

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Administration Committee will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA  
Special Common Council  
Third Floor Council Chambers  
140 Main Street, Menasha  
June 3, 2009  
5:00 PM**

**AGENDA**

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. ROLL CALL/EXCUSED ABSENCES
- D. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA  
(five (5) minutes time limit for each person)
- E. ACTION ITEMS
  - 1. [Approval to Retain Legal Counsel to Assist City in Bondholders Negotiations \(Steam Utility\)](#)
  - 2. [R-15-09 Resolution of the City of Menasha Common Council Regarding Appointment of Special Counsel and Consideration of Cessation of Steam Utility Operations](#)
- F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

**DRAFT**

HUNTON & WILLIAMS LLP  
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WASHINGTON, D.C. 20006-1109

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FILE NO: 99999.000309

May 22, 2009

**PRIVILEGED AND CONFIDENTIAL**  
**ATTORNEY-CLIENT COMMUNICATION**

Mayor Donald Merkes  
City of Menasha, Wisconsin  
140 Main Street  
Menasha, Wisconsin 54952

***Re: Representation of the City of Menasha Regarding Menasha Steam Utility***

Dear Mayor Merkes:

Thank you for the opportunity for Hunton & Williams LLP to represent the City of Menasha, Wisconsin (the "City") in connection with its Steam Utility (the "Utility") and the financing for the Utility. This letter, and the accompanying Hunton & Williams Standard Terms of Engagement, will establish the terms of our representation. If we fail to address any issues about which you have questions, please let us know. Good communication is critical to the success of our relationship and we want you to be happy with our services.

**THE CLIENT - WHOM WE REPRESENT**

We will represent the City, including the Utility. You will be our primary contact, but you understand that we do not represent you individually. If you want us to represent any other persons or entities, please advise us and we will determine whether we can undertake that additional representation.

**SCOPE OF ENGAGEMENT - WHAT WE WILL DO**

You have engaged us to perform work for the City and its Utility in several areas relating to the financing and operation of the Utility and the financial status of the City. Specifically, we will provide counsel and related representation to the City and its Utility with respect to, and including:

1. Review all matters pertaining to the City's outstanding revenue bond anticipation notes, note anticipation notes and general obligation promissory notes issued in connection with the Utility (collectively, the "Notes");
2. Review the Menasha Steam Utility Strategy Analysis and Recommendation (the "Report") prepared for the City by Stern Brothers & Co. (the "Consultant");
3. Advise and represent the City in connection with its dealings with holders of the outstanding Notes, as further described below;
4. Assist the City in connection with teleconference calls and meetings with holders of the Notes and their representatives regarding the status of the Notes, the Utility and the City;
5. Assist the City and Consultant in review of inventory of available City and Utility assets;
6. Assist the City in contacting State and Federal officials regarding financial assistance for the Utility, the City and in connection with the Notes;
7. Assist the City in connection with continuing disclosure notices to bondholders and to the bond market regarding with the Utility, the Notes and the City;
8. Advise the City on its obligations under Federal and State securities laws regarding disclosures pertaining to the Notes;
9. Advise and assist the City in creating post-closure funds and proper use of such funds with respect to the Notes;
10. Review and advise the City regarding restructuring of City debt in connection with the Utility and the Notes;
11. Advise the City and the Utility with respect to all pending or threatened claims, actions, proceedings or litigation against the City and its Utility,

Mayor Donald Merkes  
City of Menasha, Wisconsin  
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including from holders of Notes, steam customers/users of the Utility,  
and including environmental compliance issues; and

12. Assist the City in connection with its options for, and its dealings related to, disposition of the utility steam plant, including potential conversion for future Utility operation, potential sale of the steam plant to a third-party purchaser for conversion or other closure alternatives.

If this does not accurately reflect your understanding about the scope of the legal services we will provide, please let me know. We will perform all services normally and reasonably associated with this type of engagement that are consistent with our ethical and professional obligations. As we proceed with this representation, if you request that we expand the scope of this engagement, and we agree to do so, this letter will cover that work as well.

#### **LAWYERS AND OTHERS ASSIGNED - WHO WILL DO THE WORK**

Douglas Lamb and Andrew Kintzinger will jointly coordinate the legal services for this representation. Mr. Kintzinger, in our Washington, DC office, will be the primary client contact. We will call upon other partners, associates, employees and paralegals whom we believe have the ability to serve you as efficiently and effectively as possible.

It is important to us that the City be satisfied with our services. We recognize that the City is facing complex financial challenges and is operating with a limited budget, and we will work closely with you to ensure that our work is performed in the most cost-effective manner possible. Please let us know promptly if you believe that we should staff the work differently or if you have any suggestions about how we can better serve the City.

#### **FEES/EXPENSES/BILLING**

[We recognize that cities ordinarily develop budgets for their legal fees. In an effort to afford the City that predictability and flexibility for a matter that is inherently unpredictable, we would like to propose a fee arrangement that allows the City to budget for our legal fees with a high degree of certainty.

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City of Menasha, Wisconsin  
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To protect both of us, as we broaden this relationship, we propose an over/under form of protection. To the extent we can do the work requested for less than your budget, you would keep 50% of the unused budget. To the extent we exceed the budget we would ask that you pay 50% of the excess. In other words, we will provide a monthly budgeted amount. To the extent that amount is exceeded, the City pays only the budgeted amount plus 50% of the excess, and if the budgeted amount is not exceeded, the City would pay the amount billed plus 50% of the difference between the billed amount and the budgeted amount. For each ensuing month, the budgeted amount would be set at the amount billed for the prior month. Each month, we will provide the City with prompt email or written notice when our time and expenses are within \$5,000.00 of that month's budgeted amount.

For the services described above, we propose an initial monthly budget amount of \$20,000, payable upon billing after the first month. After the first month, the monthly budget amount will be adjusted as described above. We would continue to track attorney time (using an hourly rate of \$425.00) and to send you regular monthly reports. Within 15 days after the end of each month, we will provide a billing report that compares the actual attorney fees incurred to the budget amount and includes a report to adjust the monthly budgeted amount for the ensuing month.]

[Alternatively, we will bill the City for lawyer services on an hourly basis at the rate of \$425.00 per hour and for paralegal services on an hourly basis at the rate of \$115.00 per hour.]

For the services described above, we may incur, at your request and with your permission, travel costs to the City. We will bill only actual, itemized air fare (coach), hotel and reasonable meal expenses. We agree that, regardless of actual costs, such travel costs shall not exceed \$1,000.00 in any month.

We are committed to providing you with efficient, effective legal services. In return, you agree to pay us timely for our services and to reimburse us for reasonable expenses in connection with the representation, regardless of the outcome. We will bill you for fees and expenses on a monthly basis. Our statements will be due and payable upon receipt. Please see the attached Standard Terms of Engagement for additional terms applicable to our bills and your payment obligations.

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### **CONFLICTS OF INTEREST**

We depend on you to help us identify, now and as the representation progresses, persons, or entities that may be in a position directly adverse to the City's interests in this representation. We also depend on you to help us identify those who are likely to be adversely affected by our representation of the City. Please advise us of any change in the City's or Utility's status that might affect our analysis of actual or potential conflict of interests.

You have identified no adverse, or potentially adverse persons or entities. We have checked our records for potential conflicts. We have discovered no conflicts and we know of no other interests, including our own, that will materially and adversely affect our ability to exercise independent professional judgment on your behalf.

### **COMMUNICATIONS**

Unless you tell us otherwise, we will send you all correspondence and statements for services related to this representation. We will depend on you to let us know if you are not receiving information or responses in a timely manner. We understand unless advised otherwise that we may communicate concerning this matter by fax, telephone, cell phone, e-mail, or letter.

If the terms of this letter are satisfactory, please sign a copy in the space provided, and return it to me. If you have any questions, please feel free to contact me. We appreciate the opportunity to represent the City.

Very truly yours,

Andrew R. Kintzinger

**STATEMENT TO BE SIGNED BY CLIENT**

I have read this letter and the accompanying Hunton & Williams LLP Standard Terms of Engagement. I understand their content, and hereby engage Hunton & Williams LLP in accordance with their terms and conditions on behalf of the City.

Agreed:

THE CITY OF MENASHA, WISCONSIN

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

Title: Mayor

Date: May, 2009

Enclosures  
Hunton & Williams "Standard Terms of Engagement"



May 27, 2009

The Honorable Don Merkes  
Mayor  
The City of Menasha  
140 Main Street  
Menasha, WI 54952

Mr. Charles Forrest  
Stern Brothers & Co.  
8000 Maryland Avenue  
Suite 800  
St. Louis, Missouri 63105

Re: Legal Services Regarding Restructuring of Menasha Steam Utility Obligations

Gentlemen:

Orrick is honored to be considered to represent The City of Menasha, Wisconsin (the “City”), and its owned public utility, the Menasha Steam Utility (“MU”), in connection with the possible closing of the Steam Utility Plant and the compromise or restructuring of outstanding obligations of the City related to MU. We understand the challenges that the City and MU face—both those presented by the broader economic environment and those specific to MU’s outstanding obligations.

