

**AGREEMENT NO. 13-001BC
FOR GENERAL PUBLIC FINANCE LEGAL SERVICES**

This Agreement for public finance legal services (this “Agreement”) is made and entered into this ____ day of _____ 2013 by and between the County of Orange, California, a political subdivision organized and existing pursuant to the Constitution and laws of the State of California (the “County”) and Orrick, Herrington & Sutcliffe LLP (“Orrick”).

RECITALS

WHEREAS, from time-to-time the County requires public finance legal services with respect to ongoing financing issues not covered by any specific contract; and

WHEREAS, Orrick is ready, willing and able to provide public finance legal services to the County;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

Section 1. ***Engagement of Orrick.*** The County engages the services of Orrick as an independent contractor to provide public finance legal services in financial matters related to the County, as more fully described below. Orrick is willing and able to perform such services for and on behalf of the County. It is understood that Roger Davis, Donald Field, Phil Morgan and Chas Cardall shall be the attorneys of Orrick principally responsible for performing the services described herein. Through the aforementioned persons and such other Orrick attorneys and staff as are needed to carry out the responsibilities of Orrick under this Agreement, Orrick shall provide the following professional services if and as requested by the Contract Administrator:

A. Responding to questions from the County, interpreting outstanding documents and agreements, federal tax law, regulations and agreements pertaining to County disclosure obligations, reviewing proposals generated by or submitted to the County, and providing other general or specific advice to the County, in each case as related to outstanding or proposed debt obligations of the County or a related entity.

B. Representing the County or related entity in connection with any agreement securing or otherwise related to debt obligations, validation action, reverse validation action, swap, investment agreement, IRS audit, SEC inquiry, financial restructuring, workout, participant bankruptcy or similar matter.

C. Customary bond counsel and/or disclosure counsel and/or tax counsel services in connection with particular financings of the County or a related entity, which may include (i) consultation with representatives of the County, County Counsel, the County’s financial advisor and underwriters, and others, regarding the proposed financing; (ii) preparation of certain of the documents to be approved, adopted or executed by the County (which in the case of disclosure counsel services may include the official statement or other disclosure document);

(iii) validation action if necessary; (iv) attendance at PFAC or Board of Supervisors or working group meetings; (v) coordination of the closing; (vi) rendering customary legal opinions; and (vii) preparation of closing transcripts, all as deemed by Orrick to be appropriate to the matter. It is mutually understood that all potential financings will be subject to future approvals by PFAC and the Board of Supervisors.

D. Any additional services related to matters not otherwise covered by the Agreement and specifically requested in writing by the Contract Administrator.

Orrick and County agree that the County has County Counsel to render general day-to-day and ongoing legal services. Orrick shall circulate documents to, and coordinate its service with, County Counsel to the extent requested by the County or County Counsel.

Section 2. ***Term.*** This Agreement shall be effective as of the date first written above and shall continue in full force and effect until _____ 2016. By mutual written agreement between the Contract Administrator and Orrick, this Agreement may be extended for two (2) years; provided, however, that none of the terms and conditions of this Agreement shall be amended or modified in any way. Notwithstanding the foregoing, either party may terminate this Agreement at any time either in whole or in part upon 30 days' written notice to the other party regarding such termination.

Section 3. ***Compensation of Orrick.***

A. Orrick will be paid based on the hourly rates set forth in the attached Hourly Fee Schedule plus expenses (other than general interpretive services related to any documents drafted by Orrick pursuant to separate contract or pursuant to this Agreement, a reasonable amount of which interpretive services shall be provided to the County at no additional charge). In addition Orrick will be paid its costs and expenses incurred in connection with the services provided. Fees and expenses for the services described in Section 1 (except Subsection C) shall not exceed \$75,000 in any contract year.

B. Fees and expenses for the services described in Section 1 (except Subsection C) shall be paid periodically as submitted by Orrick, but no more frequently than monthly or less frequently than annually; and for Subsection C services shall be payable upon completion of such services with respect to each financing or upon earlier termination of intention to proceed with the financing.

