

## AGREEMENT FOR BOND COUNSEL SERVICES

**THIS AGREEMENT** is made and entered into this \_\_th day of May, 2013 by and between the City of Lemoore (the “City”), whose address is 119 Fox Street, Lemoore, CA 93245, and The Weist Law Firm (the “Bond Counsel”), whose address is 108 Whispering Pines Drive, Suite 235, Scotts Valley, CA 95066.

### WITNESSETH:

**WHEREAS**, the City desires to arrange for the procurement of approximately \$7 Million of low interest rate tax-exempt private placement obligations (the “Private Placement Financing”) in connection with the proposed acquisition and construction of certain solar related improvements for the Water Enterprise Fund (the “Project”); and

**WHEREAS**, the City desires to retain Bond Counsel to do the necessary consulting, legal and analytical work hereinafter outlined, upon the terms and conditions hereinafter set forth, to structure, issue and deliver said low interest rate municipal private placement obligations (the “2013 Water Revenue Loan Obligation”) as necessary to successfully accomplish the acquisition and construction of the Project; and

**WHEREAS**, Bond Counsel is specifically trained and experienced in the conduct of Private Placement Financing proceedings for accomplishing the issuance of the 2013 Water Revenue Loan Obligation, and hereby represents that it is ready, willing and able to perform said work; and

**NOW, THEREFORE**, in consideration of the covenants and premises herein contained and other good and valuable consideration, the parties hereto agree as follows:

### **Section 1. Scope of Services.**

**Bond Counsel Services:** Bond Counsel shall provide the following legal services in connection with the preparation of the resolutions, documents and certifications necessary for the execution and delivery of the 2013 Water Revenue Loan Obligation. Such services shall include the following:

1. Consulting with representatives of the City, including the City Manager, Finance Director, City Attorney and the City’s engineers, consultants, and others, with respect to the timing, terms and legal structure of the proposed issuance of 2013 Water Revenue Loan Obligation.
2. Preparing all resolutions, ordinances, notices, affidavits, Depository Trust Company agreements, indentures, installment sale agreements, lease or loan agreements, and other legal documents customarily prepared by Bond Counsel, as required for the issuance of 2013 Water Revenue Loan Obligation (the “Principle Documents”).
3. Reviewing documents prepared by City staff, advisors, and/or consultants, including audit reports and budgets, project descriptions, rate setting documents, the purchase contract(s) to be derived therefrom, that might have a bearing on the Private Placement Financing.
4. Preparing documentation with respect to any bond provisions, parity debt provisions and reserve fund policy provided or required in connection with the 2013 Water Revenue Loan Obligation, if any.

5. Assisting in the preparation of a financing plan, as necessary, for the Private Placement Financing and the issuance of 2013 Water Revenue Loan Obligation.

6. Attending such meetings or hearings of the City Council (the "Council"), and working group meetings or conference calls as the City may request, and as Bond Counsel deems prudent and necessary.

7. Advising as to the prudence of seeking a rating and/or bond insurance, if applicable.

8. Preparing all final closing papers required to effect delivery of the 2013 Water Revenue Loan Obligation, and coordinate the closing of the 2013 Water Revenue Loan Obligation.

9. Rendering Bond Counsel's customary final legal opinion as to the validity of the 2013 Water Revenue Loan Obligation and the exemption from gross income for federal income tax purposes and from California personal income tax of interest thereon.

10. Preparing the required reports to the California Debt and Investment Advisory Commission (pursuant to section 8855 et seq. of the Government Code) respecting the sale of the 2013 Water Revenue Loan Obligation and Form 8038-G to the Internal Revenue Service (pursuant to Section 149 of the Internal Revenue Code of 1986).

11. Preparing a complete transcript of the proceedings, containing originally signed copies of all resolutions, ordinances, legal agreements, disclosure statements, certificates and notices. Two copies shall be provided to the City.