The attached materials include a preliminary discussion of the considerations and options for the City in connection with MU and our suggestions on some of the immediate steps that the City may consider undertaking. This discussion is based on our preliminary research. We were just informed of the situation on Friday and are not in possession of all of the relevant material. We will develop and refine our thinking and recommendations based on further discussions with your team and analysis of the issues. We have also provided a short list of Orrick’s experience on related matters and an introduction to our proposed team. We would be happy to provide additional information regarding our experience and our firm.

### **Overview of Orrick**

Orrick is a global law firm, founded in San Francisco in 1863. Our firm focuses on litigation, complex and novel finance and innovative corporate transactions. Orrick’s commitment to public finance stretches back to the founding of our firm. For the past two decades, our Public



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Finance Group has ranked number one in the country as bond counsel and as underwriter's counsel, averaging a combined market share of over 12 percent of all municipal debt obligations issued each year. Additionally, as you will see from the attached materials, Orrick is one of the few firms with established and well-regarded work-out experience directly related to restructuring municipal debt obligations, including, among others, representing the City of Detroit, Michigan; The City of Vallejo, California; the City of Half Moon Bay, California; and the City of Richmond, California, to name just a few (willing to be named). Our restructuring lawyers are known for delivering winning results, client-focused service and efficient strategies to clients involved in restructurings and insolvencies.

Orrick has a preliminary understanding of the City and its BANs and NANs related to the Steam Utility Plant based on our review of the relevant Official Statements.

Initially, we would expect our services to include the following: (i) participate (with bond counsel) in an analysis of the obligations and exposure of the City with respect to the BANs and NANs and with respect to operating or closing the Steam Utility Plant; (ii) discussions and meetings with the holders of the BANs and NANs (the "Holders") leading to negotiation of confidentiality agreements, standstill/forbearance agreements and restructuring/settlement agreements with the Holders and, to the extent required, other parties; (iii) assistance with the review of any Material Events Notices prepared by the City or its financial advisors or bond counsel; (iv) providing advice with respect to public statements made with respect to financial matters; (v) providing advice and strategy for communicating scope and potential solutions to financial crisis to the Common Council and the bond rating agencies; (vi) participating in the review and evaluation of other outstanding debt to determine whether the potential closing of the Steam Utility Plant, or a default or non-payment upon maturity of the revenue bonds will trigger any adverse events with respect to those obligations; (vii) advising the City of steps necessary to resolve issues created with respect to other debt obligations; and (viii) such other services related to the City's financial condition and restructuring as may be requested in writing, including fax (telecopier) or e-mail, by the City from time to time. Obviously, the precise scope of our services will depend on a number of factors, including the course of the negotiations with the Holders, the effect of any default or ratings downgrade on the City's other debt and the reaction of the other affected creditors, actions the City may take in response to any default or ratings downgrade and any involvement by the State Treasurer or the Governor in response to the City's solvency issues.

We understand that the City would like us to bring the firm's resources to bear on this problem, and to work with the City's finance and legal staff, including Quarles & Brady, as the City's



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bond counsel; Stern Brothers & Co., as the City's financial advisor; and the Common Council to help address the fiscal issues facing the City. Please note that we will endeavor to utilize the resources of the firm in the most cost-efficient and effective manner possible.

Our fees for this work will be based on our standard hourly rates in effect at the time services are rendered. Given the nature of this engagement, we cannot predict at this time what the fees and costs will be, but will provide monthly statements of our services and frequent updates of amounts expended and will also consult with the City on ways to manage the same. While not a fee cap, we would anticipate that the monthly charge for our services will likely range between \$80,000 to \$100,000, but may be higher during the early stage of our engagement as we familiarize ourselves with the facts regarding the City's financial and legal exposure relating to the MU-related obligations, and commence discussions with the Holders of the NANs and the BANs. We will also charge for our costs and disbursements, such as postage, special delivery, telecopies, filing, travel (with respect to travel, based on lowest available refundable coach airfares), publication or other similar costs.

We look forward to discussing this proposal further and to adding to our understanding of the City's needs. We are available at your convenience to meet or talk by phone regarding this proposal.

Very truly yours,

A handwritten signature in black ink that reads "Roger L. Davis".

Roger L. Davis



# CITY OF MENASHA

*Presentation to*

Mayor Don Merkes, City of Menasha, Wisconsin &  
Charles Forrest, Stern Brothers & Co.

May 27, 2009





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The discussion which follows is not intended as and should not be taken as legal advice, and Orrick, Herrington & Sutcliffe LLP cannot be responsible for actions the City of Menasha may take or fail to take in reliance upon the following without seeking further legal advice on the matter from qualified legal counsel. Unless Orrick is engaged by the City of Menasha as its counsel, no attorney-client relationship exists between Orrick and the City of Menasha. There may be additional information the City of Menasha has not shared with Orrick which would cause us to alter any advice we would give you, and there may be more subtle aspects of the questions not discussed below which would, upon further consultation, turn out to be the factors of greatest importance to the City of Menasha.



ORRICK

*We greatly appreciate the opportunity to make this presentation to the City of Menasha, Wisconsin (the "City" or "Menasha") and the Menasha Steam Utility ("MU" or "Steam Utility") in connection with the possible closing of the Steam Utility and the compromise or restructuring of outstanding obligations of the City related to the Steam Utility.*

## SITUATIONAL OVERVIEW

The City of Menasha (the "City" or "Menasha") has been under financial pressure for several years relating to the operation of the Steam Utility. MU is a municipal public utility owned by the City and managed and operated for the City by the Menasha Utilities Commission. The Steam Utility, a coal-fired plant, created in 2004, among other reasons, to convert a portion of the Menasha Power Plant into an industrial steam production facility to provide low cost steam to nearby paper mills. MU has three customers under long-term contracts that enables it to sell, at each customer's discretion, below-cost steam to Sonoco U.S. Mills, Inc. ("Sonoco"), George A. Whiting Paper Co. ("Whiting") and Alcan Packaging Corp. ("Alcan" and, together with Sonoco and Whiting, collectively, the "Customers"). These are not "take-or-pay" contracts; thus, each Customer has no obligation to purchase a minimum annual amount of steam. Moreover, the steam rates charged by MU is less than its operating expenses (not including debt service). As a result of recent (and, in respect of Sonoco, anticipated) arbitral decisions, MU is not able to charge its Customers for the steam at a price that would cover the Steam Utility's operating and capital costs, let alone lease payments or debt service. Given low-cost alternative power supply sources, it is not expected that MU will be able to renegotiate more favorable contract prices with the Customers. Whiting and Sonoco have claimed that they have been overcharged for steam for 2008 and 2009 and have sought refunds of such amounts (Whiting, \$90,000; Sonoco more than \$2 million). Additionally, the City and MU are encountering actual or threatened environmental litigation or proceedings by the Wisconsin Department of Natural Resources, the United States Environmental Protection Agency, and the Sierra Club relating to operation of the steam plant.

The City currently has approximately \$41 million of steam utility related revenue and general obligation bonds maturing in the next 30 months, approximately \$14 million of which are general obligation bonds. Because these revenue and general obligation bonds were sold as interest-only notes, MU has not made any principal amortization payments on these bonds. The City, nonetheless, already has levied more than \$2.5 million in ad valorem taxes relating to the debt service on the general obligation bonds.

The 2005 and 2006 revenue bond anticipation notes, aggregating \$24,160,000, mature on September 1, 2009. The City is not likely to have sufficient available revenues to repay the notes when they become due. Additionally, if the City determines to close the Steam Utility Plant, the closure may constitute a default on the notes. The City has requested advice on what actions may be available to it to compromise or restructure the outstanding obligations of the City related to the Steam Utility and possibly other City or MU obligations.



## SUMMARY OF MU-RELATED OBLIGATIONS

### MENASHA UTILITY

MU is a municipal public utility owned by the City and managed and operated for the City by the Menasha Utilities Commission. In January 2009, the City and MU retained Stern Brothers & Co. to analyze the financial performance of the Steam Utility and to provide a recommendation for its future. As a result of its analysis, Stern Brothers & Co. recently recommended that the City close the steam plant, which the City is contemplating approving as of July 1, 2009.

On February 1, 2005, the City issued its \$12,660,000 Taxable Steam Utility Revenue Bond Anticipation Notes, with a maturity date of September 1, 2009 (the "2005 BANs"). The 2005 BANs were issued to acquire, construct and equip the steam utility facilities, including the capital expense relating to the acquisition and installation of certain steam turbine generators. Thereafter, on December 1, 2006, the City issued its \$11,500,000 Taxable Steam Utility Revenue Bond Anticipation Notes (the "2006 BANs" and, together with the 2005 BANs, the "BANs") and \$2,675,000 Taxable Note Anticipation Notes (Steam Utility) ("NANs") and \$1,340,000 Taxable General Obligation Promissory Notes (Steam Utility) (the "2006 GO Bonds"),

The BANs and the NANs are not general obligations of the City and are payable from the proceeds of the sale of revenue notes, monies held in certain reserve funds and income and revenues received from the operation of the Steam Utility. Additionally, the City has agreed to appropriate funds to pay any deficiency out of its annual general tax levy or other available funds for such payments, including surplus funds of the City's Combined Electric and Water Utility, subject to annual budgetary appropriation and other conditions. Such payments are subject to annual budgetary appropriations, approval of the Public Service Corporation, and applicable levy limitations. Notwithstanding the City's agreement, the BANs and NANs are not general obligations of the City, and the City is not obligated to make such appropriation. The City's obligations to make payments on the BANs or NANs are unsecured contractual obligations of the City, and no lien has attached to the Steam Utility or its property. The BANs and NANs are enforceable in the same manner as any other contractual obligations of the City.

