



COUNTY OF SAN MATEO

Inter-Departmental Correspondence
County Manager's Office

DATE: June 25, 2001

BOARD MEETING DATE: July 3, 2001

TO: Honorable Board of Supervisors
FROM: Paul T. Scannell, Assistant County Manager *Paul T. Scannell*
Thomas F. Casey III, County Counsel *Thomas F. Casey III*
SUBJECT: Resolution Authorizing Execution of a Contract with Orrick, Herrington & Sutcliff and California Financial Services

Recommendation

Adopt a Resolution Authorizing Execution of Contracts with Orrick, Herrington & Sutcliff and California Financial Services.

Background

After completion of the Need/Assessment Study performed by Turner Construction Company, the County exercised its option to continue that contract for design and construction of the Forensic Laboratory and Coroner's Office. In addition the County has approved the development of a Communication System for various agencies including the Emergency Services Council (ESC) and the County, including the Sheriff and various other departments. Both of these projects have been reviewed by the Board in various forms. A significant portion of these projects undertaken by the County or the County's share of the ESC Radio Microwave will be financed by the issuance of Lease Revenue Bonds.

Discussion

Orrick, Herrington & Sutcliff has provided the County with excellent legal services in connection with various projects, including: the Certificates of Participation for construction of the Maguire jail in 1991; a Lease Revenue Bond refunding of that transaction in 1993; the Lease Revenue Bond North County Satellite Clinic in 1993; the 1994 Health Center financing; the 1995 financing for the 2500 Middlefield Office for HSA and the new courtrooms on the fourth floor; the 1997 Colma Creek Flood Control Zone; the 1997 Lease Revenue Bonds for 555 County Center and the 1999 refinancing of various elements of the previous transactions to accomplish savings for the County. California Financial Services (CFS) has provided Financial Advisory services on all these transactions. The proposed financing for the Communication System and the Forensic Laboratory/Coroner's Office will be integrated with these previous financings. We have worked successfully with Orrick and CFS for ten years and have been able to provide the County with cost effective and innovative, creative methodologies to accomplish the County's capital projects goals.

Fiscal Impact

The maximum amount payable under the contracts is \$110,000 to Orrick, Herrington & Sutcliff and \$85,000 to California Financial Services. Payment will be made from the proceeds of the bonds and will be conditioned upon the successful completion of the transaction.

PTS:TFC:kjl

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

*** * * * ***

**RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT
WITH
ORRICK, HERRINGTON & SUTCLIFF
AND
CALIFORNIA FINANCIAL SERVICE**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an agreement, reference to which is hereby made for further particulars, whereby the law firm of Orrick Herrington & Sutcliff would provide legal services and California Financial Services would provide financial advice regarding the issuance of bonds for the financing of the construction of the law enforcement communication and crime lab project; and

WHEREAS, this Board has been presented with a form of such agreements and said Board has examined and approved same as to both form and content and desires to enter into same;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors be, and he is hereby, authorized and directed to execute said agreements for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest his signature thereto.

*** * * * ***

BOND COUNSEL SERVICES AGREEMENT

**Re: San Mateo County Joint Powers Financing Authority
Lease Revenue Bonds (Capital Projects), 2001 Series A**

This AGREEMENT, dated as of the 1st day of June, 2001, by and between the County of San Mateo, California (hereinafter called the "County"), and Orrick, Herrington & Sutcliffe LLP, of San Francisco, California (hereinafter called "Bond Counsel"):

W I T N E S S E T H

WHEREAS, the County presently contemplates the financing of a forensics laboratory, coroner's offices and law enforcement communication systems and other facilities (the "Project") through the issuance of lease revenue bonds by the San Mateo County Joint Powers Financing Authority (the "Authority"); and

WHEREAS, it is contemplated that the County will issue, or cause to be issued, and sell one or more issues of bonds (the "Bonds") to finance the Project; and

WHEREAS, the County desires to retain Bond Counsel to perform legal services in connection with the Bonds; and

WHEREAS, the County desires to set forth the terms of Bond Counsel's employment in connection with the preparation of proceedings for the issuance of the Bonds to finance the Project and for consultation and related legal services in connection therewith.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the County and Bond Counsel do hereby agree as follows:

1. The County, on behalf of itself and the Authority, employs Bond Counsel to provide the following legal services relative to the Bonds:

(a) Consultation with the Authority, the County and its staff and counsel and the County's financial consultant concerning the proceedings for authorizing the lease and issuance of the Bonds, including preparation of resolutions, documents, notices, and certificates as required by law for such issuance.

