

BOND COUNSEL SERVICES AGREEMENT

Re: San Mateo County Joint Powers Financing Authority Lease Revenue Bonds (Capital Projects) 2009 Refunding Series A

This AGREEMENT, dated as of the 1st day of October, 2009, by and between the County of San Mateo, California (hereinafter called the "County"), San Mateo County Joint Powers Financing Authority (hereinafter called the "Authority"), and Orrick, Herrington & Sutcliffe LLP, of San Francisco, California (hereinafter called "Bond Counsel"):

WITNESSETH

WHEREAS, the County presently contemplates the refinancing of various capital projects and other capital improvements for the County (the "Project") through the issuance in conjunction with the San Mateo County Joint Powers Financing Authority (the "Authority") of Lease Revenue Bonds (Capital Projects) 2009 Refunding Series A in the aggregate principal amount of not to exceed \$155,000,000 (the "Bonds"); and

WHEREAS, it is contemplated that the Authority will issue and sell the Bonds for the benefit of the County; and

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

WHEREAS, the parties desire to set forth the terms of Bond Counsel's employment in connection with the preparation of proceedings for the issuance of the Bonds 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, the Authority and Bond Counsel do hereby agree as follows:

1. The County and the Authority jointly employ 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 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, 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 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 form 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 and the Authority agree 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 and are estimated at \$3,000.

5. The parties agree that the maximum amount payable under this contract shall be \$200,000 for fees and Bond Counsel shall receive the least of its time, a specific amount agreed upon at pricing of the Bonds or the agreed upon cap upon the issuance of the Bonds and Bond Counsel shall be reimbursed for its actual expenses from Bond proceeds. The cap is based on the assumption that the issue is a fixed rate issue of a principal amount not to exceed \$155,000,000, scheduled to close prior to January 1, 2010. The cap will be adjusted to reflect departures from these assumptions that occasion more legal services than presently contemplated.

6. The County and the Authority 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 and the Authority hereby agree to the joint representation by Bond Counsel and each hereby 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 or the Authority, 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. Specifically, Orrick is acting as bond counsel to CSCDA in its issuance of Proposition 1-A related bonds in which the County is a participating local agency. 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 and Authority 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. Bond Counsel agrees to comply with the following policies: (A) *Non-discrimination*. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement. Bond Counsel shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Bond Counsel's equal employment policies shall be made available to County of San Mateo upon request.

With respect to the provision of employee benefits, Bond Counsel shall comply with the County Ordinance which prohibits Bond Counsel from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

(B) *Violation of Non-discrimination provisions*. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Bond Counsel to penalties, to be determined by the County Manager, including but not limited to

- (i) termination of this Agreement;
- (ii) disqualification of the Bond Counsel from bidding on or being awarded a County contract for a period of up to 3 years;
- (iii) liquidated damages of \$2,500 per violation;

(iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to:

(i) examine Bond Counsel's employment records with respect to compliance with this paragraph;

(ii) set off all or any portion of the amount described in this paragraph against amounts due to Bond Counsel under the Contract or any other Bond Counsel between Bond Counsel and County.

Bond Counsel shall report to the County Manager the filing by any person or employee regarding the San Francisco offices of Bond Counsel, in any court of any complaint of discrimination or the filing by any such person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Bond Counsel that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Bond Counsel shall provide County with a copy of their response to the Complaint when filed.

(C) *Employee Jury Service.* Bond Counsel shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Bond Counsel, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Bond Counsel or that the Bond Counsel deduct from the employees' regular pay the fees received for jury service.

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

13. This Agreement may be terminated at any time by any party upon the giving of written notice to the other parties hereto.

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

COUNTY OF SAN MATEO

By _____

SAN MATEO COUNTY JOINT POWERS
FINANCING AUTHORITY

By _____

ATTEST:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
Clerk of Said Board

By: _____
Mary A. Collins, Partner