On August 22, 2007, the City issued \$13,930,000 Taxable General Obligation Promissory Notes (Steam Utility Project) (the "MU GO Bonds"), which bonds mature on September 1, 2010. The MU GO Bonds were issued partially to refund the \$1,340,000 general obligation bonds previously issued in connection with the Steam Utility, and to replenish the Steam Utility Reserve Fund.



A SCHEDULE OF THE VARIOUS SECURITIES FOLLOWS.

<b>City of Menasha -- Steam Utility Related Obligations</b>					
<b>Type of Bond</b>	<b>Issuance Date</b>	<b>Maturity Date</b>	<b>Interest Rate</b>	<b>Interest</b>	<b>Principal Amount</b>
Taxable General Obligation Bonds	8/22/07	9/1/10	5.60%	\$ 790,080	\$13,930,000
Taxable Note Anticipation Bonds	12/1/06	9/1/11	5.2%	139,100	2,675,000
Taxable Revenue Bond Anticipation	2/01/05	9/1/09	4.35%	550,710	12,660,000
Taxable Revenue Bond Anticipation	12/1/06	9/1/09	5.7%	<u>655,500</u>	<u>11,500,000</u>
Total MU-Related Obligations				\$2,136,390	\$40,765,000



## PROACTIVE STEPS THE CITY CAN TAKE

### ESTABLISH CREDIBILITY

- Aggressively develop and implement plan to compromise or restructure MU-related obligations
- Build creditability with key parties
  - Common Council
  - State (Governor and Treasurer)
  - Holders of the NANs and BANs and any other senior creditors
  - Aggressively pursue obtaining the \$7,000,000 loan from the State to refinance some of the MU-related obligations
- Commence negotiations with note holders and other senior creditors
- Explore sale of the Steam Utility Plant
- Explore options, if any, under the various federal stimulus initiatives (including clean-tech options)

### STANDSTILL AND COMPROMISE OR RESTRUCTURE OF NANs AND BANs

- Identify key constituents with whom the City and MU must negotiate
  - Owners of NANs and BANs
  - Customers
  - Environmental Agencies (relating to clean-up costs associated with operation or closing of the Steam Utility Plant)
- Establish defenses to declaration of default by holders arising from closing of the Steam Utility Plant
  - Determine whether there are any defenses to payment (obligation limited to revenues, if Steam Utility Plant is closed, City has no revenues); determine remedies available to NANs and BANs in event of payment default
  - Determine whether the City has an obligation to operate or not close the Steam Utility Plant and if the holders have any recourse or claim against the City if the City closes the Steam Utility Plant
  - Determine whether the City has other exposures in event of the closure of the Steam Utility Plant and payment default of the NANs and BANs



- Determine how the NANs and BANs can be compromised or restructured
- Determine whether new customer for steam can be identified or if the Steam Utility can be economically converted (unlikely)
- Conduct an analysis to determine if any amounts would be owed by the City to Customers if Steam Utility is closed
- Develop a Standstill/Forbearance Agreement
- Negotiate with the holders of the NANs and the BANS a standstill/forbearance agreement to prevent the holders from exercising any remedies or commencing any litigation against the City upon non-payment of the bonds or other defaults in respect of the NANs or BANS. Typical terms include:
  - Standstill/forbearance of any enforcement action for a negotiated period (60-90-120 days)
  - Agreement by the City to provide financial information
  - Waivers/releases
  - Holders of the BANs and RANs may seek reimbursement of their attorneys' fees and expenses relating to any compromise or restructuring
- Identify/outline potential terms of a compromise or restructuring of obligations
  - Length for payment
  - Source for payment: pledging collateral, issuance of new bonds, special tax assessment payable over [x] years, securitization proceeds, proceeds from sale of facilities
  - Prepare a strategy in event the obligations cannot be compromised or restructured

#### **ADDRESS POTENTIAL ISSUES UNDER OTHER CITY OBLIGATIONS**

- Consider other City issues
- Quantify the scope of the City's exposure



## OUR EXPERIENCE

### PUBLIC FINANCE

Orrick's commitment to public finance stretches back more than a century. For the past two decades, we have ranked number one in the country as bond counsel and as underwriter's counsel, averaging a combined market share of over 12 percent of all municipal debt obligations issued each year.

In addition to serving as bond counsel and underwriter's counsel, Orrick also acts as issuer counsel, disclosure counsel, special tax counsel, company counsel, credit provider counsel, lender counsel, trustee counsel, and swap/derivative provider counsel. We serve these roles in connection with the issuance of tax-exempt and taxable bonds. We also provide post-issuance services on arbitrage rebate compliance, continuing disclosure, bankruptcy, IRS audits, SEC investigations, defaults and other workouts.

### MUNICIPAL BANKRUPTCY AND WORKOUT EXPERIENCE

**City of Vallejo, California.** Orrick represents the City of Vallejo, California's largest city ever to file for protection under chapter 9 of the Bankruptcy Code. Vallejo is the largest American city to be deemed eligible for chapter 9 relief. The case has generated cutting edge legal issues, as well as litigation over a number of hotly-contested factual issues, including those relating to the City's insolvency and eligibility to be a chapter 9 debtor, and to its pending motion for approval of the rejection of collective bargaining agreements.

Orrick led the City through the myriad federal and state pre-filing requirements to ensure compliance with chapter 9 eligibility requirements, including satisfying the Bankruptcy Code requirement for pre-filing negotiation with creditors. This process involved negotiating with the City's two primary creditor constituencies: the City's four labor associations, in an effort to resolve issues with respect to the individual collective bargaining agreements, and Union Bank, the City's credit enhancer and holder of over \$50 million in Certificates of Participation.

**City of Detroit.** Orrick represents the City of Detroit, Michigan in connection with the restructuring of certain swap agreements associated with the City of Detroit's 2006 Pension Obligation Certificates (the "POCs"), of which \$800 million were variable rate taxable certificates. The scheduled payments of principal and interest were guaranteed under insurance policies on specifically designated 2006 POCs by Financial Guaranty Insurance Company ("FGIC") and XL Capital Assurance Inc., now Syncora ("XL", together with FGIC, the "Insurers"). Additionally, to hedge against its variable rate exposure on certain of the 2006 POCs, the City has certain exposure in respect of interest rate swap agreements entered into with UBS AG and SBS Financial Products Company, LLC. Because the ratings of the Insurers and of the POCs fell below investment grade, the swap counterparties may have the right to declare an early termination event in respect of the swap agreements which, based on the timing of the termination event, could have required the City to make a termination payment to the counterparties of between \$300 and \$400 million. Orrick is representing the City in the negotiation with the counterparties and the Insurers of a restructuring of the potential termination events.



**City of Half Moon Bay.** Orrick lawyers have been working with the City of Half Moon Bay to identify financing methods that would help the City pay an \$18 million judgment stemming from a lawsuit with a developer over the failed Beachwood development. The settlement payment is due in August 2009. Orrick helped negotiate the settlement and is assisting the City in the issuance of Judgment Obligation Bonds to pay a portion of the settlement cost (net of payments in cash from the City and possibly State level assistance). Orrick was asked to advise the City on the possibility of filing a chapter 9 bankruptcy case but advised that the City would not likely be eligible to file due to its financial standing. The bonds have been given a rating of "AA-" by Standard and Poor's.

**Richmond, California.** The City of Richmond, California, experienced significant financial difficulties from 2000-2004. In early 2004, Richmond projected a deficit in the general fund equal to approximately 30 percent of the general fund budget for fiscal year 2003-04. Richmond's audited financial statements were late, and its accounting system was unable to produce reliable reports on the state of the City's finances. Orrick attorneys worked closely with Richmond and its financial advisors to develop a Fiscal Recovery Plan for the City. The plan included one-time emergency measures to plug the 2003-04 budget gap as well as assistance in reviewing the City's plans to create structural balance. We also worked with Richmond's auditing firms to get its audited financial statements caught up. As counsel to Richmond, Orrick attorneys provided critical advice to resolve its cash flow problems, and allow it access to the market. We also identified innovative methods for Richmond to borrow money to resolve its cash flow problems. Richmond successfully emerged from its fiscal crisis and now has a solid "A" rating and has been able to access the bond market for needed public programs and projects.

**Orange County, California.** Orrick was hired as counsel to Goldman Sachs & Co. to advise on the allocation of monies to debt and other obligations during the County's bankruptcy, financings during bankruptcy, the County's plan to exit bankruptcy and the bond financings that enabled the County to emerge from bankruptcy. After the bankruptcy, Orrick was hired by the County as its principal finance counsel.