(b) Consultation with the Authority, the County, the County's financing consultant, the County's architects and any other participating entities, concerning the timing, terms and structure of the proposed financing, including analysis of the advantages and disadvantages of each available financing technique and considerations of state law, federal tax law, federal securities law and general public finance law.

(c) Preparation of resolutions to be adopted by the governing board of the Authority and the County approving the issuance of the Bonds and the execution of the lease and related contracts.

(d) Preparation of the proceedings for the authorization, issuance and sale of the Bonds, including resolutions, authorizing the issuance of the Bonds and securing and setting forth the terms and conditions of the Bonds, and their form, date, denominations and maturity, and preparation of the proceedings for the sale of the Bonds (but excluding preparation of the Bond Purchase Contract which is prepared by counsel to the Underwriters).

(e) Attendance at meetings of the Authority, as requested by the Authority or County.

(f) Assistance in the preparation of a timetable setting forth the actions necessary to accomplish the authorization and sale of the Bonds.

(g) Review, as to those matters that are related to the issuance and sale of the Bonds, of the official statement describing the Bonds to be prepared by the County's financing consultant and/or underwriters, and participation in meetings reviewing the official statement, but Bond Counsel will not be responsible for the preparation or content thereof or the rendering of any opinion thereon.

(h) Review, as to those matters that are related to the issuance and sale of the Bonds, any environmental impact reports on the Project to be prepared by the County; but Bond Counsel will not be responsible for the preparation or content of such documents.

(i) Attendance at and participation in meetings with rating agencies and prospective bond bidders, if deemed necessary or desirable by the County.

(j) If the Bonds are to be sold at public sale, attendance at the public sale of the Bonds, if requested, and review and approval as to legality of the bids received for the Bonds.

(k) Assistance in obtaining any governmental approvals necessary as a condition precedent to issuance of the Bonds, but Bond Counsel shall not be responsible for the obtaining of such approvals.

(l) Examination of the proofs of the Bonds, the preparation of final closing papers, the organization and conducting of the closing, and the rendering of a final legal opinion at the time of delivery of and receipt of payment for the Bonds with respect to the validity of such Bonds and the tax status of such Bonds.

(m) Review of any Bond insurance or any other credit enhancement arrangements, such as letters of credit or lines of credit entered into in connection with the financings, if such credit enhancement is desired by the County.

(n) Such other legal services as may be incidental to the foregoing, including services requiring Bond Counsel's environmental, tax, real estate and other lawyers.

2. The services of Bond Counsel provided for herein will not include representation of the County in any legal action challenging the validity of the transactions. In

the event any such services shall become necessary, Bond Counsel will perform such services on such terms as shall be mutually agreeable at the time.

3. Subject to paragraph 5 below, the County agrees to pay and Bond Counsel agrees to receive as full compensation for the rendering of the aforesaid services and for any services heretofore performed by Bond Counsel in connection therewith a fee for legal services based upon the customary full hourly rates in effect at the time of Bond Counsel's personnel working on the transactions, such fees together with the out-of-pocket expenses described in paragraph 4 below to be payable solely upon the delivery of and receipt of payment for the Bonds.

4. In addition to the foregoing, Bond Counsel shall be reimbursed for its out-of-pocket expenses, which include traveling expenses, long distance telephone call charges, word processing and secretarial overtime requested or necessary because of the time demands of the transaction, reproduction of documents, costs incurred on Bond Counsel's word processing equipment used to prepare documents, filing fees, printing charges, and like expenditures. Reimbursement as provided hereunder shall be paid following receipt of proceeds of the Bonds.

5. The parties agree that the maximum amount payable under this contract shall be \$110,000 for fees and Bond Counsel shall receive the lesser of its time or the agreed upon cap upon the issuance of the Bonds and Bond Counsel shall be reimbursed for its actual expenses from Bond proceeds.

6. The County shall pay all costs and expenses incurred by them and incident to the issuance of the Bonds, including the cost of preparing the Bonds for execution and delivery, all printing costs and publication costs and any fees and expenses of the financing consultant and underwriter required to be paid by the County.