**Excluded Services** Bond Counsel's services are limited to those specifically set forth above. Bond Counsel's services do not include representation of the City or any other party to the transaction in any litigation or other legal or administrative proceeding involving any of the 2013 Water Revenue Loan Obligation, the Private Placement Financing or any other matter. Bond Counsel's services also do not include compliance with the California Environmental Quality Act, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the Porter-Cologne Water Quality Control Act, the Safe Drinking Water and Toxic Enforcement Act of 1986, the Hazardous Substance Account Act, the Hazardous Waste Control Act, or any determinations pertaining to completion and readiness for acceptance.

Bond Counsel's services also do not include any responsibility for compliance with state blue sky, environmental, land use, real estate or similar laws or for title to or perfection of security interests in real or personal property, including the acquisition of interests in real property, whether through gift, negotiation or the exercise of the power of eminent domain.

Bond Counsel's services also do not include any responsibility the negotiation or preparation of joint powers agreements with other agencies. Bond Counsel will not be responsible for the services performed or acts or omissions of any other participant. Also, Bond Counsel's services will not extend past the date of issuance of the 2013 Water Revenue Loan Obligation and will not, for example, include services related to on-going administration, annexation, rebate compliance or continuing disclosure or otherwise related to the 2013 Water Revenue Loan Obligation, proceeds of the 2013 Water Revenue Loan Obligation or the Private Placement Financing after issuance of the 2013 Water Revenue Loan Obligation.

Bond Counsel may be willing to perform such excluded services on such terms as might be mutually agreed to at the time of need. The performance by Bond Counsel of services excluded by the above paragraph, if required by the City, shall be under separate written agreement.

**Section 2. Compensation.**

- A. Legal Fees for Bond Counsel Services. For all bond counsel services rendered in connection with the Private Placement Financing of the 2013 Water Revenue Loan Obligation and the corresponding our fee shall be a contingent flat fee of \$20,000. Payment of said amount shall be entirely contingent upon the successful placement of such 2013 Water Revenue Loan Obligation.
- B. Out-of-Pocket Expenses. If monies are available from the costs of issuance fund, in addition to the legal fees, Bond Counsel shall be reimbursed its normal and customary out-of-pocket expenses, and customary mileage rates; parking charges and bridge tolls as incurred, photocopies at thirty-five cents per page, transcript preparation and distribution; telephone and facsimile charges as incurred, and postage and express delivery charges as incurred, with a cap of \$1,000.

**Section 3. Termination of Agreement and Legal Services.**

This Agreement and all legal services to be rendered under it may be terminated at any time by written notice from either party, with or without cause. In that event, all finished and unfinished documents prepared for adoption or execution by the City, shall, at the option of the City, become its property and shall be delivered to it or to any party it may designate; provided that Bond Counsel shall have no liability whatsoever for any subsequent use of such documents.

In the event of termination by the City without cause, Bond Counsel shall nevertheless be entitled to receive full compensation in the exact manner set forth in Section 2 hereof (which shall remain similarly contingent) if the City concludes a Private Placement Financing of the 2013 Water Revenue Loan Obligation within two years from the date of this Agreement, regardless of the amount of work or length of time invested by Bond Counsel in the Private Placement Financing up to the point of termination. This continuing, but contingent, right to receive full compensation shall survive the term of this Agreement. If not sooner terminated as aforesaid, this Agreement and all legal services to be rendered under it shall terminate upon final issuance of the 2013 Water Revenue Loan Obligation. Upon termination, Bond Counsel shall have no future duty of any kind to or with respect to the 2013 Water Revenue Loan Obligation or the City.

**Section 4. Insurance.**

Bond Counsel specifically represents that it maintains errors and omissions insurance applicable to the Bond Counsel services to be rendered under this Agreement.