**Financial Control Board, Washington, D.C.** In the early 1990's, the District of Columbia (the "District") was experiencing severe financial problems and had an accumulated deficit in excess of half a billion dollars. In 1992, Pauline Schneider, while at her prior firm, drafted legislation which was adopted by the U.S. Congress and amended the District's Home Rule Act to permit the District to issue long term general obligation debt to finance its accumulated deficit. This was just the first in a series of measures taken by or on behalf of the District to address its financial crisis. In April 1995, in response to the District's ongoing fiscal and operational problems, Congress enacted the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104-8, as amended (the "Authority Act"), which established the District of Columbia Financial Responsibility and Management Assistance Authority (the "Authority"). Without repealing the District's Mayor/Council government structure, the Authority Act granted the Authority substantial powers over the financial activities and management operations of the District government during any "Control Period" as defined in the Authority Act. The powers of the Authority were expanded by Congress in August 1997 by the National Capital Revitalization and Self-Government – Improvement Act of 1997, Public Law 105-33. During the Control Period, which ran from 1995 – 2001, the Authority was authorized to exercise governmental control powers for the purpose of eliminating budget deficits and cash shortages of the District, ensuring



efficient and effective delivery of services in the District, enhancing the District's access to the capital markets, approval all bond issuances, ensuring the long-term financial, fiscal and economic vitality and operational efficiency of the District, examining the structural relationship between the District government and the Federal government, and reviewing the financial impact of activities of the District before the activities are implemented or submitted for Congressional review.

The Control Board also assisted the District in pursuing certain financings that generated revenues for the District such as a real property tax lien securitization program. Ms. Schneider, while at her former firm, was hired in 1996 as counsel to the Control Board to draft legislation authorizing the sale and securitization of such tax liens. The District successfully completed its first transaction later that year. Beginning in 1997, attorneys now with Orrick were hired as bond counsel to the District, and thereafter assisted the District in obtaining all necessary approvals from the Authority for its bond issuances during the Control Period. Attorneys now with Orrick have continually served as bond counsel to the District since then.

**Jefferson County.** Orrick has been closely involved in the Jefferson County matter since the County's financial difficulties became known. Orrick represents a significant creditor which has exposure in certain of the municipal financings of Jefferson County.

### **WORKOUTS OF VRDO/AUCTION RATE BONDS**

As a result of the widespread dislocation in the insured and municipal variable market this year caused by the downgrades of the monoline bond insurers, Orrick attorneys developed various structures to assist our municipal clients with the substitution and conversion of letter of credit and standby arrangements as well as various other credit supported financings. Many of these structures required expertise beyond traditional public finance law and were the result of collaboration with lawyers in our structured finance, bankruptcy, securities law and corporate and municipal tax practices.

As one example, Orrick attorneys have developed structures to address the current lack of appetite on the part of investors for outstanding auction rate and variable rate tender option bonds that are insured by one of the mono-line municipal bond insurers currently facing ratings difficulties. One such structure is designed to take the bonds out of the market but still preserve the potential future value of the bond insurance policy, as well as any related swap insurance and/or reserve fund surety policy. The structure should work well for a number of different types of bonds. In addition, we have developed, and continue to develop other structures for other types of bonds (such as lease-backed and certain conduit bonds).

We also have experience restructuring numerous transactions for public finance issuers in responding to the fall-out arising from the downgrade of the financial sureties.

### **MAJOR BANKRUPTCY CLAIMS LITIGATION**

**City of Vallejo, California.** As discussed in detail above, Orrick represents the City of Vallejo in its chapter 9 case, California's largest city ever to file for bankruptcy protection.



**Enron.** Orrick represented the Utah Associated Municipal Power Systems, Old Dominion Electric Cooperative and Jacksonville Electric Authority, among others, in connection with claims asserted by and against them in the bankruptcy cases of Enron Corp., Enron Power Marketing and Enron North America under forward power purchase agreements, including novel issues regarding ability of power purchasers to recover against Enron for fraud and the application of the special treatment of such agreements under the safe-harbor provisions of the Bankruptcy Code. Amounts asserted in connection with these proceedings totaled in excess of \$50 million, in the aggregate.

**Potomac Electric Power Company.** Orrick represented Potomac Electric Power Company (Pepco) in complex, cutting-edge litigation relating to the ability of Mirant Corporation, a debtor power generator, to reject electric power contracts. Our defense of Pepco resulted in the U.S. Court of Appeals for the Fifth Circuit requiring courts to consider the public interest before approving the rejection of a power contract.

**Subprime.** Orrick represents creditors in mortgage industry-related bankruptcy proceedings and out-of-court work-outs and wind-downs, including creditors involved in the Aegis, American Home Mortgage, First Magnus, Ownit and ResMae bankruptcy cases. Claims include breach of representations and warranties, early payment default, termination payments, and indemnity claims. Orrick also advises purchasers of assets from distressed and bankrupt subprime lenders, including American Home Mortgage and First Magnus.

**Lehman.** Orrick represents corporate and financial counter-parties with swap, forward contracts, repurchase agreements and other derivative products in various aspects of the Lehman Brothers proceedings pending in the United States and the United Kingdom. Claims include breach of representations and warranties, early payment default, termination payments, and indemnity claims.

**Refco.** Orrick represents a secured bondholder in the Refco bankruptcy case in connection with the resolution of its claim.



## THE ORRICK TEAM



**Lorraine McGowen, New York.** Lorraine McGowen, a partner in the New York office, is a member of the Executive Committee and a former co-chair of the Restructuring Group. She has practiced in the areas of creditors' rights and bankruptcy for more than 20 years, with a particular focus on the enforcement of creditors' rights and remedies in out-of-court work-outs and bankruptcy proceedings. Ms. McGowen represents formal and ad hoc creditors' committees and secured and unsecured creditors and other significant parties in complex bankruptcy cases, corporate restructurings and other insolvency matters and has extensive experience representing public and private entities in out-of-court work-outs and bankruptcy proceedings. Recently, she has been actively involved in the liquidity crisis affecting financial institutions, advising significant counter-parties with respect to their exposure to troubled financial institutions. She also provides innovative solutions to strategic and financial purchasers of distressed companies. Ms. McGowen advises clients on the bankruptcy and commercial law implications of proposed transactions, including mergers and acquisitions, project and structured financings, leveraged leases, securitizations and other transactions.



**Roger L. Davis, San Francisco.** Roger Davis is a partner in the San Francisco office and Chair of the Public Finance Group. He is a member of the firm's Executive Committee and partner in charge of ancillary businesses, which includes Bond Logistix LLC, a leading provider of arbitrage rebate compliance, investment and swap advisory, continuing disclosure and other post-bond issuance compliance services. Mr. Davis has served as bond counsel, underwriters counsel, disclosure counsel, bank counsel, derivatives counsel, and other roles in more than 900 transactions involving virtually every type of state and local governmental obligation in most of the western states and several Pacific Islands. He led the Orrick team charged with restructuring the debt of Orange County, California and financing the County's way out of bankruptcy.



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## **CONCLUSION AND NEXT STEPS**

We trust that this proposal provides a framework for further discussion. We would welcome the opportunity to review your legal requirements in more detail and to provide more specific advice as appropriate.



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## APPENDICES

### FIRM MATERIALS

*Firm Overview*

*Restructuring Practice Overview*

*Public Finance Practice Overview*

### CLIENT REFERENCES



## FIRM DESCRIPTION

**Orrick's core practice areas include the following:**

**Transactional**

Banking and Finance

Restructuring

Capital Markets

Compensation and Benefits

Emerging Companies

Energy and Project Finance

Mergers and Acquisitions

Outsourcing and Technology Transactions

Public Finance

Real Estate

Structured Finance

Tax

**Litigation**

Commercial Litigation

Employment Law

Intellectual Property

International Dispute Resolution

Product Liability Litigation

Securities Litigation

White Collar Defense

Orrick, Herrington & Sutcliffe LLP is an international law firm with more than 1,100 lawyers located throughout the United States, Europe and Asia. We focus on litigation, complex and novel finance and innovative corporate transactions.

The firm strives to help our clients achieve their goals and solve their problems by performing effective, challenging and innovative legal work on their behalf. Throughout the world, our clients include Fortune 500 companies, major industrial and financial corporations, commercial and investment banks, high-growth companies, governmental entities, start-ups and individuals. The firm's core values, shared by all Orrick colleagues, emphasize that we observe "the highest standards of integrity and ethics at all times...we bring enthusiasm, innovation, entrepreneurial zeal and commitment to advancing the welfare of the firm and our clients."



Our offices are located in many of the world's financial centers and other key commercial locations: Beijing, Berlin, Düsseldorf, Frankfurt, Hong Kong, London, Los Angeles, Milan, Moscow, New York, Orange County, Pacific Northwest, Paris, Rome, Sacramento, San Francisco, Shanghai, Silicon Valley, Tokyo, Taipei and Washington, D.C. We are the first U.S. law firm to establish a Global Operations Center, located in Wheeling, West Virginia, to provide 24-hour, seven-days-a-week technology, human resources, marketing, legal assistance and accounting services. To efficiently serve our clients, Orrick is organized into two divisions—transactional and litigation—comprised of several practice areas, which are highlighted on the left of this page.