7. The County acknowledges that Bond Counsel regularly performs legal services for many private and public entities in connection with a wide variety of matters. Some of these clients may have some direct or indirect relationship with the County, as, for example, issuers, insurers, suppliers, lenders, investment bankers, consultants, pension plan trustees, landlords, donors or bondholders. With varied client representation, there is always the possibility of other transactions between clients and of disputes among them. Bond Counsel has served as bond counsel, special counsel or underwriter's counsel in financings by governmental entities that include states, counties, municipalities, special districts, joint powers authority and other political subdivisions, as well as departments and agencies of the foregoing, including the State of California. In addition, Bond Counsel is currently advising most investment banking firms on a variety of matters. Bond Counsel is now providing services for these clients and expects to continue to do so in the future. To the extent there might appear to be or is any actual or potential conflict arising from such relationships, the County and the Authority waive any such conflict.

8. Bond Counsel shall not assign any of its rights or obligations herein contracted for without the consent of the County first having been obtained.

9. Bond Counsel shall at all times keep a complete and thorough record of the services and time expended by Bond Counsel and Bond Counsel shall also make available to the County for inspection purposes all of such records so maintained. The County will pay upon billing by Bond Counsel based upon time and service previously rendered.

10. Bond Counsel shall keep in full force and effect during the term of this Agreement an errors and omissions insurance policy in the minimum of One Million Dollars (\$1,000,000.00).

11. In performing services under this Agreement, Bond Counsel shall comply with all procedures established by the County Counsel's Office.

12. This Agreement may be terminated at any time by either party upon the giving of written notice to the other party.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove set forth.

COUNTY OF SAN MATEO on behalf of itself and
the SAN MATEO COUNTY JOINT POWERS
FINANCING AUTHORITY

By _____

ORRICK, HERRINGTON & SUTCLIFFE LLP

By _____

Mary A. Collins, Partner

FINANCIAL ADVISOR AGREEMENT

This AGREEMENT, made as of the 25th day of June, 2001, by and between the COUNTY OF SAN MATEO (hereinafter the "County"), and CALIFORNIA FINANCIAL SERVICES, of Santa Rosa, California (hereinafter called "Financial Advisor"):

W I T N E S S E T H

WHEREAS, the County presently contemplates a Lease Revenue Bond financing with the San Mateo County Joint Powers Financing Authority (the "JPA") pursuant to which the JPA may finance the acquisition and installation of a forensic crime laboratory (the "Crime Lab Project"); and

WHEREAS, the County presently contemplates a Lease Revenue Bond financing with the San Mateo County Joint Powers Financing Authority (the "JPA") pursuant to which the JPA may finance the acquisition and installation of a county-wide Mutual Aid Communications System (the "Mutual Aid System Project"); and

WHEREAS, the County presently contemplates a Lease Revenue Bond financing with the San Mateo County Joint Powers Financing Authority (the "JPA") pursuant to which the JPA may finance the acquisition and installation of a Sheriff's Radio and Communications System (Sheriff's Radio Project); and

WHEREAS, it is contemplated that the JPA will issue and sell one or more issues of Lease Revenue Bonds and that one or more issues of Lease Revenue Bonds will be executed and delivered to finance the Project(s); and

WHEREAS, the County has determined that the establishment of a direct payment system and the creation of a budgeting and monitoring system reduces the County's cost of funds and improves management's control over large construction projects; and

WHEREAS, the services required to implement these changes are highly specialized and are not otherwise required by the County except when bond financed projects are being constructed; and

WHEREAS, the County desires to retain a Financial Advisor to perform financial consulting services in connection with the financing of the Crime Lab Project, Mutual Aid System Project and Sheriff's Radio Project; and

WHEREAS, the Financial Advisor is qualified to perform such services as would be required to implement a direct payment system and to create a budgeting and monitoring system for the County's construction projects; and

WHEREAS, the County desires to set forth the terms of Financial Advisor's employment in connection with the preparation of proceedings for the issuance of the Lease Revenue Bonds to finance the Project and for consultation and related financial consulting services in connection therewith.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the County and the Financial Advisor do hereby agree as follows:

1. The County employs the Financial Advisor to provide the following financial consulting services relative to the Lease Revenue Bonds:

(a) Review of proposals, as received, including a summary evaluation of each question isolating objective criteria

and subjective criteria and culminating in a recommendation of firms to be interviewed in the oral presentation phase (as necessary) of the selection process.

