



Council Meeting: April 6, 2010

SUBJECT: Authorize the Issuance of Revenue Bonds to Finance Water and Wastewater Capital Projects and Approve a Financing Team

BACKGROUND

The City of Sunnyvale owns and operates a water utility, a solid waste utility, and a wastewater utility. From time to time, the City has had a need to issue debt to finance the substantial capital and infrastructure projects that such public utilities require. Projects for the Materials Recovery Facility at the SMaRT Station, the City's Recycled Water System, significant wastewater projects, and the original construction of the SMaRT Station have all been financed through revenue bonds. The FY 2009/2010 budget includes plans to issue additional water and wastewater revenue bonds. In addition, there will be a future need to issue bonds to finance a \$400 million Water Pollution Control Plant Renovation over the next 10-15 years.

EXISTING POLICY

Fiscal Sub-Element Policy F.2.5 Revenue Bonds – All City utility related improvements shall be funded only from revenues of the respective utilities.

Fiscal Sub-Element Policy I.1b.1 Capital improvements associated with the existing infrastructure of a utility should be primarily funded from two sources: rate revenue and debt financing.

DISCUSSION

The FY 2009/2010 Approved Budget reflects the need for significant capital improvements to both water and wastewater facilities over the next several years. Much of this is due to aging infrastructure. Currently it is an excellent time for agencies with good credit ratings (like Sunnyvale) to enter the municipal debt market because of very favorable low interest rates. It also makes good fiscal sense to accelerate projects (as was done with the Wastewater Oxidation Pond Sediment Removal Project in November of 2009) to achieve construction cost savings over the long term. Given the positive position of the market, staff recommends that revenue bonds be issued for water and wastewater projects, which would minimize the effect on utility rates by spreading the costs to users on a more equitable, long-term basis.

The existing Water and Wastewater Revenue Bonds Series 2001 (“2001 Bonds”) have approximately \$21 million (\$7 million for water, \$14 million for wastewater) in outstanding principal. Staff also is proposing to refund the 2001 Bonds in conjunction with the issuance of revenue bonds for new water and wastewater capital projects. Under current market conditions, this would be advantageous to the City even if new money was not needed. Anticipated net present value savings under the current conditions are approximately \$1 million for the combined systems, or 4.62% of the refunded par amount. It is important to note that these savings could change significantly based on market conditions at the time of sale.

The recommended financing plan is to issue two series of revenue bonds – one for each utility – with each containing a refunding and new project component. The two revenue bonds issues will include approximately \$17 million in new financing for the City’s water system, and approximately \$23 million in new financing for the City’s wastewater collection and treatment system.

Build America Bonds

The American Recovery and Reinvestment Act (ARRA) included a new financing tool for state and local governments called Build America Bonds (BABs). BABs, which allow a new direct federal payment subsidy, are taxable bonds issued by state and local governments that provide access to the conventional corporate debt markets. In order to recoup the savings lost by issuing taxable instead of tax exempt bonds, the City would receive, from the United States Treasury Department, a direct payment in an amount equal to 35 percent of the interest payment on the Build America Bonds. As a result of this federal subsidy payment, the City would have lower net borrowing costs and be able to reach more sources of borrowing than with more traditional tax-exempt bonds. Staff will consider these bonds only if the market conditions are favorable, and will structure the legal documents to allow for the purchase of BABs if the appropriate conditions exist.

Competitive v. Negotiated Sale

There are two ways that the City can sell bonds: competitive and negotiated. In a negotiated sale, the City works with an underwriter to prepare the bonds for sale. Bonds sold at negotiated sale typically have complex structures and require more presale marketing or are sold in particularly volatile markets. As a result of such presale marketing, a negotiated sale typically results in a better interest rate than if such securities are sold at competitive sale as discussed below.

Under the competitive approach, the City would set a date and time at which any underwriter may submit a bid to purchase the bonds. The City would award the bonds to the firm that offers the lowest true interest cost. The process entails publishing notice of the sale and the mailing of Official Statements and Bid Forms to underwriting firms. Firms that are interested in bidding on the City’s bonds will submit a bid on the date and time specified for sale.

Typically, refunding of existing debt is done on a negotiated basis. In this case, the complexity of the transactions and the current unsettled state of the financial markets are additional reasons staff is recommending that the bonds are sold through a negotiated sale. Furthermore, the staff is recommending De La Rosa & Co. ("DLR") as the underwriter. DLR has agreed to underwrite the bonds for the same underwriter's discount the City would otherwise have obtained in connection with a competitive sale of the bonds. DLR will receive no fee for structuring the bonds. The City's recommended financial advisor, Ross Financial, will work closely with DLR to assure that the bonds will be structured within the parameters that the City would have set for a competitive sale.

