

Consideration of Contract with Remcho, Johansen & Purcell, LLP

Remcho, Johansen & Purcell, LLP, has represented governmental and private clients in the governmental arena for more than 25 years. Because of its expertise in this area, the firm was instrumental in drafting Proposition 71. James Harrison, a partner in the firm, was one of five attorneys at three law firms who worked closely with Bob Klein in researching and drafting the measure. James Harrison was also involved in the implementation of Proposition 71, including participating in a meeting convened by the National Academy of Sciences in December 2004 to discuss “best practices” for CIRM.

At the beginning of 2005, Robert Klein met with the Attorney General to confirm the Attorney General’s agreement that, given the specialized nature of the agency and the extraordinary legal research that had gone into the development of the initiative, the Attorney General’s office concurred with the need to hire James Harrison of the Remcho firm as the board counsel to avoid duplicating this massive research effort and accumulated expertise.

The Remcho firm has represented CIRM since the agency’s inception in 2005 as counsel to the Board. In this capacity, the firm has been involved in virtually every aspect of the agency’s operations, including defending the agency in litigation, drafting and reviewing agency policies, advising the agency on conflict of interest issues, and interfacing with constitutional officers and legislators on matters ranging from financing to proposed legislation. In addition, the firm is involved in matters relating to: (1) the Governing Board and its subcommittees and task forces; (2) Financial Structure and public and private bond programs; (3) Inter-governmental relations; (4) CIRM’s Major Facilities Program; and (5) Other agency programs and policies. James Harrison also participates in executive committee meetings and meetings of the ICOC and its subcommittees and he works closely with CIRM’s General Counsel, who along with agency staff seeks advice from the firm.

As a result of the firm’s extensive involvement in the research and drafting of Proposition 71 and the establishment of CIRM and its policies, the firm is uniquely positioned to assist CIRM without incurring significant research time. The firm has also been able to leverage its experience representing state agencies, including the Controller, the Department of Education, and the First Five Commission, and the Legislature, to assist CIRM. Given its limited number of staff, CIRM relies on board counsel for a wide range of legal expertise. By relying on a single firm for this expertise, the agency avoids the duplication of cost and effort that would ensue from using multiple firms.

Along with the Attorney General’s Office, the firm defended CIRM against statutory and constitutional challenges. The firm’s experience defending Proposition 10 against similar claims reduced the costs to CIRM. Because the agency was unable to issue bonds until the litigation was resolved, the firm agreed to let CIRM defer payment, without interest, on its bills for approximately eighteen months.

The firm charges CIRM a significantly discounted public agency rate of \$350 per hour for partners. From 2005 until 2007, the rate was \$300, which was equal to the rate the firm charged the Controller's Office on a contract that began in 1999. For Fiscal Year 2009-2010, the firm's rates will remain the same: \$350 per hour for partners and \$265 for associates. These rates are significantly lower than the market rates for firms with similar expertise.

During **Fiscal Year 2008-2009**, the firm provided a variety of services in addition to those described above. These services included:

- Extensive work relating to Little Hoover Commission ("LHC"), including drafting written testimony and meeting with LHC staff;
- Extensive work relating to CIRM's financial condition, including interactions with State Treasurer, State Controller, Department of Finance, and Attorney General relating to PMIA loan, bond sales and proceeds, and general administrative cap;
- Research and draft legal opinion regarding validity of CIRM grant agreements;
- Work on major facilities issues, including reviewing grant award agreements and work with grantees on guarantee and drafting a collateral pledge agreement;
- Work on private placement of bonds;
- Extensive work on loan program, including drafting loan policy materials and request for information for delegated underwriter and legal opinion regarding warrants;
- Work with Governance Subcommittee on CIRM governance issues;
- Work on SB 1565, including memorandum regarding the constitutionality of SB 1565;
- Develop Extraordinary Petition policy;
- Develop policy regarding telephonic participation in board meetings; and
- Develop pre-application review policy, including legal issues relating to policy.

For **Fiscal Year 2009-2010**, in addition to ongoing responsibilities above, we anticipate that the firm will continue to be significantly involved in the following areas, among others:

- Assisting with CIRM's response to the Little Hoover Commission's report;

- Assist with legal issues relating to the implementation of CIRM's loan program and potential reinvestment opportunities for CIRM, including arrangements with delegated underwriters and potential loan guarantee program;
- Assist with legal issues relating to CIRM's finances and cash flow management, including alternative funding models and potential private placement;
- Assist with implementation of CIRM's Major Facilities Program and work with the Facilities Working Group; and
- Assist with CIRM's policies and program reviews of tax-exempt bond objectives including a request for private letter ruling from IRS.

Proposal: Amend contract to extend term through Fiscal Year 2009-2010 at a contract amount of \$450,000.