## RESTRUCTURING PRACTICE OVERVIEW

Orrick's restructuring lawyers deliver winning results, client-focused service and efficient strategies to clients involved in restructurings and insolvencies. We routinely work on complex restructurings and financing transactions and offer clients value-added legal advice, from negotiation and mediation to litigation and counseling. We have successfully represented many different constituencies in virtually every aspect of corporate reorganizations, out-of-court restructurings, insolvency and liquidation matters.

Our lawyers—who have a track record of leadership and creativity—draw on the experience of other Orrick practitioners, including those in the corporate, finance, securities, litigation, tax, pension and real estate groups, to deliver a full range of restructuring-related legal services to major financial, commercial and industrial institutions around the world.

### AREAS OF FOCUS

- **Court Proceedings.** Represent debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts around the world.
- **Out-of-Court Restructurings.** Represent secured lenders, lender groups, other senior creditors and issuers in complex financial restructurings, recapitalizations and rescue financings.
- **Distressed Assets and Alternative Investments.** Represent buyers and sellers of distressed loans and claims, and in distressed merger and acquisition mandates.
- **Financial and Structured Products.** Represent secured lenders, financial institutions and other sophisticated investors in the restructuring of financial products and complex corporate, capital markets and derivative products to limit bankruptcy and commercial risks.

### INDUSTRY EXPERIENCE

We represent clients in cutting-edge matters across a range of industries, including:

- Airline and Transportation
- Automotive
- Consumer Products and Services
- Energy
- Financial Services
- Healthcare
- Hospitality and Gaming
- Manufacturing
- Media and Telecommunications
- Mining
- Municipal Finance
- Real Estate
- Retail
- Technology

### REPRESENTATIVE CLIENTS

Leading global companies engage Orrick to serve as counsel, including:

- ABN AMRO Bank N.V.
- Bank of America
- BlueSky Capital
- Citizens Bank
- City of Vallejo
- Cooper Industries, Ltd. (In re Federal-Mogul Corporation)
- D.E. Shaw & Co., L.P.
- EOS International
- Eurotunnel (ad hoc committee)
- Fuji Bank
- Intel Corporation
- JPMorgan Chase & Co.
- Koch Industries, Inc.
- Nomura Credit & Capital, Inc.
- Philippine Airlines
- Plainfield Asset Management LLC
- Potomac Electric Power Company
- Sandell Asset Management Corp.
- Sigma Financial Corporation (common interest group)
- Stone & Webster, Inc. (creditor's committee)
- Telecom Italia SpA
- The Bank of Nova Scotia
- The Royal Bank of Scotland
- USA Capital Diversified Trust Deed Fund (equity committee)
- United Online, Inc.
- W. R. Grace & Co. (court-appointed fiduciary)
- Wells Fargo & Company
- WestLB AG



## NOTABLE ENGAGEMENTS

- **W. R. Grace & Co.** Represented the court-appointed future claimants' representative in the ongoing Chapter 11 case of this worldwide chemical company, with estimated present and future tort claims in excess of US\$3 billion.
- **Quebecor World Finance.** Represent ABN AMRO as agent in restructuring and defeasance of a US\$475 million securitization loan facility to Quebecor World Finance.
- **Cooper Industries, Ltd.** Represent Cooper Industries and its affiliates as principal creditors and holders of an indemnity claim of more than US\$480 million, in connection with the restructuring proceedings of Federal-Mogul, a worldwide manufacturer and distributor of automotive products.
- **Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund LLC.** Represented the interests of approximately 1,300 investors whose cumulative investment exceeds US\$150 million in one of five companion chapter 11 cases.
- **NVIDIA Corporation.** Defended NVIDIA in trial of fraudulent transfer and successor liability action brought by the bankruptcy trustee of 3dfx Interactive, Inc. arising from NVIDIA's 2001 acquisition of assets from 3dfx Interactive.
- **Structured Products.** Advise on some of the most significant and complex mandates in the financial markets, including Sigma Financial Corporation, Cheyne Finance PLC, Whistlejacket Capital Ltd. and Rhinebridge PLC.
- **Lehman Brothers.** Represent corporate and financial counterparties in various aspects of the Lehman Brothers proceedings pending in the United States and the United Kingdom.
- **Stone & Webster, Inc.** Represented the Official Committee of Unsecured Creditors in the Chapter 11 cases of Stone & Webster, an international engineering and construction enterprise with 72 subsidiaries. Orrick continues to represent the SWE&C Liquidating Trust to resolve claims against Stone & Webster Engineers & Constructors, Inc. and its direct and indirect subsidiaries totaling in excess of US\$1 billion.
- **Ritchie Risk-Linked Strategies.** Represent ABN AMRO with respect to approximately US\$500 million in pre-petition secured loans and DIP loans to Ritchie Risk-Linked Strategies, an SPV created to purchase life settlements.
- **Potomac Electric Power Company ("Pepco").** Defended Pepco in complex, cutting-edge litigation concerning the ability of Mirant Corporation, a debtor power generator, to reject electric power contracts.
- **Subprime.** Represented various financial institutions and lenders in connection with the bankruptcies of several mortgage companies and the workout of trouble mortgage portfolios.
- **City of Vallejo, California.** Represent the city of Vallejo, California's largest city ever to file for bankruptcy protection, in its chapter 9 case.

## THE ORRICK DIFFERENCE

- **Enduring Relationships.** Orrick is dedicated to investing in its client relationships, with the goal of building long-term partnerships. Each client works with a team of lawyers who focus on understanding the client's role and desired outcome in restructuring matters and keeping the client informed of issues affecting its business.
- **Strategic Thinking.** Orrick's success stems from its ability to think in the business mind-set and to understand clients' business objectives. Our experience with nearly all types of restructuring matters provides us with the broad insight required to develop creative solutions that help our clients achieve their goals.
- **Responsive Approach.** In an increasingly competitive business world, Orrick understands the need for timely responses from highly skilled lawyers. We provide each client with service that is targeted to the client's specific requirements. Orrick's information technology systems and client extranets connect the firm's lawyers and clients around the world, allowing access to resources regardless of location, and enabling our lawyers to deliver consistently high-quality services.
- **Global Scope.** With 21 offices worldwide, Orrick lawyers have handled restructuring and insolvency matters from Toledo to Tokyo and have the geographic reach to advise clients on the issues impacting them around the world.



## PUBLIC FINANCE PRACTICE OVERVIEW

Orrick consistently ranks No. 1 in public finance related legal work in the United States and also practices public finance in several other countries. In 2008, Orrick served as bond counsel or underwriters' counsel on more than 570 financings aggregating nearly \$60 billion. Our clients include municipal issuers, nonprofit corporations, private company borrowers, developers, Indian tribes, underwriters, credit providers, investment providers, swap providers and others, in both primary and secondary market transactions.

Orrick's public finance practice is well known for its unique depth in tax matters related to public finance. The diversity of our public finance practice, combined with an emphasis on sophisticated tax-driven transactions, provides clients with our unmatched strength in analyzing and opining on tax matters including innovating solutions to tax-related problems; obtaining IRS rulings and handling post-issuance tax compliance and IRS audits. The Public Finance Tax Group includes a current board member and a former chair of the National Association of Bond Lawyers (NABL) and a former chair of the American Bar Association's Committee on Tax-Exempt Finance—the two most influential professional groups in the United States for tax aspects of public finance.

Our reputation for safety and reliability has enabled us to innovate public finance techniques that have been widely adopted in the United States and frequently used as development models in other countries, including mixed revenue structures; tax increment financing; lease certificates of participation; pension obligation bonds; prepaid natural gas financings; tobacco settlement revenue, federal grant, delinquent property tax and other municipal asset securitizations; earthquake, worker's compensation and other insurance financings; various public-private partnership models; and derivative repackagings of municipal securities.

### FACTORS THAT DIFFERENTIATE ORRICK

- **Most Established Practice:** Orrick has maintained a substantial practice in the area of public finance for over 100 years, including the historic financing of such iconic projects as the Golden Gate Bridge and Carnegie Hall.
- **Key Geographic Locations:** Orrick is strategically situated to provide the best legal services for our clients. Our public finance practice presently consists of more than 90 lawyers in the United States, with 30 in San Francisco, 23 in New York, 9 in Los Angeles, 10 in Sacramento, 12 in the Pacific Northwest and 7 in Washington, D.C. Additional lawyers in London, Rome, Milan and Paris also practice public finance.
- **Comprehensive Counsel:** Orrick has established practices in other areas such as corporate securities, 144A limited offerings, asset securitization, project finance, energy (including clean and renewable), real estate, commercial transactions, emerging companies, private entity financing, intellectual property, bankruptcy, environmental and tax law that give us the ability to handle aspects of public finance transactions beyond traditional issues.
- **Unmatched Public Finance Securities Law Experience:** No other firm matches Orrick in experience in public finance securities law issues. Orrick is not only the top-ranked bond counsel firm, but is also regularly ranked in the top three as disclosure counsel and as underwriters' counsel. The undisputed authority in U.S. federal securities law as applied to municipal securities is Orrick public finance partner Robert Fippinger, author of "The Securities Law of Public Finance" (Practising Law Institute, 2nd ed., 1999).
- **Post-Closing Services:** Orrick is one of the few bond counsel firms that is able to offer a variety of post-closing services to our clients. Our unique wholly owned ancillary corporation, Bond Logistix LLC, an SEC-registered investment advisory firm, provides cost-effective arbitrage rebate compliance services for more than 12,000 bond issues, as well as post-issuance tax compliance, investment product and swap advisory/monitoring, and continuing disclosure services.

