

LOMA LINDA PUBLIC FINANCING AUTHORITY

AGENDA

MEETING OF OCTOBER 8, 2013

7:00 P.M.

A regular meeting of the Loma Linda Public Financing Authority is scheduled to be held Tuesday, October 8, 2013 in the City Council Chamber, 25541 Barton Road, Loma Linda, California.

Reports and Documents relating to each agenda item are on file in the Office of the Secretary and are available for public inspection during normal business hours. An agenda packet is also available at the Loma Linda Branch Library. The agenda and reports are also located on the City's Website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov).

Persons wishing to speak on an agenda item are asked to complete an information card and present it to the City Clerk prior to consideration of the item. When the item is to be considered, the Chair will recognize you, and you may offer your comments. The Agency meeting is recorded to assist in the preparation of the Minutes, and you are therefore asked to give your name and address prior to offering testimony.

The Oral Reports/Public Participation portion of the agenda pertaining to items NOT on the agenda is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, the Agency Board may take no action at this time; however, the Agency Board may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

**A. Call To Order**

**B. Roll Call**

**C. Items To Be Added Or Deleted**

**D. Oral Reports/Public Participation (Non-Agenda Items)**

**E. General**

1. Minutes of June 11, 2013
2. Amended and Restated Agreement for Services – Law Firm of Stradling Yocca Carlson & Rauth [**Executive Director**]

**F. Reports**

**G. Adjournment**



# City of Loma Linda Official Report

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Rhodes Rigsby, Chairman  
Ovidiu Popescu, Vice-Chairman  
Ronald Dailey, Member  
Phillip Dupper, Member  
John Lenart, Member

FINANCING AUTHORITY AGENDA: October 8, 2013

TO: Financing Authority  
VIA: T. Jarb Thaipejr, City Manager  
FROM: Pamela Byrnes-O'Camb, City Clerk  
SUBJECT: Minutes of June 11, 2013

Approved/Continued/Denied By City Council Date _____
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## **RECOMMENDATION**

It is recommended that the City Council approve the Minutes of June 11, 2013.

City of Loma Linda

Public Financing Authority Minutes

Regular Meeting of June 11, 2013

A regular meeting of the Public Financing Authority was called to order by Mayor Rigsby at 8:35 p.m., Tuesday, June 11, 2013 in the City Council Chamber, 25541 Barton Road, Loma Linda, California.

Authority Members Present:

Rhodes Rigsby, Chairman  
Ovidiu Popescu, Vice-Chairman  
Ron Dailey  
Phill Dupper  
John Lenart

Authority Members Absent:

None

Others Present:

City Manager T. Jarb Thaipejr  
General Counsel Richard Holdaway

No items were added or deleted and no public participation comments were offered upon invitation of the Chairman.

**PFA-2013-001 - Minutes of June 12, 2012**

**Motion by Popescu, seconded by Dailey and unanimously carried to approve the Minutes of June 12, 2012 as presented.**

The meeting adjourned at 8:35 p.m..

Approved at the meeting of .

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Pamela Byrnes-O'Camb, Secretary



# City of Loma Linda Official Report

Rhodes Rigsby, Chairman  
Ovidiu Popescu, Vice Chairman  
Ron Dailey, Member  
Phil Dupper, Member  
John Lenart, Member

FINANCING AUTHORITY AGENDA: October 8, 2013

TO: Financing Authority

VIA: T. Jarb Thaipejr, Executive Director *T.J.T.*

FROM: Pamela Byrnes-O'Camb, Secretary *pbo*

SUBJECT: Amended and Restated Agreement for Services – Stradling Yocca Carlson & Rauth – Mark Huebsch Special Counsel

## RECOMMENDATION

It is recommended that the Financing Authority Board approve a fee structure for Special Legal Counsel as follows: in connection with the issuance of bonds or similar obligations, \$450/hr. for Mark Huebsch and \$495/hr. for other shareholders of the firm; \$650/hr. for Carol Lew, \$275 to \$310/hr. for associates and \$125/hr. for paralegals; said fees to be adjusted annually as outlined in the Agreement.

## BACKGROUND

The law firm of Stradling Yocca Carlson & Rauth has performed as Special Counsel to the Public Financing Authority since its inception in 2002. The firm has substantial expertise in finance, real estate and other matters of relevance to the Financing Authority.

The firm, and particularly Mr. Huebsch, has represented the City and Financing Authority relating to bond issuance.

Not only has the City and Financing Authority benefitted from the long relationship and level of experience of the firm, but also the institutions and community. Document turnarounds have been relatively quick and service has been responsive.

