



County Executive Office

Memorandum

STIB

October 11, 2006

To: Bill Campbell, Chairman

From: 
Thomas G. Mauk, County Executive Officer

Subject: Exception to the Rule 21

06 OCT 13 AM 8:37
 RECEIVED
 COUNTY EXECUTIVE OFFICE
 11/1/06

The County Executive Office is requesting a supplemental for the October 17, 2006 Board Hearing Meeting.

Agency: County Executive Office

Subject: Approval of a Financing in Concept, Bond Counsel and Financial Advisor, and Service Agreements for a Proposed Pension Obligation Financing

District: All

Reason for supplemental: Legal Court Validation Filing required by November 1, 2006. Staff will return to the Board prior to 11-1-06 for final approval of the documents and validation filing.

Concur: 
 Bill Campbell, Chairman
 Orange County Board of Supervisors

cc: Rob Richardson
 Assistant to the County Executive Officer



06 OCT 13 AM 8:37

**SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT**

STIB

ASR Control

MEETING DATE: October 17, 2006
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All
SUBMITTING AGENCY/DEPARTMENT: County Executive Office, Public Finance
DEPARTMENT CONTACT PERSON(S): Thomas L. Beckett, 834-5969
 Faye Watanabe, 834-3047

SUBJECT: Approval of a Financing in Concept, Bond Counsel and Financial Advisor, and Service Agreements for a Proposed Pension Obligation Financing

<p>CEO CONCUR <i>[Signature]</i></p>	<p>COUNTY COUNSEL REVIEW <i>Approved Agreements as to Form</i> <i>[Signature]</i>, Deputy</p>	<p>CLERK OF THE BOARD Discussion</p>
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Budgeted: Yes **Current Year Cost:** \$260,000 est. maximum total for two contracts for a FY 2007-08 financing **Annual Cost:** N/A

Staffing Impact: N/A **# of Positions:** N/A **Sole Source:** No

Current Fiscal Year Revenue:
Funding Source: General Fund

Prior Board Action: Resolution No. 06-008 dated January 24, 2006 - Approval of Issuance of 2006 Taxable Pension Obligation Bonds

RECOMMENDED ACTION(S)

1. Approve a financing in concept for the early payment of the County's employer pension obligation for FY 2007-08.
2. Approve Orrick, Herrington & Sutcliffe LLP as Bond Counsel and service Agreement No. 06-005BC, and Kelling, Northcross & Nobriga as Financial Advisor and service Agreement No. 06-006FA for a proposed pension obligation financing for FY 2007-08, including authorization for the Public Finance Manager to execute these Agreements.
3. Authorize preparation of the documents required for validation of a proposed pension obligation financing for FY 2007-08 pursuant to Section 860 et seq. of the Code of Civil Procedure with staff to return with a request for approval of these documents as soon as possible.

SUMMARY:

The County Executive Office requests the Board of Supervisors approve the financing in concept, Bond Counsel and Financial Advisor, and Agreement Nos. 06-005BC and 06-006FA for a proposed pension obligation financing for FY 2007-08.

BACKGROUND INFORMATION:

Background:

On January 31, 2006, the County issued the Series 2006 Taxable Pension Obligation Bonds (2006 POBs) in the amount of \$105,990,520. The County Treasurer purchased the 2006 POBs as an investment for the County Pool pursuant to the Treasurer's Investment Policy Statement.

Proceeds of the 2006 POBs were used for the early payment of a portion of the County's FY 2006-07 employer pension contribution to the Orange County Employees Retirement System (OCERS). The purpose of this financing was for the County to make an early payment of a portion of the required employer retirement contribution to receive a discount equal to the annual assumed actuarial rate of the OCERS investment return for a savings of approximately \$4 million. Previously on December 19, 2005, the OCERS Board approved this discount provided that the County pay at least 50% of the total FY 2006-07 employer contribution in advance. The discount rate at the time of the financing was 7.5% and since that time, OCERS revised its assumed investment rate of return to 7.75%.

The 2006 POBs are variable rate bonds with a monthly reset which is priced at a spread of approximately 15 basis points (0.15%) above the London Interbank Offered Rate (LIBOR). The 2006 POBs will mature on June 29, 2007.