C. For tax and revenue anticipation notes, instead of an hourly rate based fee, Orrick's fee will be \$62,500 for both bond counsel and disclosure counsel services, plus a fixed amount of \$2,500 for expenses assuming in each case a single issue of fixed rate notes. The fee would be increased by \$15,000 if issued as variable rate instead of fixed rate notes. At any time, the County may request Orrick to convert its hourly rate based fee with respect to any financing or other matter covered by this Agreement to a fixed fee acceptable to the County. If no fixed fee can be agreed to, the fee will remain based on hourly rates.

D. All fees and expenses are non-contingent and, in the event of termination of this Agreement or any of the services described in Section 1 prior to completion for payment as above, fees for services performed to that point will be based on Orrick's normal hourly rates (plus expenses).

Section 4. **Invoicing and Payment.** Orrick shall submit to the Contract Administrator invoices in acceptable detail and format for services rendered, including any supporting documentation as may be requested by the Contract Administrator or County Auditor-Controller. Invoices must reference this Agreement and must clearly specify the services performed. Each invoice shall be reviewed by County staff prior to payment to ensure that the billing is consistent with the compensation provisions of this Agreement. County will pay Orrick within the normal processing schedule of the County Auditor-Controller's Accounts Payable Section or sooner.

Section 5. **Contract Administration.** For the purpose of this Agreement, the County Public Finance Manager or her designee shall act as the Contract Administrator. The Contract Administrator will provide overall coordination and guidance of the services to be performed herein and will address policy issues as necessary and appropriate.

Section 6. **Standards of Work.** Orrick agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to highest professional standards as exist in Orrick's profession, industry or field of practice.

Section 7. **Errors and Omissions.** All work submitted by Orrick shall be completed and shall be carefully checked prior to submission. Orrick understands that the County's examination of Orrick's work product is discretionary and Orrick shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions, Orrick's work may be returned to Orrick for correction, which work shall be corrected without additional cost to the County. Should the County or others discover errors or omissions in the work submitted by Orrick after the County's acceptance thereof, the County's approval of Orrick's work shall not be a defense by Orrick.

Section 8. **Conflict of Interest.** Orrick shall not utilize in the performance of this Agreement any formerly employed person of any of the County agencies or departments if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to this Agreement unless otherwise approved in writing by the Contract Administrator. This prohibition shall apply for a two-year period beginning on the date the person terminated County service.

Orrick shall not utilize in the performance of this Agreement any County employee unless such employment is required as a condition of the employee's regular employment with the County. An employee of the County is defined to be any person holding a permanent or temporary position with the County. Orrick shall not employ or negotiate to employ any County employee(s) who have been or are involved in administration or performance of this Agreement, unless otherwise approved in writing by the Contract Administrator.

It is the policy of the Orange County Board of Supervisors, on behalf of the County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to the County while simultaneously being employed by the County, unless the board is advised of, and gives specific consent to, such adverse employment.

Any law firm, responding to a request for proposal or contract offer, shall disclose all present and contemplated employment which is or may be adverse to the County.

Any law firm, which has been retained by the County which desires employment which is or may be adverse to the County, shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why the County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action.

If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment or shall not represent the County. The authority to give consent of the County is not delegated to any officer or employee of the County.

The County recognizes that this policy may exceed the Rules of Professional Conduct 4-101 and 5-102 of the State Bar of California. Where applicable, law firms employed by the County shall comply with such Rules in securing necessary consent from their other clients.

Specifically, and in addition, a law firm employed as bond counsel cannot represent, in the bond issue or any other matter, any other participant in the bond issue without specific consent of the Board.