### AWARDS, RECOGNITION AND RANKINGS

- **THE AMERICAN LAWYER**  
"Dealmaker of the Year"  
Roger L. Davis (2006, 1998)  
Mary A. Collins (2005)  
Robert P. Feyer (2003)  
Eileen Heitzler (2002)  
Tom Myers (2001)
- **CALIFORNIA LAWYER**  
"Attorney of the Year"  
John H. Knox (2006)  
Robert P. Feyer (2004)
- **THOMSON REUTERS RANKINGS**  
No. 1 Bond Counsel Firm (2008)  
No. 1 Disclosure Counsel Firm (2008)  
No. 2 Underwriter's Counsel Firm (2008)



## REPRESENTATIVE CLIENTS

### CALIFORNIA

Bay Area Toll Authority (BATA) in a \$1.16 billion financing for the San Francisco Bay Bridge, which took five years of legal, financial and legislative effort to come together and resulted in the transfer of financing responsibility of the \$8.7 billion Toll Bridge Seismic Retrofit Program from the State of California to BATA. The transaction required new specific state legislation, a private letter ruling by the Internal Revenue Service, and coordination of four California state entities: BATA, the California Department of Transportation, the California State Treasurer's Office and the California Infrastructure and Economic Development Bank.

### NEW YORK

The Trust for Cultural Resources of the City of New York on the issuance of its variable rate revenue bonds on behalf of Lincoln Center for the Performing Arts, Inc. Proceeds of the bonds were used to finance, among other things, renovations to the world famous Alice Tully Hall, which is used by organizations such as The Juilliard School, The Chamber Music Society of Lincoln Center and The Film Society of Lincoln Center, and the expansion and improvement of the North Plaza.

### OREGON

Oregon Department of Transportation (ODOT) in a \$400 million transaction that funds a portion of a major state initiative to upgrade bridges and finance highway improvements throughout the state of

Oregon. A unique aspect of this transaction was the establishment of a subordinate lien structure, which allowed ODOT to sell \$200 million in variable rate debt for the first time and on an ongoing basis.

### WASHINGTON, D.C.

Orrick represented the District of Columbia as bond counsel in the sale of \$827 million in general obligation bonds—the largest debt offering ever by the District. The transaction consisted of \$576 million general obligation bonds to finance new capital projects and \$251 million general obligation refunding bonds to refinance debt originally issued in 2001, 2003 and 2005. The refinancing will save the District \$9.2 million in interest payments.

### EUROPE

Lawyers in our European offices serve as counsel for public entities, banks and other financial institutions in connection with the issuance of bonds for public infrastructure and other projects. Recently, Orrick's Italian finance lawyers acted as legal counsel for Autostrade Lombarde S.p.A. (già Bre.Be.Mi. S.p.A.) as promoter (and contractor) in the project financing regarding the building and managing of the Brescia-Milano highway, and they also regularly advise on securitization transactions of health care receivables of local health care authorities in various Italian regions.

## PRACTICE AREAS

- Arbitrage Rebate
- Assessment and Special Tax Land Secured Financing
- Clean and Renewable Energy Financing
- Continuing Disclosure
- Credit Enhancement
- Gas and Electric Prepayment Transactions
- General Obligation Bonds
- Governmental Affairs and Legislation
- Health Care Financing
- Higher Education and Student Loan Financing
- Hotel, Resort, Casino and Entertainment Facilities
- Indian Tribe Financing
- Industrial Development and Pollution Control Financing
- Insurance Financing
- Investment Products and Placement
- Lease Finance and Certificates of Participation
- Military Housing
- New Products
- Nonprofit Corporation Financing
- Pension Bonds and Other Post-Employment Benefits Financing
- Public Power Financing
- Public-Private Partnerships
- Redevelopment Agency Financing
- Revenue Bonds
- Sales and other Special Tax Financing
- School Financing
- Securitization of Municipal Revenues (tobacco settlement payments, federal grants, tax liens, license fees, leases, receivables)
- Short Term Financing
- Single Family and Multifamily Housing
- Solid Waste and Waste-to-Energy Financing
- Swaps, Investment Products and other Hedges
- Tax Aspects of Tax-Exempt Financing
- Transportation Financing
- Troubled Transactions
- Water and Wastewater Financing



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## CLIENT REFERENCES

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**RESOLUTION OF THE CITY OF MENASHA COMMON COUNCIL  
REGARDING APPOINTMENT OF SPECIAL COUNSEL AND  
CONSIDERATION OF CESSATION OF STEAM UTILITY OPERATIONS**

**Introduced by Mayor Merkes**

WHEREAS, the Common Council of the City of Menasha ("Common Council") has the authority to exercise general control and supervision of the Menasha Utilities Commission ("Commission") with respect to the charge and management of the City of Menasha's municipal steam utility (the "Steam Utility") in accordance with Section 9-5-1 of the City of Menasha municipal ordinances and Wis. Stat. § 66.0805; and

WHEREAS, by resolution dated May 27, 2009 ("Commission Resolution;" hereby attached to this Common Council resolution as Attachment A), the Commission has made certain recommendations to the Common Council with respect to the Steam Utility, including a recommendation that the Common Council authorize and direct the Steam Utility to cease its operation of the steam plant facility; and

WHEREAS, the Commission's recommendations have been necessitated by certain unforeseeable events beyond the reasonable control of the City, the Commission, and the Steam Utility, which events are enumerated in the Commission Resolution and hereby acknowledged and affirmed by the Common Council; and

WHEREAS, the City of Menasha has a number of outstanding steam utility related financial obligations, including approximately \$2.7 million in note anticipation notes and approximately \$14 million in general obligation bonds, as well as over \$24 million in principal and interest on revenue bond anticipation notes, which notes are due to be paid in full on September 1, 2009 ("Revenue BANS"); and

WHEREAS, the Common Council has reviewed the report prepared by the financial firm of Stern Brothers & Co. ("Stern Brothers"), which report is referenced in the Commission Resolution as the "Menasha Steam Utility Strategy Analysis and Recommendation," and which concludes that (i) under the existing steam supply contracts, the Steam Utility will be unable to cover operating expenses in 2009 and beyond; (ii) that the Steam Utility will not generate sufficient revenues to provide payment for any of the outstanding obligations issued by the City of Menasha to finance the Steam Utility; and (iii) that, as a result, the City of Menasha will not be able to access the financial markets to refinance the Revenue BANS, and

WHEREAS, the Common Council understands that representatives of the Steam Utility, Menasha Utilities and the City of Menasha over the past several weeks and months have undertaken serious and substantive efforts to determine whether or not new steam supply contracts with existing and potential new customers could be developed that would enable the Steam Utility to continue operating and that such efforts have been unsuccessful; and

WHEREAS, a public hearing on the recommended closure of the Steam Utility was held on Tuesday, May 12, 2009; and

WHEREAS, the Common Council understands that City and utility staff, together with Stern Brothers and a team of expert consultants and legal advisors have been actively working to develop a work-out strategy and will continue to do so in an effort to minimize the impact of the Steam Utility potentially ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders; and

WHEREAS, upon recommendation from Stern Brothers, the City and utility staff have interviewed special municipal finance legal counsel to assist the Common Council, City and utility staff in further developing a work-out strategy for the City in dealing with its taxpayers, steam customers and bondholders; and

WHEREAS, the Common Council and the City have negotiated an engagement letter with Hunton & Williams LLP, to serve as special municipal finance counsel to the City with regard to its outstanding Steam Utility related financial obligations.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MENASHA:

1 . That the City takes under advisement the recommendations in the Commission Resolution regarding the ceasing its operation of the steam plant facility.

2. That Hunton & Williams LLP be retained as special municipal finance counsel to the City to advise the City regarding its outstanding steam utility related financial obligations, and that the Mayor is hereby authorized to execute an engagement letter with Hunton & Williams LLP substantially in the form attached as Attachment B hereto.