**Section 5. Nature of Engagement.**

The City acknowledges that Bond Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Bond Counsel has represented, is representing or may in the future represent other public entities, underwriters, trustees, rating agencies, insurers, credit enhancement providers, lenders, contractors, suppliers, financial and other consultants/advisors, accountants,

investment providers/brokers, providers/brokers of derivative products and others who may have a role or interest in the Private Placement Financing or that may be involved with or adverse to the City in this or some other matter. Bond Counsel agrees not to represent any such entity in connection with the 2013 Water Revenue Loan Obligation Financing, during the term of this Agreement, without the consent of the City. Given the special, limited role of Bond Counsel described above, the City acknowledges that no conflict of interest exists or would exist, and waives any conflict of interest that might appear actually or potentially to exist, now or in the future, by virtue of this Agreement or any such other attorney-client relationship that Bond Counsel may have had, have or enter into, and the City specifically consents to any and all such relationships.

**Section 6. Standards of Professional Conduct.**

Bond Counsel and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Bond Counsel represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is licensed to practice in California. Bond Counsel certifies that it will not accept representation in any matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein.

Bond Counsel certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner. It is understood that the services under this Agreement must be provided immediately, and that they are time-critical. Bond Counsel is engaged by City for its unique qualifications and skills.

Bond Counsel agrees that it will comply with all ethical duties, will maintain the integrity of the Bond Counsel-client relationship, and will take all steps available to preserve all applicable legal privileges, confidences, and records from disclosure; however, it is hereby understood and agreed that 2013 Water Revenue Loan Obligation Private Placement Financing is public in nature, and the City hereby waives its right to confidential communications, and protecting of records from disclosure.

**Section 7. Independent Contractor.**

Bond Counsel and City understand and agree that Bond Counsel is an independent contractor and that the City shall not be liable for Workers' Compensation, retirement or unemployment benefits for Bond Counsel or Bond Counsel's agents, partners or employees.

**Section 8. No Guarantee of Outcome.**

City hereby acknowledges and agrees that this is a best efforts undertaking, and that no guarantee of success or outcome has been, or can be, made by Bond Counsel.

**Section 9. Arbitration.**

Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled solely and exclusively by binding arbitration in San Francisco, California. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of JAMS/Endispute ("JAMS"), with the following exceptions if in conflict: (a) one arbitrator shall be chosen by JAMS; (b) each party to the arbitration

will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the JAMS' rules and regulations) of the proceedings has been given to such party. Each party shall bear its own attorneys fees and expenses.

The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this Section shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY submits to the ongoing jurisdiction of the state of California and/or the United States City Court for THE ENFORCEMENT HEREOF.

#### **Section 10. Entire Agreement.**

This Agreement contains the entire understanding between Bond Counsel and City. All previous proposals, offers and communications relative to the Private Placement Financing and this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement.

No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by both Bond Counsel and City. No oral agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors or assigns as may be permitted pursuant to the provisions of this Agreement.

#### **Section 11. Modification.**

Both City and Bond Counsel understand that it may be desirable or necessary during the execution of this Agreement for Bond Counsel or City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and all changes and their cost shall be memorialized in a written amendment to this original Agreement prior to the performance of the additional work.

Until a written change order is so executed, City shall not be responsible to pay any charges Bond Counsel may incur in performing such additional services, and correspondingly Bond Counsel shall not be required to perform any such additional services.

#### **Section 12. Severability.**

All sections and subsections of this Agreement are severable, and the unenforceability or invalidity of any of the sections or subsections of this Agreement shall not affect the validity or enforceability of the remaining sections or subsections of this Agreement, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the parties.

Therefore, if any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be effected by such holding and shall nevertheless continue in full force without being impaired or invalidated in any way.

**Section 13. Waiver.**

The waiver by either party of a default or breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent default or breach of the same or of a different provision of that party. No waiver or modification of this Agreement or of any covenant condition, or limitation contained in this Agreement shall be valid unless in writing and duly executed by the party or parties to be charged therewith.

**Section 14. Counterparts.**

This Agreement may be executed in any number of counterparts and each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers and representatives thereto duly authorized, all as of the day and year first above written.

**CITY OF LEMOORE**

**THE WEIST LAW FIRM**

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

By: \_\_\_\_\_  
Cameron A. Weist, Esq.