County acknowledges that Orrick regularly performs legal services for many private and public entities in connection with a wide variety of matters. For example, Orrick has represented, is representing, or may in the future represent other public entities, underwriters, trustees, rating agencies, insurers, credit enhancement and liquidity providers, lenders, investors, financial and other consultants/advisors, accountants, investment or swap providers/brokers, and others who may have a role or interest in the matter(s) described in Section 1 of this Agreement, or that may be involved with or adverse to County, or a related entity in these or some other matters. Given the role of Orrick described in Section 1, the County acknowledges that no conflict of interest exists and waives any conflict of interest that might appear actually or potentially to exist, by virtue of this Agreement or any such other attorney-client relationship that Orrick may have had, have or enter into, and County specifically consents to any and all such relationships.

Section 9. **Compliance with Gift and Political Contribution Ban.** By executing this Agreement, Orrick covenants to the County that it has complied, and will comply during the term of this Agreement, in all respects with the “Ban on Political Contributions and Gifts” provisions of Article V of the County of Orange, Board of Supervisors, Policies and Procedures for Consideration and Approval of Proposed Public Financings.

Section 10. **Confidentiality of Work.** All work performed by Orrick, including but not limited to all drafts, data, correspondence, proposals, reports and estimates compiled or composed by Orrick pursuant to this Agreement, but expressly excluding all documents, data, reports or correspondence typically circulated among the working group with respect to any financing, or any matter required to be disclosed pursuant to judicial process or California or federal law (including, but not limited to federal securities laws), is for the sole use of the County and shall be confidential and not released to any third party without prior written consent of the Contract Administrator.

Section 11. **Independence of Orrick.** Orrick and the agents and employees of Orrick, in performance of this Agreement, shall act in an independent capacity and not as employees, officers or agents of the County.

Section 12. **Subcontracts.** Orrick is responsible for all requirements under this Agreement even though the requirements are carried out pursuant to subcontract. All Agreement requirements apply to subcontractors. All proposed subcontracts must be filed with, and approved by the Contract Administrator prior to execution of any agreement with the subcontractor.

Orrick shall submit a listing which identifies the name of the subcontractor, the method by which the subcontractor was selected, and the total funding to be paid to the subcontractor. If other than the lowest bidder or a sole-source provider is selected, all documents used in subcontractor selection must be presented in writing to the Contract Administrator for prior approval before awarding any contract. The Contract Administrator reserves the right to disapprove any subcontractor.

Section 13. **News Releases.** Orrick agrees to submit to the Contract Administrator, prior to release, copies of news releases related to this Agreement. County reserves the right to modify or deny the release of such news releases.

Section 14. **Examination of Accounts, Audit and Records.** Orrick's records relating to services provided under this Agreement shall be subject at all reasonable times to inspection, audit and reproduction by the County or any of its duly authorized representatives. Orrick shall preserve and make available records (I) for a period of three years from the date of final payment under this Agreement and (II) for such longer period, if any, as is required by subsections A and B below:

- A. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any termination.
- B. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

Section 15. **Ownership of Records.** All work-product, records, and materials relating to this Agreement shall be the sole and exclusive property of County, as the work is completed or otherwise upon termination of this Agreement. Orrick shall deliver to the Contract Administrator all copies of any and all materials pertaining to this Agreement.

Section 16. **Name Change.** Orrick shall provide written notice to the Contract Administrator at least thirty (30) days prior to any changes to Orrick's current legal name, if practicable, but in any event, not later than the date of any such change. The Contract Administrator shall be provided with all pertinent information relating thereto which is requested.

Section 17. **Changes in Staff.** The Contract Administrator has the reasonable right to approve or disapprove any proposed changes in Orrick's staff from the individuals named in this Agreement. The Contract Administrator shall be provided with a resume of any proposed substitute and shall be given the opportunity to interview that person prior to his or her decision to approve or disapprove.

Section 18. **Child Support Compliance.** Unless provided contemporaneously with its execution of this Agreement, Orrick agrees to furnish to the Contract Administrator within thirty (30) days of this Agreement's effective date:

- A. The name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in Orrick;
- B. A certification that Orrick has fully complied with all applicable federal and state reporting requirements regarding its employees;
- C. A certification that Orrick has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

The failure of Orrick to timely submit the data or certifications required by Subsections A, B or C, or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement, and failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

The Contract Administrator, with the concurrence of the County Purchasing Agent, may waive the requirements of this provision, or any part thereof.