Passed and Approved on this                      day of June, 2009

CITY OF MENASHA COMMON COUNCIL

By:

\_\_\_\_\_  
Donald Merkes, Mayor

\_\_\_\_\_  
Deborah A. Galeazzi, Clerk

**RESOLUTION OF THE MENASHA UTILITIES COMMISSION  
REGARDING CESSATION OF STEAM UTILITY OPERATIONS**

WHEREAS, the Menasha Utilities Commission ("Commission") has entire charge and management of the City of Menasha's municipal steam utility (the "Steam Utility"), subject to the general control and supervision of the City of Menasha ("City") pursuant to Section 9-5-1 of the City of Menasha municipal ordinances and Wis. Stat. § 66.0805; and

WHEREAS, unforeseeable events beyond the reasonable control of the City, the Commission, and the Steam Utility have made it impossible for the Steam Utility to generate sufficient revenues to recover its current and projected operation and maintenance costs, to meet debt coverage requirements, and to perform its obligations, including (i) unforeseeable increases in the cost of converting plant operations to better facilitate the burning of Powder River Basin coal; (ii) unforeseeable increases in the cost of fuel supply and transport; (iii) unforeseeable decreases in customer demand for steam supply; (iv) unprecedented decreases in spot market prices for electricity; and (v) pending actions by the Wisconsin Department of Natural Resources, the federal Environmental Protection Agency and the Sierra Club to require the installation of pollution control equipment, and in the case of the latter, to no longer burn coal at all, actions which pose additional financial and litigation risks at present and in the foreseeable future at an as yet unknown additional cost that cannot be borne by the Steam Utility or the City; and

WHEREAS, the financial firm of Stern Brothers & Co. ("Stern Brothers") has analyzed the current and prospective financial performance of the Steam Utility with a view toward determining whether and under what conditions the City would be able to structure a refinancing of its existing steam utility related financial obligations, which include \$24 million in principal and interest on revenue bond anticipation notes, which are due to be paid in full on September 1, 2009 ("Revenue BANS"); and

WHEREAS, the result of this analysis is contained in a report designated "Menasha Steam Utility Strategy Analysis and Recommendation," which the Commission has reviewed; and

WHEREAS, Stern Brothers concludes that, under the existing steam supply contracts, the Steam Utility will be unable to cover operating expenses in 2009 and beyond and will not generate sufficient revenues to provide payment for any of the revenue or general obligation notes issued to finance the Steam Utility and therefore cannot access the financial markets to refinance the Revenue BANS, and

WHEREAS, as a result of this conclusion, Stern Brothers recommends that the Steam Utility cease operating the steam plant facilities, which recommendation the Commission hereby adopts on the grounds that it is in the best interests of the City and its taxpayers; and

WHEREAS, City and utility staff, together with Stern Brothers and a team of expert consultants and legal advisors have been actively working to develop a work-out strategy and will continue to do so in an effort to minimize the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders.

NOW, THEREFORE, BE IT RESOLVED BY THE MENASHA UTILITIES COMMISSION:

1. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Steam Utility to cease its operation of the steam plant facility, effective July 3, 2009.

2. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees (i) to issue a notice to all existing Steam Utility customers that the Steam Utility will no longer operate the steam plant facility, such notice to be issued no later than June 3, 2009, or such date as may be designated by the Common Council; (ii) to take all steps necessary to terminate any and all Steam Utility agreements with customers, vendors, or others, the termination of which is necessary due to the cessation of steam plant operations by the Steam Utility; (iii) to timely inform all other necessary parties of the Steam Utility ceasing to operate the steam plant facility; and (iv) to undertake all steps necessary to ensure that such directives be undertaken in accordance with prudent utility and business practices, and in a manner designed to preserve as much value of the steam plant facility as may be practicable.

3. That the Commission recommends to the Common Council of the City of Menasha that, in order to preserve the value of the steam plant facility for possible sale, the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees, to further evaluate alternatives for the facility to continue operating in a combined heat/power configuration and to maintain the operational readiness of the facility so it can be reactivated in the future.

4. That the Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President, the Interim General Manager, staff and employees of Menasha Utilities, and, as may be appropriate, their designees, to take all steps necessary to develop and implement a work-out plan for the purpose of minimizing the impact of the Steam Utility ceasing to operate the steam plant facility on the City, its taxpayers, its steam customers, and bondholders, such plan to be subject to approval by the Common Council.

Approved on May 27, 2009.

MENASHA UTILITIES COMMISSION

By

Madi L Allwood  
President

Robert H. Fabulach  
Vice President

**DRAFT**

HUNTON & WILLIAMS LLP  
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FILE NO: 99999.000309

May 22, 2009

**PRIVILEGED AND CONFIDENTIAL**  
**ATTORNEY-CLIENT COMMUNICATION**

Mayor Donald Merkes  
City of Menasha, Wisconsin  
140 Main Street  
Menasha, Wisconsin 54952

**Re: Representation of the City of Menasha Regarding Menasha Steam Utility**

Dear Mayor Merkes:

Thank you for the opportunity for Hunton & Williams LLP to represent the City of Menasha, Wisconsin (the "City") in connection with its Steam Utility (the "Utility") and the financing for the Utility. This letter, and the accompanying Hunton & Williams Standard Terms of Engagement, will establish the terms of our representation. If we fail to address any issues about which you have questions, please let us know. Good communication is critical to the success of our relationship and we want you to be happy with our services.

**THE CLIENT - WHOM WE REPRESENT**

We will represent the City, including the Utility.  You will be our primary contact, but you understand that we do not represent you individually. If you  want us to represent any other persons or entities, please advise us and we will determine whether we can undertake that additional representation.

**SCOPE OF ENGAGEMENT - WHAT WE WILL DO**

You have engaged us to perform work for the City and its Utility in several areas relating to the financing and operation of the Utility and the financial status of the City. Specifically, we will provide counsel and related representation to the City and its Utility with respect to, and including:

1. Review all matters pertaining to the City's outstanding revenue bond anticipation notes, note anticipation notes and general obligation

promissory notes issued in connection with the Utility (collectively, the "Notes");

2. Review the Menasha Steam Utility Strategy Analysis and Recommendation (the "Report") prepared for the City by Stern Brothers & Co. (the "Consultant");
3. Advise and represent the City in connection with its dealings with holders of the outstanding Notes, as further described below;
4. Assist the City in connection with teleconference calls and meetings with holders of the Notes and their representatives regarding the status of the Notes, the Utility and the City;
5. Assist the City and Consultant in review of inventory of available City and Utility assets;
6. Assist the City in contacting State and Federal officials regarding financial assistance for the Utility, the City and in connection with the Notes;
7. Assist the City in connection with continuing disclosure notices to bondholders and to the bond market regarding with the Utility, the Notes and the City;
8. Advise the City on its obligations under Federal and State securities laws regarding disclosures pertaining to the Notes;
9. Advise and assist the City in creating post-closure funds and proper use of such funds with respect to the Notes;
10. Review and advise the City regarding restructuring of City debt in connection with the Utility and the Notes;
11. Advise the City and the Utility with respect to all pending or threatened claims, actions, proceedings or litigation against the City and its Utility, including from holders of Notes, steam customers/users of the Utility, and including environmental compliance issues; and

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12. Assist the City in connection with its options for, and its dealings related to, disposition of the utility steam plant, including potential conversion for future Utility operation, potential sale of the steam plant to a third-party purchaser for conversion or other closure alternatives.

If this does not accurately reflect your understanding about the scope of the legal services we will provide, please let me know. We will perform all services normally and reasonably associated with this type of engagement that are consistent with our ethical and professional obligations. As we proceed with this representation, if you request that we expand the scope of this engagement, and we agree to do so, this letter will cover that work as well.

#### **LAWYERS AND OTHERS ASSIGNED - WHO WILL DO THE WORK**

Douglas Lamb and Andrew Kintzinger will jointly coordinate the legal services for this representation. Mr. Kintzinger, in our Washington, DC office, will be the primary client contact. We will call upon other partners, associates, employees and paralegals whom we believe have the ability to serve you as efficiently and effectively as possible.

It is important to us that the City be satisfied with our services. We recognize that the City is facing complex financial challenges and is operating with a limited budget, and we will work closely with you to ensure that our work is performed in the most cost-effective manner possible. Please let us know promptly if you believe that we should staff the work differently or if you have any suggestions about how we can better serve the City.

#### **FEES/EXPENSES/BILLING**

[We recognize that cities ordinarily develop budgets for their legal fees. In an effort to afford the City that predictability and flexibility for a matter that is inherently unpredictable, we would like to propose a fee arrangement that allows the City to budget for our legal fees with a high degree of certainty.

To protect both of us, as we broaden this relationship, we propose an over/under form of protection. To the extent we can do the work requested for less than your budget, you would keep 50% of the unused budget. To the extent we exceed the budget we would ask that you pay 50% of the excess. In other words, we will provide a monthly

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budgeted amount. To the extent that amount is exceeded, the City pays only the budgeted amount plus 50% of the excess, and if the budgeted amount is not exceeded, the City would pay the amount billed plus 50% of the difference between the billed amount and the budgeted amount. For each ensuing month, the budgeted amount would be set at the amount billed for the prior month. Each month, we will provide the City with prompt email or written notice when our time and expenses are within \$5,000.00 of that month's budgeted amount.

For the services described above, we propose an initial monthly budget amount of \$20,000, payable upon billing after the first month. After the first month, the monthly budget amount will be adjusted as described above. We would continue to track attorney time (using an hourly rate of \$425.00) and to send you regular monthly reports. Within 15 days after the end of each month, we will provide a billing report that compares the actual attorney fees incurred to the budget amount and includes a report to adjust the monthly budgeted amount for the ensuing month.]

[Alternatively, we will bill the City for lawyer services on an hourly basis at the rate of \$425.00 per hour and for paralegal services on an hourly basis at the rate of \$115.00 per hour.]