Approval of Financing Team

The Financing Team consists of City officials, bond counsel, disclosure counsel, financial advisor, and underwriter. Staff is recommending the same team that has been used on many of its recent transactions. This team is experienced, is familiar with the City and the City's management systems, and provides their services at very competitive rates. The recommendations for these positions have been listed below:

Bond Counsel and Disclosure Counsel

Jones Hall, A Professional Law Corporation
San Francisco, CA

Financial Advisor

Ross Financial
San Francisco, CA

Underwriter

De La Rosa & Co.
San Francisco, CA

Description of Recommended Bond Counsel and Disclosure Counsel and Services

Bond counsel is responsible for drafting legal documents and ensuring that the bonds are issued in compliance with all applicable state and federal laws. Bond counsel delivers an opinion at closing that the bonds are legally issued and interest is exempt from Federal and state taxes. Because the City will be selling to investors in the capital markets (rather than through a private placement), bond counsel also serves as disclosure counsel. In this role, disclosure counsel will draft the Official Statement for each bond offering, describing the City, the applicable utility, including rate structure in place for that utility, the City's economic picture and the bond issue, and issue an opinion that the Official Statement is accurate in all material respects.

The law firm of Jones Hall is recommended as bond and disclosure counsel. Jones Hall is one of the leading bond counsel firms in the State and serves local governments throughout California. The firm has served as bond counsel and disclosure counsel for the City and Financing Authority on several previous financings, including the 2009 Variable Rate Refunding Certificates of Participation financing for the Government Center Site Acquisition Project, the Mello-Roos financing for the Downtown Parking Project, and the 2001 Utilities Bonds. In addition, Jones Hall acted as disclosure counsel in connection with the above transactions and the 1998 refunding of the Parking Lease Revenue Bonds. The firm also serves as bond counsel and disclosure counsel on a similar utility bond financing for the City of Palo Alto, one of the few municipalities in California that operates a combined utility.

Jones Hall's proposed services will include:

- Consultation with the financing team on structuring the financing;
- Preparation of basic bond documents;
- Preparation of the preliminary and final Official Statement
- Preparation of the Bond Purchase Agreement;
- Preparation of documents for pre-closing and closing;
- Providing bond counsel opinion relating to the validity and tax-exempt nature of the interest on the bonds; and
- Providing an opinion that the Official Statement is accurate in all material respects.

Jones Hall proposes a fee of not to exceed \$160,000 for both issues, plus out-of-pocket expenses (not to exceed \$2,500 per bond issue) for both bond counsel services and disclosure counsel services. This fee will be paid from the proceeds of the bonds and is contingent on their sale and closing.

Description of Recommended Financial Advisor and Services

Ross Financial is a San Francisco-based financial advisory firm that is focused solely on municipal bonds. Its principal, Peter Ross, has more than thirty years experience in the municipal bond market, having served in the capacities of bond counsel, underwriter, and financial advisor over the course of his career. Ross Financial performs work for many prominent municipalities in California, including the Cities of San Jose, San Francisco, Burbank, the Santa Clara Valley Transportation Authority, SamTrans, and Peninsula Corridor Joint Powers Board.

Ross Financial's services include reviewing structuring options, analyzing merits of a refunding, cash flow analysis, participation in rating agency presentations, review of the Official Statements, bond documents, and related activities. Ross Financial has served as financial advisor for many of the city's recent transactions, playing a significant role in obtaining excellent financing through the Series 2007 Utility Revenue Bonds, which were a private placement deal to fund the SMaRT Station materials recovery equipment project.

Ross Financial proposes a fee of \$50,000 plus out-of-pocket expenses (not to exceed \$1,000). This fee will be paid from the proceeds of the bonds and is contingent upon their sale and closing. Because this fee is within the threshold for approval by the City Manager, the contract will be authorized by him if the financing team is approved by Council.

Description of Recommended Bond Underwriter and Services

De La Rosa & Co. ("DLR") is the recommended underwriter of the bonds. The City has a long-standing professional relationship with DLR, which is a California-based investment bank focused solely on California municipal bonds. The firm is one of the most active participants in the California municipal bond market, serving as an underwriter on over 450 California municipal bond transactions since 2005 with an aggregate par amount of \$97 billion. The firm has served the City in the past as underwriter on its 1998 Refunding Certificates of Participation, 2001 Government Center financing, 2001 Water and Wastewater revenue bonds, 2003 Solid Waste revenue bonds, 2003 tax allocation bonds, and Mello-Roos financing. The firm has extensive experience underwriting utility revenue bond issues in California. In 2009 De La Rosa & Co. served as lead underwriter on \$1.2 billion of California utility revenue bonds.

The Underwriter is compensated at the time of sale through an Underwriter's Discount. This is the amount paid to the underwriting group for purchasing, underwriting, and selling the securities. The Underwriter's Discount is computed as a percentage of the par amount of the sale. De La Rosa & Co. is proposing a not to exceed Underwriter's discount of .080%. Again, this fee is contingent upon sale and closing of the bonds and will be paid as a cost of issuance from bond proceeds.

FISCAL IMPACT

Both the Water and Wastewater bonds will finance these new capital projects over 30 years at current interest rates resulting in approximately \$1.2 million in new annual debt service for the water system, and \$1.4 million in new annual debt service for the wastewater system, including all costs of issuing the debt.

The Water Revenue Bonds will be issued in an amount not to exceed \$30 million (including \$7 million in refunding bonds), will have a final maturity of no more than thirty years from the date of issuance, and will bear interest at rates not in excess of 6.5 percent. The not-to-exceed interest rate is based on a net calculation after taking into account any federal interest subsidy received by the City, should the City choose to issue federally taxable Build America Bonds. Based on current market conditions, it is expected that the final maturity of the bonds will be 30 years from the date of issuance, and the all-in interest cost would be approximately 4.80 percent.

The Wastewater Revenue Bonds will be issued in an amount not to exceed \$40 million (including \$14 million in refunding bonds), will have a final maturity of no more than thirty years from the date of issuance, and will bear interest at rates not in excess of 6.5 percent. Again, the not-to-exceed interest rate is based on a net calculation after taking into account any federal interest subsidy received by the City, should the City choose to issue federally taxable Build America Bonds. Based on current market conditions, it is expected that the final maturity of the bonds will be 30 years from the date of issuance, and the all-in interest cost would be approximately 4.72 percent.

Staff will be returning to council at a later date for final approval to issue the bonds. At that time, approval of the financing documents will be requested and staff will provide a detailed fiscal impact that includes actual debt service impacts for Council's review.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Authorize staff to proceed with the issuance of Water Revenue Bonds and Wastewater Revenue Bonds, approve the financing team, and authorize the City Manager to enter into contracts with Jones Hall for Bond Counsel and Disclosure services in substantially the same form as the attached.
2. Do not authorize staff to proceed with the issuance of Water Revenue Bonds and Wastewater Revenue Bonds.

RECOMMENDATION

Staff recommends Alternative 1, authorize staff to proceed with the issuance of Water Revenue Bonds and Wastewater Revenue Bonds, approve the financing team, and authorize the City Manager to enter into contracts with Jones Hall for Bond Counsel and Disclosure services in substantially the same form as the attached.

Reviewed by:

Mary J. Bradley Director of Finance
Prepared by: Timothy J. Kirby, Revenue Systems Supervisor

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Agreement for Legal Services between the City of Sunnyvale and Jones Hall for Bond Counsel and Disclosure Counsel services in connection with Wastewater Revenue Bonds

- B. Agreement for Legal Services between the City of Sunnyvale and Jones Hall for Bond Counsel and Disclosure Counsel services in connection with Water Revenue Bonds

AGREEMENT FOR LEGAL SERVICES

BETWEEN THE CITY OF SUNNYVALE AND JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES IN CONNECTION WITH WASTEWATER REVENUE BONDS

This AGREEMENT FOR LEGAL SERVICES is entered into this ___ day of _____, 2010, between the CITY OF SUNNYVALE (the "City", or the "Client") and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys").

BACKGROUND:

WHEREAS, the City of Sunnyvale (the "City") intends to issue its Wastewater Revenue Bonds, Series 2010 (the "2010 Wastewater Revenue Bonds") for the purpose of providing funds to (1) prepay the portion of the Installment Sale Agreement, dated as of December 1, 2001, between the Sunnyvale Financing Authority (the "Authority") and the City, which will cause the defeasance and refunding of a corresponding principal amount of the Authority's outstanding Water and Wastewater Revenue Bonds, Series 2001 (the "Series 2001 Bonds") relating to the City's Wastewater System; (2) finance certain additions and improvements to the City's Wastewater System; (3) fund a reserve fund for the 2010 Wastewater Revenue Bonds; and (4) pay for costs of issuance incurred in connection with the issuance of the 2010 Wastewater Revenue Bonds; all pursuant to and secured in the manner provided herein; and

WHEREAS, the 2010 Wastewater Revenue Bonds will be secured by net revenues of the City's Wastewater System; and

WHEREAS, in order to issue and sell the 2010 Wastewater Revenue Bonds, the Client requires the services of nationally-recognized bond counsel and disclosure counsel.

AGREEMENT:

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Client and Attorneys agree as follows:

Section 1. Attorney-Client Relationship. Upon execution of this Agreement, the Client will be Attorney's client, and an attorney-client relationship will exist between Client and Attorneys. Attorneys assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in the proposed financing transaction. Attorneys further assume that all other parties understand that in the proposed financing transaction Attorneys represent only the Client, Attorneys are not counsel to any other party, and Attorneys are not acting as an intermediary among the parties. Attorneys' services as bond counsel and disclosure counsel are limited to those contracted for in this Agreement; the Client's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the Client will not affect, however, our responsibility to render an objective Bond Opinion.

Section 2. Scope of Engagement.

(i) Bond Counsel.

Attorneys shall perform all of the following services as bond counsel in connection with the issuance and sale of the 2010 Wastewater Revenue Bonds:

- a. Consultation and cooperation with Client and Client's staff to assist in the formulation of a coordinated financial and legal issuance of the 2010 Wastewater Revenue Bonds.
- b. Preparation of all legal proceedings for the authorization, issuance and delivery of the 2010 Wastewater Revenue Bonds by the Client; including (a) preparation of an ordinance of the City Council of the Client adding a Utility Revenue Bond Law to the City's Municipal Code, and a resolution of the City Council of the City authorizing the issuance and sale of the 2010 Wastewater Revenue Bonds, and approving related documents and actions, (b) preparation of all financing documents, including an Indenture of Trust, (c) preparation of all documents required for the closing of the issue, (d) supervising the closing, and (e) preparation of all other proceedings incidental to or in connection with the issuance and sale of the 2010 Wastewater Revenue Bonds.
- c. Advising the Client, from the time Attorneys are hired as Bond Counsel until the 2010 Wastewater Revenue Bonds are issued, as to compliance with federal tax law as required to ensure that interest on the 2010 Wastewater Revenue Bonds is exempt from federal income taxation (if such Bonds are issued as tax-exempt obligations).
- d. Upon completion of proceedings to Attorneys' satisfaction, providing a legal opinion (the "Bond Opinion") approving the validity and enforceability of the proceedings for the authorization, issuance and delivery of the 2010 Wastewater Revenue Bonds, and stating (if such Bonds are issued as tax-exempt obligations) that interest with respect to the 2010 Wastewater Revenue Bonds is (a) excluded from gross income for purposes of federal income taxes and (b) exempt from California personal income taxation. The Bond Opinion will be addressed to the Client, and may also be addressed to the underwriter of the 2010 Wastewater Revenue Bonds and other participants in the financing.
- e. Review those sections of the official statement or other form of offering or disclosure document to be disseminated in connection with the sale of the 2010 Wastewater Revenue Bonds involving summary descriptions of the 2010 Wastewater Revenue Bonds, the legal proceedings leading to the authorization and sale of the 2010 Wastewater Revenue Bonds, the legal documents under which the 2010 Wastewater Revenue Bonds will be issued, and federal tax law and securities law provisions applicable to the 2010 Wastewater Revenue Bonds, as to completeness and accuracy.
- f. Assist the Client in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the 2010 Wastewater Revenue Bonds.
- g. Such other and further services as are normally performed by bond counsel in connection with similar financings.

Attorneys' Bond Opinion will be delivered by Attorneys on the date the 2010 Wastewater Revenue Bonds are exchanged for their purchase price (the "Closing").

The Bond Opinion will be based on facts and law existing as of its date, will cover certain matters not directly addressed by such authorities, and will represent Attorneys' judgment as to the proper treatment of the 2010 Wastewater Revenue Bonds for federal income tax purposes. Attorneys' opinion is not binding on the Internal Revenue Service ("IRS") or the courts. Attorneys cannot and will not give any opinion or assurance about the effect of future changes in the Internal Revenue Code of 1986 (the "Code"), the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. Client acknowledges that future legislation, if enacted into law, or clarification of the Code, may cause interest with respect to the 2010 Wastewater Revenue Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the 2010 Wastewater Revenue Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Code may also affect the market price for, or marketability of, the 2010 Wastewater Revenue Bonds. Attorneys will express no opinion regarding any pending or proposed federal tax legislation.

In rendering the Bond Opinion, Attorneys will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Attorneys without undertaking to verify the same by independent investigation, and Attorneys will assume continuing compliance by the Client with applicable laws relating to the 2010 Wastewater Revenue Bonds.

(ii) Disclosure Counsel.

Attorneys shall also perform all of the following services as disclosure counsel to the Client in connection with the issuance and sale of the 2010 Wastewater Revenue Bonds:

Preparation of an Official Statement for the 2010 Wastewater Revenue Bonds, including consulting with representatives of the Client, the underwriter, the Client's financial advisor and others, gathering information for disclosure in the Official Statement, and assisting in the preparation of a bond purchase agreement for the 2010 Wastewater Revenue Bonds.

Rendering an opinion to the Client and the underwriter of the 2010 Wastewater Revenue Bonds stating to the effect that based upon Attorneys' participation in the preparation of the Official Statement, nothing has come to their attention to lead them to believe that the Official Statement (except for any financial statements and the financial and statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion included therein, and The Depository Trust Company and its book-entry system and information in the Appendices, as to which Attorneys may decline to express any view) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3. Excluded Services. Our duties in this engagement are limited to those expressly set forth above in Section 2, except as expressly set forth in a written amendment to this Agreement. Among other things, our duties do not include:

- a. Preparing requests for tax rulings from the Internal Revenue Service, or "no-action" letters from the Securities and Exchange Commission.

- b. Drafting state constitutional or legislative amendments.
- c. Pursuing test cases or other litigation.
- d. Making an investigation or expressing any view as to the creditworthiness of the Client or the 2010 Wastewater Revenue Bonds.
- e. Representing the Client in Internal Revenue Service examinations, audits or inquiries, or Securities and Exchange Commission investigations.
- f. Reviewing or opining on the business terms of, validity, or federal tax consequences of any investment agreement that the Client may choose as an investment vehicle for the proceeds of the 2010 Wastewater Revenue Bonds, unless the Client and Attorneys agree on the terms of such review and compensation for such review.
- g. Reviewing or opining on the business terms of, validity, or federal tax consequences of any derivate financial products, such as an interest rate swap agreement that the Client may choose to enter into in connection with the issuance of the 2010 Wastewater Revenue Bonds, unless the Client and Attorneys agree on the terms of such review and compensation for such review.
- h. Addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

Section 4. Conflicts; Prospective Consent. Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the Client, one or more of Attorneys' present or future clients will have transactions with the Client. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the 2010 Wastewater Revenue Bonds. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent the Client as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the 2010 Wastewater Revenue Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the 2010 Wastewater Revenue Bonds. Execution of this Agreement will signify the Client's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

Section 5. Compensation. (a) **Bond Counsel.** For the bond counsel services rendered to the Client specified in Section 2(i), Attorneys shall be paid the percentage compensation set forth below (subject to a cap on such compensation of \$50,000):

- (i). One percent (1%) of the principal amount of the 2010 Wastewater Revenue Bonds to a principal amount of \$1,000,000; plus
- (ii). One-half percent (1/2%) of the principal amount of the 2010 Wastewater Revenue Bonds in excess of \$1,000,000, but less than or equal to \$5,000,000; plus
- (iii). One-quarter percent (1/4%) of the principal amount of the 2010 Wastewater Revenue Bonds in excess of \$5,000,000, but less than \$15,000,000; plus

(iv). One-eighth percent (1/8%) of the principal amount of the 2010 Wastewater Revenue Bonds in excess of \$15,000,000.

(b) Disclosure Counsel. For the services of Attorneys as disclosure counsel listed in Section 2 (ii), the Client shall pay Attorneys an additional flat fee equal to \$30,000.

Any services rendered in any litigation (other than validation proceedings deemed necessary by Attorneys) involving the Client or the financing proceedings relating to the 2010 Wastewater Revenue Bonds are excepted from the services to be rendered for the above compensation. For such services which Attorneys are directed to render for and on behalf of the Client, or any financing entity, compensation shall be on the basis of reasonable fees to be agreed upon by the appropriate entity and Attorneys.

In addition, Attorneys shall be reimbursed for any costs advanced by Attorneys on behalf of the City, including delivery and messenger services, closing costs, duplication costs, transcript binding costs and expenses for travel outside the State of California, if any, but specifically excluding travel expenses within the State of California.

Payment of said fees and expenses is entirely contingent upon the successful issuance of the 2010 Wastewater Revenue Bonds by the Client, and are due upon the issuance of the 2010 Wastewater Revenue Bonds.

Section 6. Responsibilities of the Client.

(a) General.

The Client will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the Client, or otherwise deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. During the course of this engagement, Attorneys will rely on Client to provide Attorneys with complete and timely information on all developments pertaining to any aspect of the 2010 Wastewater Revenue Bonds and their security. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the 2010 Wastewater Revenue Bonds, including the cost of preparing certified copies of proceedings required by Attorneys in connection with the issuance of the 2010 Wastewater Revenue Bonds, and printing and publication costs.

(b) Federal Tax Law-Related Responsibilities. The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2010 Wastewater Revenue Bonds. As a condition of Attorneys issuing their opinion, you will be required to make certain representations and covenants to comply with certain restrictions designed to insure that interest on the 2010 Wastewater Revenue Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2010 Wastewater Revenue Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2010 Wastewater Revenue Bonds. Attorneys' opinion will assume the accuracy of these representations and compliance with these covenants. Attorneys will not undertake to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the 2010 Wastewater Revenue Bonds may adversely affect the value of, or the tax status of interest on, the 2010 Wastewater Revenue Bonds. In this regard, Client



agrees to familiarize itself with the relevant requirements and restrictions necessary for the 2010 Wastewater Revenue Bonds to qualify for exemption from federal income taxation and to exercise due diligence both before and after issuance of the 2010 Wastewater Revenue Bonds in complying with these requirements.

Section 7. Insurance. Attorneys shall maintain insurance for the duration of this Agreement against claims for injuries to persons or damage to property that may arise from or in connection with the performance of work under this Agreement. The insurance shall be in the form and amount set forth in Exhibit A, attached.

Section 8. Indemnification. Attorneys agree to indemnify and hold harmless the City and its officers, agents and employees, from and against any and all liability, losses, damages, costs and expenses resulting from any professional malpractice of Attorneys, its officers, employees, agents or subcontractors determined by a court of law to have occurred in the performance of services under this Agreement.

Section 9. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Attorneys be considered an agent, partner, or employee of the Client.

Section 10. Assignment. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the Client.

Section 11. Termination of Agreement. This Agreement may be terminated at any time by the Client with or without cause upon written notice to Attorneys. In the event of such termination, all finished and unfinished documents shall at the option of the Client become its property and shall be delivered to the Client by Attorneys.

* * * * *



IN WITNESS WHEREOF, the City and Attorneys have executed this Agreement as of the date first above written.

CITY OF SUNNYVALE

By _____

JONES HALL, A PROFESSIONAL LAW CORPORATION



William H. Madison



EXHIBIT A

Insurance

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.

Minimum Limits of Insurance

Attorneys shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence and \$2,000,000 (including operations, for bodily injury, personal and property damage, products and completed operations)
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Errors and Omissions Liability: \$1,000,000 per claim and in the aggregate limits

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Attorneys or automobiles owned, leased, hired or borrowed by the Attorneys.
2. For any claims related to this project, the Attorneys' insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Attorneys' insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.



Verification of Coverage

Attorneys shall furnish the City with original 2010 Wastewater Revenue Bonds and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All 2010 Wastewater Revenue Bonds and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

AGREEMENT FOR LEGAL SERVICES

BETWEEN THE CITY OF SUNNYVALE AND JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES IN CONNECTION WITH WATER REVENUE BONDS

This AGREEMENT FOR LEGAL SERVICES is entered into this ___ day of _____, 2010, between the CITY OF SUNNYVALE (the "City", or the "Client") and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys").

BACKGROUND:

WHEREAS, the City of Sunnyvale (the "City") intends to issue its Water Revenue Bonds, Series 2010 (the "2010 Water Revenue Bonds") for the purpose of providing funds to (1) prepay the portion of the Installment Sale Agreement, dated as of December 1, 2001, between the Sunnyvale Financing Authority (the "Authority") and the City, which will cause the defeasance and refunding of a corresponding principal amount of the Authority's outstanding Water and Wastewater Revenue Bonds, Series 2001 (the "Series 2001 Bonds") relating to the City's Water System; (2) finance certain additions and improvements to the City's Water System; (3) fund a reserve fund for the 2010 Water Revenue Bonds; and (4) pay for costs of issuance incurred in connection with the issuance of the 2010 Water Revenue Bonds; all pursuant to and secured in the manner provided herein; and

WHEREAS, the 2010 Water Revenue Bonds will be secured by net revenues of the City's Water System; and

WHEREAS, in order to issue and sell the 2010 Water Revenue Bonds, the Client requires the services of nationally-recognized bond counsel and disclosure counsel.

AGREEMENT:

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Client and Attorneys agree as follows:

Section 1. Attorney-Client Relationship. Upon execution of this Agreement, the Client will be Attorney's client, and an attorney-client relationship will exist between Client and Attorneys. Attorneys assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in the proposed financing transaction. Attorneys further assume that all other parties understand that in the proposed financing transaction Attorneys represent only the Client, Attorneys are not counsel to any other party, and Attorneys are not acting as an intermediary among the parties. Attorneys' services as bond counsel and disclosure counsel are limited to those contracted for in this Agreement; the Client's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the Client will not affect, however, our responsibility to render an objective Bond Opinion.

Section 2. Scope of Engagement.

(i) Bond Counsel.

Attorneys shall perform all of the following services as bond counsel in connection with the issuance and sale of the 2010 Water Revenue Bonds:

- a. Consultation and cooperation with Client and Client's staff to assist in the formulation of a coordinated financial and legal issuance of the 2010 Water Revenue Bonds.
- b. Preparation of all legal proceedings for the authorization, issuance and delivery of the 2010 Water Revenue Bonds by the Client; including (a) preparation of an ordinance of the City Council of the Client adding the Utility Revenue Bond Law to the City's Municipal Code, and a resolution of the City Council of the City authorizing the issuance and sale of the 2010 Water Revenue Bonds, and approving related documents and actions, (b) preparation of all financing documents, including an Indenture of Trust, (c) preparation of all documents required for the closing of the issue, (d) supervising the closing, and (e) preparation of all other proceedings incidental to or in connection with the issuance and sale of the 2010 Water Revenue Bonds.
- c. Advising the Client, from the time Attorneys are hired as Bond Counsel until the 2010 Water Revenue Bonds are issued, as to compliance with federal tax law as required to ensure that interest on the 2010 Water Revenue Bonds is exempt from federal income taxation (if such Bonds are issued as tax-exempt obligations).
- d. Upon completion of proceedings to Attorneys' satisfaction, providing a legal opinion (the "Bond Opinion") approving the validity and enforceability of the proceedings for the authorization, issuance and delivery of the 2010 Water Revenue Bonds, and stating (if such Bonds are issued as tax-exempt obligations) that interest with respect to the 2010 Water Revenue Bonds is (a) excluded from gross income for purposes of federal income taxes and (b) exempt from California personal income taxation. The Bond Opinion will be addressed to the Client, and may also be addressed to the underwriter of the 2010 Water Revenue Bonds and other participants in the financing.
- e. Review those sections of the official statement or other form of offering or disclosure document to be disseminated in connection with the sale of the 2010 Water Revenue Bonds involving summary descriptions of the 2010 Water Revenue Bonds, the legal proceedings leading to the authorization and sale of the 2010 Water Revenue Bonds, the legal documents under which the 2010 Water Revenue Bonds will be issued, and federal tax law and securities law provisions applicable to the 2010 Water Revenue Bonds, as to completeness and accuracy.
- f. Assist the Client in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the 2010 Water Revenue Bonds.
- g. Such other and further services as are normally performed by bond counsel in connection with similar financings.



Attorneys' Bond Opinion will be delivered by Attorneys on the date the 2010 Water Revenue Bonds are exchanged for their purchase price (the "Closing").

The Bond Opinion will be based on facts and law existing as of its date, will cover certain matters not directly addressed by such authorities, and will represent Attorneys' judgment as to the proper treatment of the 2010 Water Revenue Bonds for federal income tax purposes. Attorneys' opinion is not binding on the Internal Revenue Service ("IRS") or the courts. Attorneys cannot and will not give any opinion or assurance about the effect of future changes in the Internal Revenue Code of 1986 (the "Code"), the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. Client acknowledges that future legislation, if enacted into law, or clarification of the Code, may cause interest with respect to the 2010 Water Revenue Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the 2010 Water Revenue Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Code may also affect the market price for, or marketability of, the 2010 Water Revenue Bonds. Attorneys will express no opinion regarding any pending or proposed federal tax legislation.

In rendering the Bond Opinion, Attorneys will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Attorneys without undertaking to verify the same by independent investigation, and Attorneys will assume continuing compliance by the Client with applicable laws relating to the 2010 Water Revenue Bonds.

(ii) Disclosure Counsel.

Attorneys shall also perform all of the following services as disclosure counsel to the Client in connection with the issuance and sale of the 2010 Water Revenue Bonds:

Preparation of an Official Statement for the 2010 Water Revenue Bonds, including consulting with representatives of the Client, the underwriter, the Client's financial advisor and others, gathering information for disclosure in the Official Statement, and assisting in the preparation of a bond purchase agreement for the 2010 Water Revenue Bonds.

Rendering an opinion to the Client and the underwriter of the 2010 Water Revenue Bonds stating to the effect that based upon Attorneys' participation in the preparation of the Official Statement, nothing has come to their attention to lead them to believe that the Official Statement (except for any financial statements and the financial and statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion included therein, and The Depository Trust Company and its book-entry system and information in the Appendices, as to which Attorneys may decline to express any view) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Section 3. Excluded Services. Our duties in this engagement are limited to those expressly set forth above in Section 2, except as expressly set forth in a written amendment to this Agreement. Among other things, our duties do not include:

- a. Preparing requests for tax rulings from the Internal Revenue Service, or "no-action" letters from the Securities and Exchange Commission.
- b. Drafting state constitutional or legislative amendments.

- c. Pursuing test cases or other litigation.
- d. Making an investigation or expressing any view as to the creditworthiness of the Client or the 2010 Water Revenue Bonds.
- e. Representing the Client in Internal Revenue Service examinations, audits or inquiries, or Securities and Exchange Commission investigations.
- f. Reviewing or opining on the business terms of, validity, or federal tax consequences of any investment agreement that the Client may choose as an investment vehicle for the proceeds of the 2010 Water Revenue Bonds, unless the Client and Attorneys agree on the terms of such review and compensation for such review.
- g. Reviewing or opining on the business terms of, validity, or federal tax consequences of any derivate financial products, such as an interest rate swap agreement that the Client may choose to enter into in connection with the issuance of the 2010 Water Revenue Bonds, unless the Client and Attorneys agree on the terms of such review and compensation for such review.
- h. Addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

Section 4. Conflicts; Prospective Consent. Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the Client, one or more of Attorneys' present or future clients will have transactions with the Client. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the 2010 Water Revenue Bonds. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent the Client as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the 2010 Water Revenue Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the 2010 Water Revenue Bonds. Execution of this Agreement will signify the Client's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

Section 5. Compensation. (a) **Bond Counsel.** For the bond counsel services rendered to the Client specified in Section 2(i), Attorneys shall be paid the percentage compensation set forth below (subject to a cap on such compensation of \$50,000):

- (i). One percent (1%) of the principal amount of the 2010 Water Revenue Bonds to a principal amount of \$1,000,000; plus
- (ii). One-half percent (1/2%) of the principal amount of the 2010 Water Revenue Bonds in excess of \$1,000,000, but less than or equal to \$5,000,000; plus
- (iii). One-quarter percent (1/4%) of the principal amount of the 2010 Water Revenue Bonds in excess of \$5,000,000, but less than \$15,000,000; plus

(iv). One-eighth percent (1/8%) of the principal amount of the 2010 Water Revenue Bonds in excess of \$15,000,000.

(b) Disclosure Counsel. For the services of Attorneys as disclosure counsel listed in Section 2 (ii), the Client shall pay Attorneys an additional flat fee equal to \$30,000.

Any services rendered in any litigation (other than validation proceedings deemed necessary by Attorneys) involving the Client or the financing proceedings relating to the 2010 Water Revenue Bonds are excepted from the services to be rendered for the above compensation. For such services which Attorneys are directed to render for and on behalf of the Client, or any financing entity, compensation shall be on the basis of reasonable fees to be agreed upon by the appropriate entity and Attorneys.

In addition, Attorneys shall be reimbursed for any costs advanced by Attorneys on behalf of the City, including delivery and messenger services, closing costs, duplication costs, transcript binding costs and expenses for travel outside the State of California, if any, but specifically excluding travel expenses within the State of California.

Payment of said fees and expenses is entirely contingent upon the successful issuance of the 2010 Water Revenue Bonds by the Client, and are due upon the issuance of the 2010 Water Revenue Bonds.

Section 6. Responsibilities of the Client.

(a) General.

The Client will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the Client, or otherwise deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. During the course of this engagement, Attorneys will rely on Client to provide Attorneys with complete and timely information on all developments pertaining to any aspect of the 2010 Water Revenue Bonds and their security. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the 2010 Water Revenue Bonds, including the cost of preparing certified copies of proceedings required by Attorneys in connection with the issuance of the 2010 Water Revenue Bonds, and printing and publication costs.

(b) Federal Tax Law-Related Responsibilities. The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2010 Water Revenue Bonds. As a condition of Attorneys issuing their opinion, you will be required to make certain representations and covenants to comply with certain restrictions designed to insure that interest on the 2010 Water Revenue Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2010 Water Revenue Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2010 Water Revenue Bonds. Attorneys' opinion will assume the accuracy of these representations and compliance with these covenants. Attorneys will not undertake to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the 2010 Water Revenue Bonds may adversely affect the value of, or the tax status of interest on, the 2010 Water Revenue Bonds. In this regard, Client agrees to familiarize itself with the relevant requirements and restrictions necessary for the 2010 Water Revenue Bonds to qualify for exemption from federal income taxation and to exercise due diligence both



before and after issuance of the 2010 Water Revenue Bonds in complying with these requirements.

Section 7. Insurance. Attorneys shall maintain insurance for the duration of this Agreement against claims for injuries to persons or damage to property that may arise from or in connection with the performance of work under this Agreement. The insurance shall be in the form and amount set forth in Exhibit A, attached.

Section 8. Indemnification. Attorneys agree to indemnify and hold harmless the City and its officers, agents and employees, from and against any and all liability, losses, damages, costs and expenses resulting from any professional malpractice of Attorneys, its officers, employees, agents or subcontractors determined by a court of law to have occurred in the performance of services under this Agreement.

Section 9. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Attorneys be considered an agent, partner, or employee of the Client.

Section 10. Assignment. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the Client.

Section 11. Termination of Agreement. This Agreement may be terminated at any time by the Client with or without cause upon written notice to Attorneys. In the event of such termination, all finished and unfinished documents shall at the option of the Client become its property and shall be delivered to the Client by Attorneys.

* * * * *



IN WITNESS WHEREOF, the City and Attorneys have executed this Agreement as of the date first above written.

CITY OF SUNNYVALE

By _____

JONES HALL, A PROFESSIONAL LAW CORPORATION

A handwritten signature in black ink, appearing to read 'William H. Madison', written over a horizontal line.

William H. Madison



EXHIBIT A

Insurance

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California.

Minimum Limits of Insurance

Attorneys shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence and \$2,000,000 (including operations, for bodily injury, personal and property damage, products and completed operations)
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Errors and Omissions Liability: \$1,000,000 per claim and in the aggregate limits

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Attorneys or automobiles owned, leased, hired or borrowed by the Attorneys.
2. For any claims related to this project, the Attorneys' insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Attorneys' insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.



Verification of Coverage

Attorneys shall furnish the City with original 2010 Water Revenue Bonds and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All 2010 Water Revenue Bonds and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.