

**Meeting Date:** 12/8/2015

**Report Type:** Consent

**Report ID:** 2015-01109

**Title: Agreement for Bond-Counsel Services with Orrick, Herrington & Sutcliffe and Disclosure-Counsel Agreement with Stradling Yocca Carlson & Rauth (Refunding of Sacramento City Financing Authority 1997 Lease Revenue Bonds - Arco Arena Acquisition)**

**Location:** Citywide

**Recommendation:** Pass a Motion approving an agreement with Orrick, Herrington & Sutcliffe for bond-counsel services and an agreement Stradling Yocca Carlson & Rauth for disclosure-counsel services in connection with refunding the Sacramento City Financing Authority 1997 Lease Revenue Bonds (Arco Arena Acquisition).

**Contact:** Joseph Cerullo, Senior Deputy 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-OHS Agreement for Bond-Counsel Services
- 3-Disclosure-Counsel Agreement

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**City Attorney Review**

Approved as to Form  
Matthew Ruyak  
12/3/2015 10:08:09 AM

**Approvals/Acknowledgements**

Department Director or Designee: Sandra Talbott - 12/3/2015 8:27:33 AM

## **Description/Analysis**

**Issue Detail:** Under the Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center (the “CPA”), the bonds issued in 1997 to finance the acquisition of Arco Arena (now Sleep Train Arena) must be refinanced before the Sacramento Kings relocate to the Golden 1 Center in October 2016. This refinancing will be accomplished using the proceeds of refunding lease-revenue bonds that will be issued by the Sacramento Public Financing Authority and secured by cash flows pledged by the Kings. Bond-counsel services for the refinancing will be provided by Orrick, Herrington, and Sutcliffe (“Orrick”), which also served as bond counsel for the bonds to be refinanced. Disclosure-counsel services will be provided by Stradling Yocca Carlson & Rauth (“Stradling”). Copies of the agreements for these services are attached to this report.

**Policy Considerations:** Orrick is uniquely able to facilitate an efficient and economic refinancing of the 1997 bonds, having served as bond counsel when those bonds were issued. Stradling has served as disclosure counsel for the City on several previous bond issues, including the recent issuance of bonds for the Golden 1 Center, and thus is knowledgeable about the City’s operations and finances.

**Economic Impacts:** None

**Environmental Considerations:** None. Passage of the motion is not a “project” subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to continuing administrative activities. (14 Cal. Code Regs. §§ 15061(b)(3), 15378(b)(2).)

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** The refinancing is required by the CPA, and the services of experienced bond counsel and disclosure counsel are essential for the refunding to succeed.

**Financial Considerations:** Orrick’s compensation will be based on time actually worked and is not contingent on a successful issuance of the refunding bonds. If bonds are issued, then compensation will be paid from the proceeds of those bonds; if bonds are not issued, then ultimately the Kings will be responsible for paying Orrick. Stradling’s compensation will be contingent on a successful issuance of the refunding bonds and be paid exclusively from proceeds of those bonds.

**Local Business Enterprise (LBE):** None

## AGREEMENT FOR BOND-COUNSEL SERVICES

### Refinancing of Sacramento City Financing Authority 1997 Lease Revenue Bonds (Arco Arena Acquisition)

This Agreement for Bond-Counsel Services, dated as of November 1, 2015, 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 authorization, issuance, sale, execution, and delivery by the City and the Sacramento Public Financing Authority (“SPFA”) of a financing (the “2016 Financing”) for the purpose of refunding certain Sacramento City Financing Authority 1997 Lease Revenue Bonds (Arco Arena Acquisition) (the “1997 Bonds”). The 2016 Financing is expected to be federally taxable. The structure of the 2016 Financing is not yet known as the Sacramento Kings have not yet provided the City with information on the cash flows, collateral, and security for the 2016 Financing, as required by section 1.2 of the Comprehensive Project Agreement for the Sacramento Entertainment and Sports Center (City Agreement No. 2014-0512).

The City and Orrick desire to enter into this agreement to evidence the engagement of Orrick in connection with the 2016 Financing 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 and SPFA, as described in this agreement.