(b) Schedule and conduct oral/telephonic interviews (as necessary) including formulation of standard and specialized questions for all of the firms to be interviewed as well as developing a system for evaluating the performance of firms so interviewed. This phase of the process will conclude with a recommendation as to which firm(s) should be selected to serve as the County's underwriter(s).

(c) Assist the Underwriter in developing a project schedule, of which the financing schedule will be a component, and assign responsibilities for each discrete task that needs to be accomplished to complete the project on a timely basis.

(d) Initially coordinate the various parties involved in the financing, including organizing and leading a kick-off meeting to commence the financing phase of the project.

(e) Assist the County in selecting a Trustee and an official statement printer through a competitive bid process, if required, limited to firms that provide reliable service and cost estimates.

(f) Solicit credit enhancement from bond insurers to the extent that the resulting "all-in" costs of funds (including fees and expenses of the insurer) is less than would be available to the County through selling Lease Revenue Bonds under its own rating.

(g) Represent the County at all document sessions and bond structuring discussions to ensure that the business terms of the legal documents and repayment requirements of the financing structure optimize the County's flexibility and minimize the

interest rate and cash flow impact of the resulting financing.

(h) Advise the County as to the pricing and marketing of Lease Revenue Bonds as recommended by the underwriting team. Evaluate the market timing of the actual sale of securities and oversee the performance of each underwriting firm as well as ensure fair distribution of Lease Revenue Bonds between firms.

(i) Evaluate and contribute to a post-sale closing analysis to be distributed by the underwriter and delivered to the County prior to the closing of the financing.

(j) Attend all relevant meetings of the Board of Supervisors or such other meetings as the County may designate during the term of the financing schedule.

2. The Financial Advisor shall provide the following additional financial consulting services relative to the Project:

(a) For the Project, subject to the County's approval, design a Direct Payment System (the "System") that establishes administrative procedures that enable the County to fund Project costs directly from trust accounts established under the 2001 County of San Mateo Supplemental Indenture of Trust (the "Lease Revenue Bond Trust"), including:

(i) Procedures that enable the County to process vendor payments on the same day they are received, as necessary;

(ii) Procedures to expedite payment of vendors when special discounts are offered for early payment;

(iii) Procedures to expedite payment of vendors when special discounts are offered for early payment;

(iv) Procedures to enable the County to withdraw funds from the lowest cost funds available;

(v) Procedures to enable the County to transfer funds

between accounts, as required or desirable;

(vi) Procedures that comply with the provisions of the Bond Trusts;

(vii) Procedures approved by the Trustee and any successor Trustee;

(viii) Procedures approved by the Controller of the County;

(ix) Procedures reviewed by the independent auditor for the County;

(x) Safeguards to protect against unauthorized access to County accounts;

(xi) Safeguards to protect against duplication of payments;

(xii) Safeguards to protect against inadvertent technical defaults arising from failure to comply with annual disclosure matters; and

(xiii) Safeguards to protect against payment defaults resulting from failure to transfer County funds 15 days in advance of investor payment.

(b) Implement and staff a Direct Pay System, subject to the County's approval of the design, including:

(i) Prepare paperwork for fund disbursement as directed by the Project Manager for each respective project;

(ii) Fax and/or Mail completed paperwork to the County Manager's Office for approval;

(iii) Mail copies of the Disbursement request and original vendor invoice(s) to the Trustee and the County for its records;

(iv) Prepare paperwork for account transfers and reinvestment of funds;

(v) Request an annual insurance certificate from the

County's various insurers and actuaries as required by the Bond Trusts;

(vi) Mail annual budgets and Financial Statements to the Trustee, the Insurer and the Rating Agencies, as required;

(vii) Assist in preparing financial data for the arbitrage rebate calculation required under federal law and under the Bond Trusts; and

(viii) Prepare a monthly Project Status Report and a Year-end Project Status Report for County Staff and the independent auditors.

