted in the light of the facts and circumstances involved in the termination.
- (e) Upon termination under section 5(b), 5(c), or 5(d), all finished and unfinished documents that Orrick has prepared for the City's, the Issuer's, or the Corporation's adoption, approval, or execution will, at the City's option, become the City's property, and Orrick shall deliver them to the City or to any person or entity the City may designate, all subject to the condition that Orrick will have no liability whatsoever for any subsequent use of such documents.
 - (f) After this agreement terminates or is terminated, Orrick will have no future duty of any kind to the City, the Issuer, or the Corporation with respect to the Bond Financing or the Bonds, except as provided in sections 1(m) and 1(n) above.
 - (g) Except as stated above, Orrick retains the right to discard any files and materials. Orrick's current policy (subject to change) is to discard all files and materials after issuance of the Bonds (except the closing transcript, which will be retained until after the Bonds are paid or defeased) or following cessation of work on the Bond Financing without issuance of the Bonds.

6. *Role of Special Counsel.*

- (a) The role of special counsel in financings, generally, is to prepare or review documents and to coordinate the procedures for authorization of the issuance, sale, and delivery of bonds and to provide an expert legal opinion with respect to the validity of the bonds and other subjects addressed by the opinion. Consistent with the historical origin and unique role of special counsel, and the reliance thereon by the public-finance market generally, Orrick's role as special counsel under this agreement is not the partisan role of an advocate. Instead, Orrick's role is to provide legal documents needed for the Bond Financing and to provide an opinion that represents an objective judgment on the matters addressed in the opinion.
- (b) In performing its services as special counsel in connection with the Bond Financing, Orrick will act as special counsel to the City, the Corporation, and the Issuer (upon approval of the Issuer's governing board) with respect to issuance of the Bond Financing, but not as special counsel to any particular body, board, office, or official of those entities. In that capacity, Orrick shall assist the City staff in representing the City, the Corporation, and the Issuer (upon approval of the Issuer's governing board) on the Bond Financing, but only with respect to the sufficiency of the legal documents for the Bond Financing and in a manner not inconsistent with the role of special counsel described in section 6(a) above.

- (c) Orrick's function and responsibility under this agreement and as special counsel with respect to the issuance of the Bonds terminates upon the earlier of the issuance, sale, and delivery of the Bonds or the abandonment of the Bond financing (unless terminated sooner under section 5 above). Orrick's services as special counsel through issuance, sale, and delivery of Bonds are limited to those contracted for explicitly in this agreement. Any post-issuance engagement of Orrick with respect to rebate compliance, disclosure, or any other matter will be separate from Orrick's engagement as special counsel through issuance, sale, and delivery of the Bonds and, unless otherwise provided, will continue on the same basis set forth in this section 6.
7. *Conflicts.* 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 and Morgan Stanley), trustees, rating agencies, insurers, banks, credit-enhancement providers, lenders, contractors, suppliers, financial and other consultants and advisors, accountants, investment and swap providers or brokers, providers or brokers of derivative products, and others who may have a role or interest in the Bonds or the Project (such as JMA Ventures) or who may be involved with, or adverse to, the City in this or some other matter. Except as otherwise set forth in the letter dated May 31, 2013, from Orrick and agreed to by the City, a copy of which is attached to this agreement as exhibit A and made part of this agreement, Orrick shall not represent any such entity (i.e., other private and public entities) in connection with the Bonds without the City's express written consent. Given the special, limited role of special counsel described in section 6 above and except as otherwise set forth in exhibit A, the City—
- (a) acknowledges and agrees that no conflict of interest exists or would exist in connection with any matter other than the 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 Bonds.
8. *No Third-Party Beneficiaries.* 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.
9. *Assignment.* Orrick may not assign its obligations under this agreement without the City's express written consent except to a successor partnership or corporation to which all or

substantially all of Orrick's assets and operations are transferred. The City may not assign its rights and obligations under this agreement without Orrick's express written consent. 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.

10. *Notice.* 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:

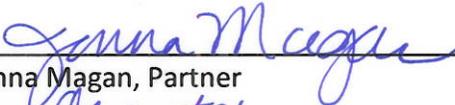
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814
Attention: Jenna Magan

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

City of Sacramento

Orrick, Herrington & Sutcliffe LLP

By: _____
James Sanchez, City Attorney
Date: _____, 2013

By: 
Jenna Magan, Partner
Date: August 21, 2013

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

DISCLOSURE COUNSEL AGREEMENT

This disclosure-counsel agreement, dated June 1, 2013, 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 intends to issue one or more series of bonds secured by certain parking revenues and other amounts (the “**Bonds**”) for the purpose of financing the City’s contribution to development of a new entertainment-and-sports center in downtown Sacramento (the “**Project**”).

The City anticipates that the Bonds will be issued by a joint-powers agency or other eligible issuer that will be subject to majority control by the City (the “**Issuer**”); that the Bonds will be tax-exempt and taxable, as circumstances dictate; that the Issuer will loan the proceeds of the Bonds to a non-profit corporation that will be an instrumentality of the City and wholly controlled by the City (the “**Corporation**”); that the Corporation will pay the proceeds to the City in return for the right to operate certain City-owned parking assets under a long-term agreement; and that the City will apply the payment from the Corporation to the Project.

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 (the “**Bond Financing**”). SYCR represents that it is ready, willing, and able to perform as disclosure counsel.

With these background facts in mind, the parties 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 Bond Financing
 - (a) Preparation of a preliminary official statement and a final official statement for the Bond Financing (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 Bond Financing;
 - (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, parking consultants, feasibility consultants, or other experts the City retains with respect to the Bond Financing (the “**City Consultants**”);
 - (5) reviewing resolutions, notices, rules, and regulations and other legal documents required for the Bond Financing, 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 all services SYCR renders under this agreement. The City’s obligation to pay these amounts is contingent on the successful closing of the Bond Financing (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, 2013, and on each January 1, April 1, July 1, and October 1 thereafter until the Closing, 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 or the Issuer.
- (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 for the benefit of the City and SYCR. It is not intended to benefit any third parties other than the Issuer.
- (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: _____
James Sanchez, City Attorney

Date: July ____, 2013

By:  _____
Kevin M. Civale, Shareholder

Date: July 8, 2013

Attest
City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney