

BOND COUNSEL AGREEMENT

CITY OF POMONA

TAXABLE PENSION OBLIGATION BONDS, SERIES 2019

THIS AGREEMENT, made as of this 16th day of December, 2019, by and between the CITY OF POMONA, a municipal corporation organized and existing under the laws of the State of California (herein “City”) and STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation (herein “Bond Counsel”):

RECITALS:

A. The City is a member of the California Public Employees’ Retirement System (“PERS”) and, as such, is obligated by the Public Employees’ Retirement Law, constituting Part 3 of Division 5 of Title 2 of the California Government Code (the “Retirement Law”), and the contract between the Board of Administration of PERS and the City Council of the City, effective July 1, 1948 (as amended, the “PERS Contract”), to make contributions to PERS to (a) fund pension benefits for its employees who are members of PERS, (b) amortize the unfunded actuarial liability with respect to such pension benefits, and (c) appropriate funds for the purposes described in (a) and (b); and

B. The City desires to issue its City of Pomona 2020 Taxable Pension Obligation Bonds, Series BJ (the “Bonds”) to refund the City’s obligations to PERS evidenced by the PERS Contract, to pay unamortized, unfunded accrued actuarial liability with respect to pension benefits and possibly a portion of the City’s current normal contribution under the Retirement Law (the “Unfunded Liability”); and

C. The City desires to retain Bond Counsel to do the necessary legal work hereinafter outlined, upon the terms and conditions hereinafter set forth, for accomplishing the issuance of the Bonds; and

D. Bond Counsel represents that it is ready, willing and able to perform said legal work;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. SCOPE OF SERVICES

A. **BOND COUNSEL SERVICES**

The City retains Bond Counsel to provide, and Bond Counsel agrees to provide, legal services in connection with the judicial validation and issuance of the Bonds. Such services shall include the rendering of legal opinions (hereinafter called the “opinions”) pertaining to the issuance of the Bonds to the effect that:

1. The Bonds have been properly issued and are valid and binding obligations; and

2. The essential sources of security for the Bonds have been legally provided; and
3. Interest on the Bonds is exempt from California personal income taxation.

Bond Counsel's services will also include:

- i. Researching applicable laws and ordinances relating to the proposed Bonds;
- ii. Attending conferences and consulting with City staff and the City Attorney regarding such laws, and the need for amendments thereto, or additional legislation;
- iii. Participating in meetings, conferences or discussions with any financial advisors, underwriters or other experts retained by the City and with representatives of PERS with respect to the issuance of the Bonds;
- iv. Prosecuting a validation action in Los Angeles County Superior Court (the "Validation");
- v. Supervising and preparing documentation of the steps to be taken through the issuance of the Bonds, including:
 - a. Drafting all resolutions, notices, rules and regulations and other legal documents required for the issuance of the Bonds, and all other documents relating to the security of the Bonds, in consultation with the City, the City Attorney, the City's financial advisor, underwriter and other experts;
 - b. Drafting and filing the Validation;
 - c. Preparing the record of proceedings for the authorization, sale and issuance of the Bonds;
 - d. Assisting in the preparation of the portions of the official statement for the sale of the Bonds which relate to the terms of the Bonds and the firm's legal opinion delivered with respect to the Bonds;
 - e. Reviewing the purchase contracts or the bidding documents relating to the sale of the Bonds and participating in the related negotiations;
 - f. Participating in meetings and other conferences scheduled by the City, the City's financial advisor or the underwriter;

- g. Consulting with prospective purchasers, their legal counsel and rating agencies;
- h. Consulting with the City Attorney concerning any legislation or litigation which may effect the Bonds, the security for the Bonds, or any other matter related to the issuance of the Bonds;
- i. Consulting with any trustee or fiscal agent for the Bonds and their counsel;
- j. Preparing the form of the Bonds, and supervising their production or printing, signing, authentication and delivery;
- k. Rendering the final approving opinion as to the validity of the Bonds for use and distribution upon their issuance; and
- l. Rendering a legal opinion to the underwriter or purchaser of the Bonds as to the applicability of the registration requirements of federal securities laws and a statement as to the fair and accurate nature of those portions of the Official Statement described in (d) above.

B. DISCLOSURE COUNSEL SERVICES

In addition to the services set forth in Section A above, Bond Counsel agrees to prepare the Official Statement and will provide a letter addressed to the underwriter or purchaser of the Bonds to the effect that, to the best knowledge of Bond Counsel, the offering document (exclusive of financial, statistical and certain other information therein) does not misstate a material fact or omit a material fact required to be stated therein.

C. SPECIAL SERVICES

“Special Services” are defined for purposes of this Agreement as services in addition to the services outlined in Sections A and B above. Special Services will include, but not be limited to, any work after a bond closing related to the amendment of bond documents or agreements and special studies or analyses. Special Services must be authorized in writing by the City Manager, or her designee.

2. COMPENSATION

The City agrees to pay Bond Counsel the following amounts as compensation for services rendered by Bond Counsel under this Agreement:

A. For the services to be rendered under Section 1.A(iv), Bond Counsel shall be paid a fee of \$25,000, provided, however, if the Validation complaint is answered or the relief requested by the City is otherwise contested, any fees incurred with respect to the challenged Validation will be billed as Special Services and be paid in accordance with 2.B below. For services provided under Sections 1.A (other than subsection (iv)) and 1.B above, Bond Counsel will be paid a fee of \$90,000.

The fees referenced in this Section 2.A shall be paid to Bond Counsel on the closing date and shall be payable solely from Bond proceeds; provided however that any fees for the services rendered under section 1.A(iv) shall be promptly paid by the City from legally available funds if the issuance of the Bonds is abandoned for any reason.