## ANALYSIS

The proposed rates are within the range of current market conditions for specialized legal services.

## FINANCIAL IMPACT

Increase in hourly rate will increase overall cost, assuming that utilization continues at historical levels.

## **AMENDED AND RESTATED AGREEMENT FOR SERVICES**

THIS AMENDED AND RESTATED AGREEMENT (“Agreement”) is made and entered into as of August 1, 2009 (the “Original Date of Agreement”) as amended and restated as of October 1, 2013 (the “Date of Agreement”), the CITY OF LOMA LINDA, a municipal corporation (the “City”), the LOMA LINDA PUBLIC FINANCING AUTHORITY (the “Financing Authority”), and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (“SYCR”).

### **WITNESSETH:**

**WHEREAS**, the City and the Loma Linda Redevelopment Agency (the “Redevelopment Agency”) previously adopted a plan, as heretofore amended (the “Redevelopment Plan”) for the Loma Linda Redevelopment Project, and were engaged in the implementation of the Redevelopment Plan, including without limitation activities for commercial and industrial development, housing development (including without limitation the development of affordable housing) and the implementation of various public improvements. Upon the dissolution of all redevelopment agencies in the State of California, including without limitation the Redevelopment Agency, in addition to advising the City in relation to redevelopment dissolution matters, SYCR advises the City, in the capacity of special counsel: the City Attorney acts as general counsel for each of such entities. Each of the City and the Financing Authority desires to retain the services of SYCR, as special counsel, to advise and represent the City and the Financing Authority in connection with such matters relating to the Financing Authority or the City as may be designated by the governing board, staff, and/or the City Manager or the Executive Director of those respective governmental entities, including, but not limited to, negotiations, document preparation, legal rendering of opinions, litigation, financing or any other facet of the practice of law as it relates to an issue of concern to the City and/or the Financing Authority, such activities including but not being limited to advisement and implementation associated with affordable housing transactions; and

**WHEREAS**, the Financing Authority as well as the City from time to time issue bonds and similar obligations in connection with the exercise of their respective governmental functions; and

**WHEREAS**, in connection with the exercise of their governmental functions, the City and the Financing Authority desire to engage the services of SYCR for those activities herein set forth and such work as may from time to time be designated by the chief executive officers of the City and the Financing Authority, respectively; and

**WHEREAS**, the City Manager of the City is the chief executive officer of the City; and

**WHEREAS**, the Executive Director of the Financing Authority is the chief executive officer of the Financing Authority; and

**WHEREAS**, SYCR is qualified in this field and possesses professional skills with respect to representing the City and the Financing Authority in any capacity including litigation or financing matters as directed by the City and the Financing Authority; and

**WHEREAS**, the City and the Financing Authority desire to designate the City Manager of the City as the contract administrator (the "Contract Administrator") for the purposes of this Agreement; and

**WHEREAS**, SYCR represents that it is ready, willing and able to continue to provide the legal services as required by the City and the Financing Authority.

**NOW, THEREFORE**, in consideration of the promises, covenants, conditions, legal detriments and agreements herein contained, it is agreed as follows:

1. **Responsibilities**: The City and the Financing Authority hereby employ SYCR, and SYCR hereby accepts such employment, to represent the City and the Financing Authority in connection with such matters relating to the Financing Authority and the City and the activities of the Successor Agency to the Loma Linda Redevelopment Agency ("Successor Agency") as may be designated by the governing board, staff, and/or the Contract Administrator on behalf of the City and the Financing Authority. All work performed by SYCR pursuant to this Agreement shall be commenced upon request therefor by the City and the Financing Authority as requested by the governing board, staff and/or Contract Administrator on behalf of one or more of those entities. In connection with the performance of duties by SYCR, the City and the Financing Authority, respectively, agree to make available, in a prompt and business-like manner, all necessary available background data as may be necessary from time-to-time. This Agreement does not concern the provision of services by SYCR for the Successor Agency; the Successor Agency and SYCR have entered into a separate agreement regarding the provisions of services (the "Successor Agency Agreement"), which Successor Agency Agreement is not modified by this Agreement and remains in full force and effect in accordance with its terms. This Agreement does not concern the provision of services by SYCR for the Loma Linda Housing Authority ("Housing Authority"); the Housing

Authority and SYCR have entered into a separate agreement regarding the provisions of services (the "Housing Authority Agreement"), which Housing Authority Agreement is not modified by this Agreement and remains in full force and effect in accordance with its terms.