(c) Create a Project Status Report (the "Report") which shall be the property of the County and which shall set forth Project budgets, account balances, fund transfers, account credits, disbursements amounts and descriptions of activity by account, including:

(i) Establish budget categories for the Projects for the construction funds and cost of issuance accounts as well as capitalized interest and debt services reserve fund accounts;

(ii) Establish initial budgeted amounts for each of the budget categories identified above;

(iii) Report disbursement of construction and cost of issuance account funds, by vendor, for each Project;

(iv) Direct the Trustee to transfer capitalized interest and reserve fund earnings to the intended accounts as set forth in the Bond Trusts;

(v) Report reinvestment of construction and debt service reserve funds and transfer various interest earnings into the relevant fund account, when appropriate;

(vi) Track vendor disbursements against the contracted

amount for each vendor in each project;

(vii) Prepare a fiscal year end report to be delivered to the County's independent auditor by August 15th of each year as well as assisting the auditors in matters related to the Projects' financing; and

(viii) Prepare annual calculation for each participating city of amounts due and payable for debt service on this financing.

3. The County agrees to pay and Financial Advisor agrees to receive as full compensation for the rendering of the aforesaid services relative to the Lease Revenue Bonds issued to fund the Project and for any services heretofore performed by Financial Advisor in connection therewith the fee of Sixty Five Thousand Dollars (\$65,000.00) for each project if financed separately or Sixty Five Thousand Dollars for the first Project plus Ten Thousand Dollars (\$10,000) for each additional project if financed simultaneously under a single set of legal documents and a single official statement, payable upon the delivery of and receipt of payment for the Lease Revenue Bonds.

4. The County agrees to pay and the Financial Advisor agrees to receive as full compensation for the rendering of the aforesaid services with reference to the work related to the Projects the fee of Ten Thousand Dollars (\$10,000) per Project per year during the construction and acquisition period for the Project. Following completion of the construction period, the annual fee for administrative services for the completed projects shall be reduced to Seven Thousand Five Hundred Dollars (\$7,500) for each financing completed. Fees are payable in equal semi-annual payments on January 1 and July 1 of each year, prorated for the initial period from the date of the financial closing to January 1, 2002.

5. In addition to the foregoing and upon presentation of an itemized statement therefor, Financial Advisor shall be reimbursed for out-of-pocket expenses, which include travel expenses other than travel by car, charges for other consultants specifically requested by the County, filing fees, printing charges, and like expenditures. Reimbursement as provided hereunder shall be paid following receipt of proceeds of the Lease Revenue Bonds; provided, however, should the contemplated proceedings be abandoned or discontinued for any reason and the Lease Revenue Bonds are not issued or sold, Financial Advisor shall be reimbursed by the County for such out-of-pocket expenses upon submission of an itemized statement therefor.

6. The County and the JPA shall pay all costs and expenses incurred by them and incident to the issuance of the Lease Revenue Bonds, included the costs of preparing the Lease Revenue Bonds for execution and delivery, all printing costs and publication costs and any fees and expenses of the financing consultant and underwriter required to be paid by the County or the JPA.

7. The parties hereto agree that the County may assign to the JPA all or any portion of its obligations hereunder except to the extent County has herein agreed to be obligated with respect to fees and out-of-pocket expenses in the event the contemplated proceedings are abandoned or discontinued for any reason and the Lease Revenue Bonds are not issued and sold. Financial Advisor agrees in the event of such an assignment to render its financial consulting services to the JPA as well as the County as herein provided.

8. The Financial Advisor shall not commence work under this agreement until all insurance requirements under this section have

been obtained and such insurance has been approved by the Director of the County. The Financial Advisor shall furnish the County with Certificate of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Financial Advisor's coverage to include the contractual liability assumed by the Financial Advisor pursuant to this agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of policy.

(a) Worker's Compensation and Employers Liability Insurance:

The contractor shall have in effect, during the entire life of this agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this agreement, the contractor makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of this work of the agreement.

(b) Liability Insurance: The contractor shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this agreement,

whether such operations be by himself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below:

Such insurance shall include:

(i) Comprehensive General Liability: \$1,000,000.00

(ii) Motor Vehicle Liability Insurance: \$500,000.00

After three (3) years from the date of this agreement is first executed the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days notice to contractor. County and its officers, agents, employees and servant shall be named as additionally insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the County at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

WITNESS THE EXECUTION HEREOF the day and year first
hereinabove set forth.

COUNTY OF SAN MATEO

BY _____

CALIFORNIA FINANCIAL SERVICES

BY _____

Mr. R. Mark Epstein