For the services described above, we may incur, at your request and with your permission, travel costs to the City. We will bill only actual, itemized air fare (coach), hotel and reasonable meal expenses. We agree that, regardless of actual costs, such travel costs shall not exceed \$1,000.00 in any month.

We are committed to providing you with efficient, effective legal services. In return, you agree to pay us timely for our services and to reimburse us for reasonable expenses in connection with the representation, regardless of the outcome. We will bill you for fees and expenses on a monthly basis. Our statements will be due and payable upon receipt. Please see the attached Standard Terms of Engagement for additional terms applicable to our bills and your payment obligations.

#### **CONFLICTS OF INTEREST**

**As we have discussed with you, we represent RBC Capital Markets Corporation ("RBC") and its related entities on matters unrelated to the City. RBC has consented to our representation of the City in connection with the scope of engagement described in this letter. However, if the City decides to pursue any**

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**litigation, arbitration or other adversarial legal proceeding adverse to RBC, we have advised you that we will be required to withdraw from representing the City on such matter.**

We depend on you to help us identify, now and as the representation progresses, persons, or entities that may be in a position directly adverse to the City's interests in this representation. We also depend on you to help us identify those who are likely to be adversely affected by our representation of the City. Please advise us of any change in the City's or Utility's status that might affect our analysis of actual or potential conflict of interests.

You have identified no adverse, or potentially adverse persons or entities. We have checked our records for potential conflicts. We have discovered no conflicts and we know of no other interests, including our own, that will materially and adversely affect our ability to exercise independent professional judgment on your behalf.

#### **COMMUNICATIONS**

Unless you tell us otherwise, we will send you all correspondence and statements for services related to this representation. We will depend on you to let us know if you are not receiving information or responses in a timely manner. We understand unless advised otherwise that we may communicate concerning this matter by fax, telephone, cell phone, e-mail, or letter.

If the terms of this letter are satisfactory, please sign a copy in the space provided, and return it to me. If you have any questions, please feel free to contact me. We appreciate the opportunity to represent the City.

Very truly yours,

Andrew R. Kintzinger

**STATEMENT TO BE SIGNED BY CLIENT**

I have read this letter and the accompanying Hunton & Williams LLP Standard Terms of Engagement. I understand their content, and hereby engage Hunton & Williams LLP in accordance with their terms and conditions on behalf of the City.

Agreed:

THE CITY OF MENASHA, WISCONSIN

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

Title: Mayor

Date: May, 2009 \_\_\_\_\_

Enclosures

Hunton & Williams "Standard Terms of Engagement"

**HUNTON & WILLIAMS LLP**  
**STANDARD TERMS OF ENGAGEMENT**

**FEES.** Unless we agree in the engagement letter to alternate fee arrangements, we will bill for our services at the firm's applicable published hourly rates in effect at the time we render the services. Those rates are based on the fair value for the services we render after taking into consideration many factors, including but not limited to: the complexity or novelty of the work performed; the seniority, experience, practice area and location of the lawyers, paralegals or law clerks performing the work; the time period within which the work is required to be completed; the likelihood that the engagement will preclude our acceptance of other employment; the number of hours required to perform the work; the nature and length of our professional relationship with the client; the results obtained; and the fees charged for similar services in the relevant geographic or subject matter market. We have established hourly rates (using the foregoing factors) for lawyers, paralegals, law clerks, and other staff timekeepers. We adjust those base rates periodically, in light of the factors enumerated above, as well as cost of living and market considerations.

**STATEMENTS.** We do our best to render monthly statements for fees, expenses and charges. We normally render separate invoices for each legal matter we handle. The client also will receive a monthly statement that shows any past due invoice, by number and date, for each of the client's matters.

**BILLING AND PAYMENT.** We record time in 15-minute increments unless other arrangements are made. Our statements will be based on time recorded in those increments.

The client agrees to pay statements within 30 days. Failure to pay statements promptly may result in temporary or permanent cessation of service. Payment of statements should be made in U.S. dollars or other agreed upon foreign currency, by wire transfer or in checks or drafts payable to Hunton & Williams LLP. Please note the date and identification number of the statement being paid, and return the remittance copy of our statement with your payment.

If our invoices are not paid within 30 days of the invoice date the client agrees to pay an interest charge on outstanding balances at an interest rate of one and one-half percent (1.5%) per month, or the maximum interest rate allowed by law, whichever is less, from the date due until paid. The client agrees to pay such interest on the outstanding balance in addition to the balance of fees and expenses due.

In the event the client fails to pay when due all amounts owed us, we will have the right to retain settlement proceeds received on behalf of client or recover the outstanding balance of fees and expenses and interest, as provided above, and all attorneys' fees incurred to collect these amounts. Such attorneys' fees will include payment for the time and expenses of any firm lawyers incurred in collection effort as well as fees and expenses of any outside counsel hired to collect the amounts due.

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**RESPONSES TO AUDITORS' INQUIRIES.** We are frequently asked to provide information to auditing firms regarding legal matters of our clients. We respond to those inquiries with the same level of care and professionalism that we use to handle the client's other legal work and will charge for these services at the same rates. When an auditing firm requests information on the client's behalf, that request will be deemed to be the client's consent for us to disclose that information to that firm.

**DISBURSEMENTS AND CHARGES.** In addition to payment of our fees, the client agrees to pay expenses incurred by us in connection with the representation. Such expenses may include long distance telephone calls, photocopying charges, travel expenses, couriers, filing fees, costs of subpoenas and depositions, and other costs and expenses advanced on our client's behalf. We manage our own telephone network, printing and document duplication services. We generally use our in-house printing and document duplicating services rather than third party services, due to timing and confidentiality concerns, unless the client requests otherwise. We set our charges for these services based upon our fully burdened cost of providing them to the client.

Before proceeding to incur expenses from an outside vendor in excess of \$1,500 we will seek your approval. We do not intend to make any profit on such expenses and we will pass them on to you based as closely on our costs as possible. We may, however, receive certain benefits from having incurred certain costs, such as benefits accorded in connection with travel expenditures (i.e., frequent flyer points). Those benefits will be retained by the firm or the individual to whom they were awarded without credit to the client.

In certain instances, we make a profit from services rendered through the firm or its affiliated entities, when such services or technology involve the use of personnel not directly employed by Hunton & Williams LLP. In particular, certain services rendered by Hunton & Williams Litigation Support Center involve the use of personnel not directly employed by Hunton & Williams LLP, but for whom the firm accepts responsibility in connection with client's services. We will bill those services at a rate that may not be billed at our cost. Similarly, work performed at the Litigation Support Center may involve the use of technology that the firm will bill at competitive rates. The same applies to services rendered by TurnStone Investigative Services LLC and other entities affiliated with Hunton & Williams LLP.

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**TRAVEL.** We generally record the time spent traveling while performing work in furtherance of the client's engagement. Time spent in travel on behalf of one client while working on a matter for another client, will be billed to the other client; we do not double-bill time. We book air travel at coach rates unless otherwise previously approved by the client or unless the air travel is transoceanic or overnight, in which case we generally book business or comparable class. Bookings for travel arrangements are generally made through an in-house travel service and the expenses charged to the client for travel include a transaction fee for each booking. Discounts applicable to particular travel purchases may be available through use of this in-house travel service and we pass them on to the client in our charges.

**TERMS OF ENGAGEMENT.** The client or Hunton & Williams may terminate the representation for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event we terminate the engagement, we will take such steps as are reasonably practicable to protect the client's interests in this matter and, if the client so requests, we will suggest possible successor counsel and provide such counsel with material the client has provided us.

Upon the termination of our engagement, the client will pay within 30 days for all services rendered and disbursements and other charges paid or incurred in connection with our engagement. If the client terminates our engagement or if Hunton & Williams terminates the engagement in accordance with the following paragraph, the client will also pay our fees and expenses in connection with any transition of the client's work to successor counsel.

If the client fails to honor the terms of the engagement, to cooperate, or to follow our advice on a material matter that would or could, in our view, render our continued representation unlawful or unethical, Hunton & Williams may withdraw from the representation. If we elect to withdraw, the client will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents or pleadings necessary to complete our withdrawal.

Unless previously terminated or other arrangements are made, Hunton & Williams' representation will terminate upon our sending the client our final statement for services rendered. Unless we agree otherwise, we will have no continuing obligation to advise the client with respect to future legal developments once this matter concludes.

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**RECORD RETENTION.** We will maintain necessary documents relating to this matter in our client files. If we receive no guidance from the client, we will employ the following procedure when a matter concludes:

1. Upon closure of the matter, any original documents that the client has provided to us will be returned.
2. Upon expiration of our normal retention period for this kind of matter, we will notify the client by mail at the client's last known address that the retention period has run, and seek the client's guidance on disposition of the file.
3. If we receive a response from the client within 2 months, we will follow the client's instructions for disposition of the file. If those instructions require substantial handling of the file, or continued retention of it, we will charge our normal fees for such procedures.
4. If we do not receive a response from the client within 2 months, the file will be destroyed pursuant to our normal procedure.

At the conclusion of a matter, it is the client's obligation to tell us which, if any, documents in our files that it wishes to receive. Electronic records relating to this matter will be made available to the client, if requested, and to the extent they are still easily accessible.