2. **Scope of Work:** SYCR, as an independent contractor and not as an agent of the City or the Financing Authority, shall provide the necessary personnel, facilities, equipment and materials (except as otherwise provided herein), to provide legal services as requested by the governing board, staff, and/or Contract Administrator on behalf of one or more of the City or the Financing Authority and agreed to be undertaken by SYCR, including, but not limited to, negotiations, document preparation, rendering legal opinions, litigation, finance or any other facet of the practice of law as it relates to an issue of concern to the City or the Financing Authority. SYCR is to attend meetings as directed by the Contract Administrator. The parties anticipate that attendance by SYCR will not be required at certain meetings in view of the regular attendance of the City Attorney who, as General Counsel to each of the City and the Financing Authority, will continue to regularly attend meetings of such entities.

3. **Period of Performance:** SYCR shall commence the performance under this Agreement as Special Counsel as of the date first herein set forth and shall continue thereafter unless terminated by the parties.

This Agreement supersedes and takes precedent over other, existing agreements between SYCR and one or more of the City and the Financing Authority concerning the provision of services.

4. **Type of Contract and Terms of Payment:** In connection with matters other than as described the in second paragraph of this Section 4, SYCR shall be entitled to a fixed hourly rate in connection with redevelopment matters not involving litigation or public finance as follows: (i) for the period commencing as of the Date of Agreement and continuing to June 30, 2014, \$265.20 per hour for Mark J. Huebsch and other shareholders of the firm, \$200 per hour for associates of the firm, and \$115 per hour for paralegals for services hereunder except to the extent other fees are otherwise expressly set forth below; (ii) for the period commencing July 1, 2014 and continuing until June 30, 2015, \$270.50 per hour for Mark J. Huebsch and other shareholders of the firm, \$215 per hour for associates of the firm, and \$115 per hour for paralegals for services hereunder except to the extent other fees are otherwise expressly set forth below; (iii) for the period commencing July 1, 2015 and continuing until June 30 of the following calendar year, and for each such fiscal year (commencing July 1 and continuing until June 30 of the following calendar year), fees shall be increased by 2% on

each anniversary date. In connection with litigation matters, hourly rates shall be \$270 per hour for shareholders of the firm, \$200 to \$245 per hour for associates of the firm, and \$125 per hour for paralegals for services hereunder except to the extent other fees are otherwise expressly set forth below; such fees shall be subject to annual adjustment by 2% in the manner described in the foregoing portion of this paragraph. In addition to the fees set forth in the preceding portion of this paragraph, SYCR shall be reimbursed for all expenses incurred and paid by SYCR, such as long distance telephone calls, telegrams, teletypes, reproduction of documents, word processing, travel at the request of the City or the Financing Authority, publishing or printing costs, court fees and other expenses which may be necessary in connection with the work to be undertaken. SYCR may decline to handle certain matters (which shall not effect a termination of this Agreement).

In connection with the issuance by the Financing Authority or the City of bonds or similar obligations, rates will be at the following hourly rates: \$450 for Mark J. Huebsch and \$495 for other shareholders of the firm, and \$650 per hour for Carol Lew, and \$275 to \$310 per hour for associates and \$125 per hour for paralegals; such fees shall be adjusted annually in the manner described in the preceding paragraph. Such amounts would be billed monthly and would not be contingent upon closing of a bond issue. Alternatively, where SYCR is engaged as bond counsel, the parties may agree to a separate arrangement which may take into account such factors as the complexity of the issue, the level of work and time that will be required, and whether the fee is contingent upon closing of a bond issue. In such cases, it is anticipated that charges would be consistent with fee schedules as from time to time established by SYCR; provided that SYCR will consult with the Financing Authority or the City, as applicable relative to such matters. In connection with conduit financings, the parties hereto may provide for other rates, by mutual agreement.

All rates as set forth herein are additionally subject to periodic adjustment upon notice by SYCR to the Contract Administrator.

It is understood and agreed that each of the City and the Financing Authority shall be responsible for services rendered to them or on their behalf by SYCR. Billings shall be made separately to the City and the Financing Authority to reflect the correct entity on behalf of which work is performed. Except to the extent otherwise set forth above, SYCR shall submit monthly billings to the Contract Administrator. The City and the Financing Authority shall pay billings within thirty (30) days after receipt of same.

5. **Extent of Performance:** In the performance of said Agreement, SYCR agrees to furnish labor required to accomplish the services set forth, supra, including a combination of legal consulting skills appropriate to this effort as well as any such related technical assistance services necessary for the same.