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

1. *Scope of Services.* The City retains Orrick as special counsel to perform, and Orrick shall perform, the following legal services for the City and SPFA in connection with the 2016 Financing:
  - (a) Consultation on the timing, terms, and legal structure of the 2016 Financing with the City’s and SPFA’s representatives, including the City Treasurer and the City Attorney; the City’s financial advisor, First Southwest Company, LLC; the City’s disclosure counsel, Stradling Yocca Carlson & Rauth; the underwriter, Bank of America Merrill Lynch, and its counsel; representatives of the Sacramento Kings and their counsel; and others.
  - (b) Preparation of documents that are required for the authorization, issuance, sale, execution, and delivery of the 2016 Financing and are to be adopted or entered into by the City or SPFA, including authorizing resolutions, trust agreements, loan agreements, leases, and subleases (the “Major Legal Documents”). The Major Legal Documents do not include any official statement, purchase contract, or continuing-disclosure certificate or agreement.

- (c) At the City's request, attendance at meetings or hearings of the Sacramento City Council whether sitting as such or as SPFA's board of directors (the "**City Council**") and at working-group meetings or conference calls; and assistance to the City's staff in the preparation of reports and presentations to the City Council.
  - (d) Rendering of Orrick's customary form of a final approving opinion to the City and SPFA on the validity of the 2016 Financing.
  - (e) Preparation and delivery to the City of a transcript of the legal proceedings for the 2016 Financing in both loose-leaf and CD-ROM formats.
  - (f) After issuance of the 2016 Financing, telephone consultations with the City's officials, staff, and consultants to answer questions about the facts and circumstances concerning the 2016 Financing.
2. *Excluded Services.* Orrick's services under this agreement do not include the following, although Orrick may provide these services under a separate agreement with the City or SPFA:
- (a) Legal services in connection with any litigation or other legal or administrative proceeding, audit, or investigation involving any of the 2016 Financing or any related matter.
  - (b) Legal services related to compliance with the California Environmental Quality Act.
  - (c) Legal services relating to state blue-sky laws or to title to, or perfection of security interests in, real or personal property.
  - (d) Financial analysis or advice.
3. *Circulation and Review of Documents.* The City retains the full-time services of the Sacramento City Attorney and the City Attorney's Office for day-to-day and ongoing legal services. 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 or SPFA'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 2016 Financing are Jenna Magan

(\$795), Brandon Dias (\$705), Chas Cardall (\$910), John Stanley (\$705), and Melissa Warr (\$270). Any increase in these rates will be effective as of the date Orrick gives the City written notice of the increase in accordance with section 10 below.

- (b) As reimbursement of expenses (disbursements), including preparation and distribution of a transcript in loose-leaf and CD-ROM formats, a flat amount of \$1,500.
  - (c) On January 1, 2016, and on each April 1, July 1, October 1, and January 1 thereafter, Orrick shall provide the City with a summary of the total legal fees and expenses accrued up to the date of the summary for services rendered under this agreement.
  - (d) Payment of legal fees and reimbursement of expenses is **not** contingent upon the issuance, sale, execution, and delivery of the 2016 Financing. The amounts owed will be due and payable forthwith upon Orrick's presentation of an invoice after the earlier of (1) issuance, sale, execution, and delivery of the 2016 Financing; or (2) the abandonment of the Bond Financing; or (3) November 1, 2016.
5. *Termination.* 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 or SPFA'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 the documents. If the City terminates this agreement, then the City shall pay Orrick forthwith for all satisfactory work at Orrick's 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, then this agreement and all legal services to be rendered under it will terminate upon issuance, sale, execution, and delivery of the 2016 Financing, 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 or SPFA with respect to the 2016 Financing except as provided in sections 1(e) and 1(f) 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, execution, and delivery of the 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 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, execution, and delivery of the 2016 Financing and to provide an opinion that represents Orrick's objective judgment on the matters addressed therein.

- (b) In performing its services as bond counsel under this agreement, Orrick will act as special counsel to the City and SPFA with respect to the authorization, issuance, sale, execution, and delivery of the 2016 Financing. In that capacity, Orrick shall assist the City staff in representing the City and SPFA, but only with respect to the sufficiency of the legal documents for the authorization, issuance, sale, execution, and delivery of the 2016 Financing 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 authorization, issuance, sale, execution, and delivery of the 2016 Financing, terminates upon the issuance, sale, execution, and delivery of the 2016 Financing (unless terminated sooner as provided in section 5 above). Orrick's services as bond counsel through the issuance, sale, execution, and delivery of the 2016 Financing are limited to those contracted for explicitly in this agreement. Any engagement of Orrick with respect to disclosure, or any other matter is separate and distinct from its engagement as bond counsel through the issuance, sale, execution, and delivery of the 2016 Financing. Unless otherwise provided, any post-issuance engagement with respect to the 2016 Financing 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; bond underwriters such as Bank of America Merrill Lynch; banks; trustees, rating agencies, insurers, credit-enhancement providers, and lenders; contractors, suppliers, financial and other consultants and advisors, accountants, investment providers or brokers, and providers or brokers of derivative products; and others who may have a role or interest in the 2016 Financing or who may be involved with, or adverse to, the City in this or some other matter. Orrick shall not represent any other private and public entities in connection with the 2016 Financing 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 2016 Financing; (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 other attorney-client relationship Orrick may have had, may have, or may enter into; and (c) consents to 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 authorization, issuance, sale, execution, and delivery of the 2016 Financing.
8. *Third-Party Rights.* This agreement is for the benefit of the City and Orrick and is not intended to benefit any third parties other than SPFA. Nothing in this agreement or in any of the documents expressly or impliedly contemplated by this agreement gives any person or entity other than the City, SPFA, and Orrick any legal or equitable right or claim under, or in respect

