

JOINT CITY COUNCIL/SUCCESSOR AGENCY

SUBJECT: SUPPLEMENTAL PROFESSIONAL LEGAL SERVICES FEE AGREEMENT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On December 14, 2012, the County of Tulare filed a civil complaint challenging the validity of the 2010 Amendment to the Redevelopment Plan for the Porterville Redevelopment Project Area No. 1 against the City of Porterville, the City Council of the City of Porterville, the Successor Agency for the City of Porterville Redevelopment Agency and the Oversight Board to the Successor Agency of the City of Porterville Redevelopment Agency.

In response to the complaint, the City Council authorized Stradling, Yocca, Carlson, & Rauth, the City's longstanding legal services provider for the Porterville Redevelopment Agency, to represent the City, City Council and the Successor Agency in responding to the lawsuit. This item approves the Professional Legal Services agreement to support that authorization.

- RECOMMENDATION: That the City Council:
1. Approve the Fee Agreement for Professional Legal Services; and
  2. Authorize the Mayor to sign the Terms of Retention.
- That the Successor Agency:
1. Approve the Fee Agreement for Professional Legal Services; and
  2. Authorize the Mayor to sign the Terms of Retention.

ATTACHMENTS: Letter for extension of services dated January 25, 2013

DD ~~DD~~ Approp./Funded MBS CM

ITEM NO. SA-02

# Stradling

Attorneys at Law

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January 25, 2013

## By Email and U.S. Mail

John D. Lollis  
City Manager  
City of Porterville  
291 North Main Street  
Porterville, CA 93257

Re: Professional Legal Services: Fee Agreement

Dear Mr. Lollis:

Thank you for the opportunity to represent the City of Porterville ("City"), the City Council of the City of Porterville ("Council"), and the City of Porterville Acting As Successor to the Porterville Redevelopment Agency ("Successor Agency") in connection with the action filed in Tulare County Superior Court, *County of Tulare vs. City of Porterville, et al*, Case No. 249877 (the "Matter"). We believe that Stradling Yocca Carlson & Rauth ("SYCR") is uniquely qualified to provide special legal services related to the Matter.

It is necessary at this time to memorialize our arrangement in a legal services agreement among the City, City Council, Successor Agency (collectively, "Porterville") and SYCR, effective as of December 18, 2012. This is in addition to the longstanding legal services agreement between SYCR and the former Porterville Redevelopment Agency (now the Successor Agency) dated November 6, 1990.

Our fee for providing the legal services discussed above as counsel to the City will be based upon the rates described in the December 18, 2012 email from Vanessa S. Locklin of this office to Julia M. Lew, City Attorney, specifically: \$300 per hour for Thomas P. Clark and Allison E. Burns, \$235 per hour for Vanessa S. Locklin, David C. Palmer and other associates of the firm, \$205 for Colin Hendricks, and \$140 per hour for paralegal services. Rates are adjusted, if at all, based on CPI for the prior year. All fees for legal services will be billed to the tenth of an hour and are billed monthly. The monthly statement will set forth the nature of the services provided during the preceding month for the total number of hours attributable to providing such services. In addition to the above fees, we would be reimbursed for our out-of-pocket expenses, including long distance and cellular telephone charges, facsimile transmissions, document delivery and messenger fees, photocopying, electronic research and travel at your direction (IRS rate, currently 56.5¢ per mile). Our representation is subject to the firm's Terms of Retention, which are attached hereto.

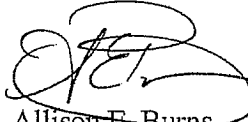
Additionally, and from time to time, the Matter may require the retention of certain expert witnesses or other consultants on behalf of the City. While the firm will assist the City in the

John D. Lollis  
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coordination of such services and will, at your request, directly contract with such service providers on behalf of the City, any and all costs for such services shall be the sole and exclusive responsibility of the City.

Thank you for your consideration and for giving us this opportunity to present this information to you. If you decide to retain our firm for these services, please acknowledge by signing the Terms of Retention and returning a signed copy to me.

Very truly yours,



Allison E. Burns  
Shareholder

STRADLING YOCCA CARLSON & RAUTH, P.C.