6. **Attorney's Fees:** The prevailing party in any arbitration or litigation arising out of or relating to our engagement, this agreement, any obligations created by this agreement, and/or the performance or failure to perform services (including, without limit, claims of breach of duty or professional negligence) shall be entitled to recover all attorneys' fees (including the value of time of attorneys in SYCR and/or the City Attorney at their normal billing rates), all experts' fees and expenses and all costs (whether or not such costs are recoverable pursuant to the California Code of Civil Procedure) as may be incurred in connection with either obtaining or collecting any relief to which that party may be entitled.

7. **Quality of Work:** SYCR further agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to high professional standards.

8. **Modification of Agreement:** This Agreement is subject to modification by mutual agreement as to scope and cost among all signatories hereto or their designees.

9. **Right of Termination:**

(a) This Agreement may be terminated by a party upon thirty (30) day written notice.

(b) In the event this Agreement is terminated by any party for any reason, SYCR shall be paid by the Financing Authority and/or the City (each of which shall be jointly and severally liable) for the reasonable value of services provided up to the date of notice of termination is given and there shall be no further liability.

10. **Contract Administration:** Contract Administrator for this Agreement on behalf of each of the City and the Financing Authority is the City Manager of the City (herein the "Contract Administrator"). The Financing Authority or the City may, by written notification, change the Contract Administrator. SYCR will be responsible for specific performance coordinated with and at the direction of the designated Contract Administrator.

11. **Release of News Information:** No news release, including photographs, public announcements or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of the Financing Authority or the City.

12. **Confidentiality of Reports:** To the extent allowable by law, SYCR shall keep confidential all reports, information, and data given to, prepared or assembled by SYCR pursuant to SYCR's performance hereunder which the Financing Authority or the City designates as confidential. Such information shall not be made available to any person, firm, corporation, or entity without the prior written consent of the Financing Authority or the City first obtained.

13. **Hold Harmless and Indemnification:** SYCR hereby agrees to, and shall, hold the City, the Financing Authority and their elective and appointive boards, commissions, officers and employees harmless and agrees to indemnification from any liabilities, losses, costs, obligations, including reasonable attorney fees for damages or claims for personal injury, including death, as well as from claims for property damage which may arise from SYCR's operations under this Agreement, whether such operations be by SYCR or by any one or more persons directly or indirectly employed by or acting as agent for SYCR except to the extent such liabilities, losses, costs, and obligations are caused or contributed to by the Financing Authority or the City.

14. **Assignment:** SYCR shall not assign or transfer its interest in this Agreement without the written consent of the Financing Authority or the City.

15. **Compliance with Applicable Laws:** In performance of this Agreement, SYCR shall abide by and conform to any and all applicable laws of the United States and the State of California.

16. **Capacity as an Independent Contractor:** Performance of SYCR services pursuant to this Agreement shall be in the capacity of an independent contractor and not as an officer, agent or employee of the Financing Authority or the City.

17. **Employment of Other Counsel Specialist or Experts:** SYCR will not employ or otherwise incur an obligation to pay other counsel, specialist or experts for services in connection with this Agreement without prior approval of the City, the Financing Authority or the Contract Administrator.

18. **Representations:** The parties hereto mentioned enter into this Agreement in consideration of the mutual recitals and other parts of this Agreement.

19. **Arbitration:** BY SIGNING THIS AGREEMENT, ALL PARTIES ARE AGREEING TO BINDING ARBITRATION OF DISPUTES, WHETHER AS TO FEES, QUALITY OF SERVICES RENDERED, OR OTHERWISE, ARISING HEREUNDER. ALL PARTIES ARE GIVING UP THE RIGHT TO A JURY OR COURT TRIAL, OR TO PROCEED UNDER THE ARBITRATION PROVISIONS OF THE STATE BAR ACT, CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 6200, *ET SEQ.*

20. **Notices:** All notices herein required shall be in writing and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

To City: City of Loma Linda  
Attention: City Manager  
25541 Barton Road  
Loma Linda, California 92354

To Financing Authority: Loma Linda Public Financing Authority  
Attention: Executive Director/City Manager  
25541 Barton Road  
Loma Linda, California 92354

To SYCR: Stradling Yocca Carlson & Rauth  
Attention: Mark J. Huebsch, Esq.  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660-6401

**IN WITNESS WHEREOF**, the parties have hereto executed this Agreement as of the date first hereinabove written.

**CITY OF LOMA LINDA**

By: \_\_\_\_\_  
City Manager

**LINDA PUBLIC FINANCING AUTHORITY**

By: \_\_\_\_\_  
Executive Director

**STRADLING YOCCA CARLSON & RAUTH, a  
Professional Corporation**

By: \_\_\_\_\_  
Mark J. Huebsch