The fees referenced in this Section 2.A assume that the Bonds will be issued within one year from the date of this Agreement. In the event the Bonds are not issued within that time, Bond Counsel reserves the right to make such modifications to the foregoing fees as the City and Bond Counsel agree, as justified by reason of increased cost to Bond Counsel and the then prevailing fees for disclosure counsel and bond counsel services for bonds such as the Bonds.

B. In the event Bond Counsel is requested to perform Special Services as set forth in Section 1.C above and should the Validation be contested as described in 2.A above, Bond Counsel will be paid fees at the hourly rates set forth in Exhibit A, or in such other manner as is mutually acceptable to the City and Bond Counsel. Such fees will be billed monthly and shall be payable within thirty (30) days following the receipt of each invoice.

C. In addition to the fees set forth in Sections 2.A and 2.B above, Bond Counsel shall be reimbursed for the actual cost of any out-of-pocket expenses reasonably incurred by Bond Counsel in the course of its employment, such as document reproduction, telecommunications charges, printing costs, filing fees, publications of notices, long-distance telephone calls, messenger services, overnight delivery services, travel and similar items of expense. All expenses incurred in connection with services rendered will be billed upon the issuance of the Bonds, and may include an estimate of costs to be incurred subsequent to the issuance date; provided, however, that any expenses related to a contested Validation shall be billed and paid monthly pursuant to Section 2.B above.

3. PERSONNEL AND CONTRACT ADMINISTRATION

City agrees to accept and Bond Counsel agrees to provide the aforementioned services primarily through Brian Forbath, Vanessa Legbandt, Allison Burns, David Palmer and Carol Lew. If any one of the above attorneys is unable to provide such services due to death, disability or similar event, Bond Counsel reserves the right to substitute another of its attorneys, upon approval by the City Attorney, or their designee, to provide such services; and such substitution shall not alter or affect in any way Bond Counsel's or the City's other obligations under this Agreement.

This Agreement will be administered by the City Attorney, or their designee.

4. CONFLICTS OF INTEREST

Bond Counsel represents many of the underwriting firms active in the issuance of bonds and other municipal financings, including RBC Capital Markets and Ramirez & Co., the proposed underwriters for the Bonds. The City hereby provides its informed written consent to Bond Counsel's representation of RBC Capital Markets and Ramirez & Co., on matters unrelated to the Bonds.

5. TERMINATION

A. This Agreement may be terminated without cause by the City or Bond Counsel upon thirty (30) days' advance written notice to the other party. Such notification shall state the effective date of the termination of this Agreement.

B. Bond Counsel reserves the absolute right to withdraw from representing the City if, among other things, the City fails to honor the terms of this Agreement, the City fails to cooperate fully or follow Bond Counsel's advice on a material matter, or any fact or circumstance occurs that would, in Bond Counsel's view, render its continuing representation unlawful or unethical. If Bond Counsel elects to withdraw, the City will take all steps necessary to free Bond Counsel of any obligation to perform further services, including the execution of any documents necessary to complete such withdrawal, and Bond Counsel will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on the City's behalf in accordance with the payment terms set forth in Section 2 above. If necessary in connection with litigation, Bond Counsel would request leave of court to withdraw.

C. Bond Counsel's representation of the City will be considered terminated at the earlier of (i) the City's termination of its representation, (ii) Bond Counsel's withdrawal from its representation of the City, or (iii) the substantial completion by Bond Counsel of its substantive work for the City. Unless Bond Counsel has been specifically engaged to perform Special Services related to the Bonds after their issuance, Bond Counsel's representation of City shall terminate on the date of issuance of the Bonds.

6. ARBITRATION

IN THE EVENT OF A DISPUTE REGARDING FEES, COSTS, OR ANY OTHER MATTER ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO BOND COUNSEL'S RELATIONSHIP WITH THE CITY, OR BOND COUNSEL'S OR THE CITY'S PERFORMANCE OF THIS AGREEMENT, INCLUDING THE QUALITY OF THE SERVICES WHICH BOND COUNSEL RENDERS, THE DISPUTE SHALL BE DETERMINED, SETTLED AND RESOLVED BY CONFIDENTIAL ARBITRATION IN THE COUNTY OF LOS ANGELES, 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 the City shall present a list of five qualified individuals who would be willing to serve that the City 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 the City's list, Bond Counsel may at its sole discretion (i) select any individual from that list and that individual shall serve as the arbitrator, or (ii) propose its own list of five individuals for arbitrator. If

Bond Counsel chooses to present a separate list, the City 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, the City and Bond Counsel each shall select one individual from its own 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 provider.

7. MISCELLANEOUS

A. Bond Counsel and the employees of Bond Counsel, in performance of the Agreement, shall act in an independent capacity and not as officers or agents of the City.

B. Without the written consent of the City, this Agreement is not assignable by Bond Counsel in whole or in part.

C. No alteration or variation of the terms of this Agreement shall be valid unless in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

D. In accordance with the requirements of California Business and Professions Code § 6148, Bond Counsel advises you that the firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to the City.

CITY OF POMONA

By: _____
Linda Lowry, City Manager

APPROVED AS TO FORM:

By: _____
Christi Hogin, City Attorney

STRADLING YOCCA CARLSON & RAUTH
a Professional Corporation

By: _____
Brian Forbath
Shareholder/Vice President

EXHIBIT A

Shareholders:	Hourly Rate:
Brian Forbath	\$600
Carol Lew	600
Allison Burns	550
Vanessa Legbandt	500
All other Shareholders	500
 Associates	 \$375
 Paralegals	 \$150