of, this agreement. This agreement inures to the sole and exclusive benefit of the City, SPFA, 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 the assets and operations of Orrick 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 Treasurer's Office  
915 "I" Street  
Historic City Hall, Third Floor  
Sacramento, CA 95814-2704  
Attention: Brian Wong

*If to Orrick:*

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

*and*

City Attorney's Office  
915 "I" Street, Fourth Floor  
Sacramento, CA 95814  
Attention: Joseph Cerullo

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.

*(Signature Page Follows)*

**City of Sacramento**

**Orrick, Herrington & Sutcliffe LLP**

By: \_\_\_\_\_  
James Sanchez, City Attorney

By:  \_\_\_\_\_  
Jenna Magan, Partner

Attest:  
Sacramento City Clerk

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

Approved as to Form  
Sacramento City Attorney

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

## DISCLOSURE COUNSEL AGREEMENT

This Disclosure-Counsel Agreement, dated November 1, 2015, 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 engage the services of SYCR as disclosure counsel in connection with the City’s authorization, issuance, sale, and delivery of one or more series of bonds (the “**Refunding Bonds**”) for the purpose of refunding the 1997 Lease Revenue Bonds (Arco Arena Acquisition) (2007 Remarketing) (the “**Refunded Bonds**”). The City and SYCR desire to enter into this agreement to evidence the engagement of SYCR as disclosure counsel and to specify the terms of the engagement. SYCR has 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 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 Refunding Bonds.
  - (a) Preparation of a preliminary official statement and a final official statement for the Refunding 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 Refunding 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, and discussions with any financial advisors, underwriters, and other experts the City retains with respect to the Refunding Bonds (the “**City Consultants**”);
    - (5) reviewing resolutions, notices, rules, and regulations and other legal documents required for the Refunding Bonds, and all other documents relating to the security of the Refunding Bonds, in consultation with the City, bond counsel, and the City Consultants;
    - (6) rendering to the City and the underwriters of the Refunding Bonds, in customary form, a Rule 10b-5 letter regarding the Official Statement; and
  - (b) preparing a continuing-disclosure certificate of the City to comply with Rule 15c2-12 in connection with the issuance, sale, and delivery of the Refunding Bonds.

2. **Compensation.** The City shall pay SYCR the amounts set forth in this section 2 as full compensation for all services SYCR renders under this agreement and as full reimbursement of all out-of-pocket expenses SYCR incurs under this agreement. The City's obligation to pay fees and expenses hereunder is contingent on the successful closing of the Refunding Bonds (the "**Closing**"), with payment to come exclusively from the proceeds of the Refunding 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).
  - (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) If, for any reason, the Closing does not occur, then the City will not be obligated to pay SYCR for services rendered under this agreement and for out-of-pocket expenses SYCR incurs under this agreement.
  - (d) If the City terminates this agreement under section 4(a), then the City shall pay SYCR forthwith in accordance with this section 2 for all satisfactory work, 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 this agreement terminates under section 4(b), then the City shall pay SYCR the amounts owed within 30 days after SYCR's presentation of an invoice.
3. **Personnel and Contract Administration.** SYCR shall provide services under this agreement primarily through Kevin Civale, Cyrus Torabi, and Lawrence Chan. If Mr. Civale, Mr. Forbath, or Mr. Chan 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 the 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 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.
- (e) 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. Delivery of signed counterparts may be accomplished email transmission of a PDF document.

*(Signature Page Follows)*

**City of Sacramento**

**Stradling Yocca Carlson & Rauth**

By: \_\_\_\_\_  
James Sanchez, City Attorney

By:  \_\_\_\_\_  
Kevin M. Civale, Shareholder

Attest  
Sacramento City Clerk

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

Approved as to Form  
Sacramento City Attorney

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