The Contract Administrator shall forthwith transmit data received from Orrick under the provisions of this Section to the Orange County District Attorney, and shall not use or disclose the data for any other purpose.

Section 19. **Insurance**. Prior to the provision of services under this Agreement, Orrick agrees to purchase all required insurance at Orrick’s expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of Orrick pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Orrick.

All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Orrick shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If Orrick fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Orrick shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for	\$1,000,000 combined single limit per

owned, non-owned and hired vehicles	occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Agreement with respect to work done by Orrick under the terms of this Agreement (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Orrick's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

Should any of the above be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Orrick's Professional Liability policy is a "claims made" policy, Orrick shall agree to maintain professional liability coverage for two years following completion of this Agreement.

The Commercial General Liability policy shall contain a severability of interests clause.

Orrick is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-

insured in accordance with provisions of that code. Orrick will comply with such provisions and shall furnish the County satisfactory evidence that Orrick has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the County Executive Office Public Finance Manager.

County expressly retains the right to require Orrick to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Orrick in writing of changes in the insurance requirements. If Orrick does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Orrick, and County shall be entitled to all legal remedies.

Section 20. ***Employee Eligibility Verification.*** Orrick warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and, to the best of its knowledge, that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Orrick shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Orrick shall retain all such documentation for all covered employees for the period prescribed by the law.

Section 21. ***Notices.*** Any and all notices between the County and Orrick provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly given when personally delivered to one of the parties or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party at the following address:

If to the County:

County of Orange
10 Civic Center Plaza, 3rd Floor
Santa Ana, CA 92701-4062
Attention: Public Finance Manager

If to Orrick:

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Attention: Roger L. Davis
Telephone: (415) 773-5758
Facsimile: (415) 773-5759

Section 22. **Governing Law, Venue and Entire Agreement.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, withstanding Code of Civil Procedure Section 394.

The parties specifically agree that by entering into and performing under this Agreement, Orrick shall be deemed to be doing business within Orange County within the meaning of Code of Civil Procedure Section 394 from this Agreement's effective date through the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this Agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

Section 23. **Amendment or Modifications.** No amendment, modification or other alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

Section 24. **Severability.** In the event that any provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and such invalidity shall in no way affect, impair, or invalidate any other provision contained herein if there is no substantive effect to the services to be rendered to the County by such judicial finding of invalidity.

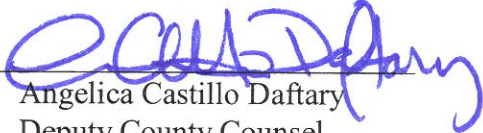
Section 25. **Counterparts.** This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first written above.

County of Orange, California

By: _____
Suzanne Luster
Public Finance Manager

Approved as to Form
Nicholas S. Chrisos, County Counsel

By: 
Angelica Castillo Daftary
Deputy County Counsel

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By: _____
Roger L. Davis Esq.

Hourly Fee Schedule

Fees for the services described in Section 1 (except Subsection C) of the Agreement to which this schedule is attached will be as follows:

A. So long as Orrick is providing Subsection C or other transaction bond counsel services to the County, Orrick generally will not charge for responding to questions, interpreting outstanding bond related documents and agreements (whether or not prepared by Orrick), federal tax laws, continuing disclosure obligations, or reviewing proposals generated by or submitted to the County, at least so long as no opinions or research memorandums are required.

B. For other matters involving substantial time and effort, opinions or research, Orrick will try to establish a reasonable fixed fee acceptable to the County or, if a fixed fee is not practical, to base the fee on hourly rates then in effect. For 2013, Orrick's full hourly rates are \$715-950 for partners, \$630-775 for of counsel, \$185-675 for associates and \$195-295 for project managers and paralegals. Those rates will normally be subject to a discount, blended rate, cap or other adjustment acceptable to the County, the amount of which will depend on the nature of the work and attorneys involved.