Enclosure

cc: Julia M. Lew  
Bradley D. Dunlap  
Thomas P. Clark, Jr.  
Vanessa S. Locklin

**TERMS OF RETENTION OF  
STRADLING YOCCA CARLSON & RAUTH**

1. **Fees and Costs.** Stradling Yocca Carlson & Rauth is compensated for its services based primarily on the value of the services and the time spent performing them. This includes the time spent on conferences, court appearances, depositions, travel, research, drafting documents, and other activities. Our current hourly rates range from \$275 to \$520. We also bill for services performed by our paralegals, librarian, senior legal assistants, and other professional personnel at rates presently ranging between \$130 and \$160 per hour. These rates are modified from time to time.

The amount of fees charged on a statement is determined by starting with the hours expended by the different attorneys and other professional personnel involved. These amounts are then adjusted for factors such as the extent of any duplication of attorney effort, unusual efficiency (or lack of efficiency), the novelty or difficulty of the issues involved, the time demands of the representation, and unusually good (or unusually disappointing) results.

The firm also charges for various costs such as copying, telephone charges, computerized legal research, word processing and/or other computer time, overtime costs, messenger services, travel, filing fees and other costs. Bills for some costs are passed on directly, such as bills for certified shorthand reporters, technical consultants, appraisers and other professionals' fees.

Payment is due within ten days of the date of each fee and costs statement. Overdue statements will be charged interest of 10% per annum, compounded annually. If you wish to question any charge, you have agreed to do so within ten days of the statement date. Please contact the partner in charge of your matters if you have any questions about any of your bills.

2. **Estimates Not Binding.** Although we may furnish estimates of fees or costs that we anticipate will be incurred, these estimates are not intended to be binding, are subject to unforeseen circumstances, and are by their nature inexact.

3. **Termination by You.** You have the right at any time, in your sole discretion, to terminate our services and representation. Upon our termination, you will remain obligated to pay for all services rendered and costs or expenses paid or incurred on your behalf prior to the date of such termination or which are reasonably necessary thereafter.

4. **Termination by Us.** We reserve the absolute right to withdraw from representing you if, among other things, you fail to honor the terms of our agreement, you fail to cooperate fully or follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on your behalf. If necessary in connection with litigation, we would request leave of court to withdraw.

5. **Date of Termination.** Our representation of you will be considered terminated at the earlier of (i) your termination of our representation, (ii) our withdrawal from our representation of you, or (iii) the substantial completion of our substantive work for you.

6. **Related Activities.** If any claim or action is brought against us or any personnel or agents of the firm based on your negligence or misconduct, or if we are asked to testify as a result of our representation of you or must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting fees, costs, or damages, including our time, even if our representation of you has ended.

7. **No Guarantee of Outcome.** We do not and cannot guarantee any outcome in a matter.

8. **Insurance.** In accordance with the requirements of California Business and Professions Code § 6148, we advise you that this firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to you.

9. **Client.** This firm's client for the purpose of our representation is only the person or entity identified in the letter accompanying these Terms of Retention. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any parent, brother-sister, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, or employees.

10. **Payment Notwithstanding Dispute.** In the event of any dispute that relates to our entitlement to any payment from you, all undisputed amounts shall be paid by you. Any amounts in any client trust account held on your behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.

11. **Arbitration.** IN THE EVENT OF A DISPUTE REGARDING FEES, COSTS, OR ANY OTHER MATTER ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO OUR RELATIONSHIP WITH YOU, OR YOUR OR OUR PERFORMANCE OF THIS AGREEMENT, INCLUDING THE QUALITY OF THE SERVICES WHICH WE RENDER, THE DISPUTE SHALL BE DETERMINED, SETTLED AND RESOLVED BY CONFIDENTIAL ARBITRATION IN ORANGE COUNTY, CALIFORNIA. ANY AWARD SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE PARTIES, AND A JUDGMENT RENDERED THEREON MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. SHOULD YOU ELECT TO HAVE ANY FEE DISPUTE ARBITRATED PURSUANT TO NONBINDING ARBITRATION UNDER STATUTORY OR CASE LAW, THEN SUCH NONBINDING ARBITRATION SHALL DETERMINE ONLY THE ISSUE OF THE AMOUNT OF FEES PROPERLY CHARGEABLE TO YOU. ANY OTHER CLAIMS OR DISPUTES BETWEEN US, INCLUDING CLAIMS FOR PROFESSIONAL NEGLIGENCE, SHALL REMAIN SUBJECT TO BINDING ARBITRATION PURSUANT TO THIS AGREEMENT.

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

12. At your direction, SYCR will contract with certain expert witnesses or other consultants necessary to your representation; any and all costs for such services shall be your sole and exclusive responsibility.

Date: \_\_\_\_\_, 2013

AGREED:

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