The legal basis for the 2006 POBs is the court validation process previously completed for the 1994 Taxable Pension Obligation Bonds pursuant to Section 860 et seq. of the Code of Civil Procedure and the resulting Trust Indenture created for that financing. This validation provided the authorization for early payment of the County's unfunded accrued actuarial liability (UAAL). The total UAAL is defined as the amount required without further payments by the County to pay benefits already earned by current and former employees who are covered by OCERS. The Segal Company which is the OCERS actuary determined this total UAAL amount for the County and all other Plan Sponsors to be approximately \$2.3 billion as of December 31, 2005. The annual amortization amount of the County's portion of the UAAL for FY 2007-08 is approximately \$114.5 million.

General Plan of Finance for FY 2007-08:

A new court validation filing pursuant to Section 860 et seq. of the Code of Civil Procedure is planned for a proposed pension obligation financing for FY 2007-08. This will serve the purpose of validating not only the financing of a portion of the total UAAL as was achieved by the 2006 POBs, but also the financing of the employer normal annual contribution. The employer normal annual contribution is defined as the present value of the benefits being earned by the current employees under the pension plan (the amount being earned by employees with each paycheck necessary to pay future retirement benefits). This amount is approximately \$115 million for FY 2007-08. If this amount is added to the aforementioned UAAL amount of approximately \$114.5 million, the total amount of the County employer retirement contribution which could be financed for FY 2007-08 is approximately \$229.5 million.

Prior to filing the validation with the court, staff will return to the Public Financing Advisory Committee (PFAC) and your Board to request the authorization required for the bonds, financing documents and validation action. The validation process will take approximately 90 days, including a statutory appeal

period. It is intended that this new validation could serve as the legal basis for annual financings of the County's pension obligations which will also be contingent on individual approvals by PFAC and your Board as any additional financing may be proposed in the future.

Bond Counsel and Financial Advisor Selections:

In addition to approval of a financing in concept for the early payment of the County employer pension obligation for FY 2007-08, the Board is also requested to approve Orrick, Herrington & Sutcliffe LLP (Orrick) as Bond Counsel and Kelling, Northcross & Nobriga (Kelling) as the Financial Advisor for this proposed financing. Both Orrick and Kelling are knowledgeable of general fund obligations and served in these respective capacities for the timely issuance of the 2006 POBs. If successful, the new validation process should be completed in mid-January 2007. Thereafter, it is anticipated that a FY 2007-08 pension financing will also need to be timely completed prior to January 31, 2007.

Included in this agenda item is the request for approval of Agreement No. 06-005BC with Orrick for bond counsel services for pension obligation bonds with a term expiring December 31, 2009. Bond counsel services include the validation action; bond related services, including documents if bonds are purchased by the Treasurer; additional services, including documents for publicly sold or privately placed bonds; and expenses. The estimated maximum contract amount for a FY 2007-08 financing is \$190,000 (which includes expenses of \$5,000 and the validation action which should be a one-time service fee of \$45,000).

Also included in this agenda item is the request for approval of Agreement No. 06-006FA with Kelling for financial advisory services for a pension obligation financing with a term expiring December 31, 2007. Services include general assistance with documents, meetings and a market analysis, and additional services for publicly sold or privately placed bonds. The estimated maximum contract amount for a financing is \$65,000 plus the actual cost of expenses at an estimated maximum amount of \$5,000 (\$70,000 total).

Status:

On September 20, 2006, PFAC approved the financing in concept, Orrick as Bond Counsel and Kelling as the Financial Advisor by a 4 to 0 vote. It is anticipated that on October 23, 2006, the OCERS Board will consider approving a discount to the County for the early payment of the FY 2007-08 County employer pension contribution.

Contingent on the OCERS Board approval of the aforementioned discount, the approval of this item by your Board will allow the finance team to develop the terms of a proposed pension obligation financing and the documents required for the validation filing with the court. Considerations for developing the structure and terms of the proposed financing will include, but not be limited to, the debt term; variable or fixed rate of interest; credit enhancement; method of sale; amount of the pension UAAL and employer normal annual contribution to be financed; maximizing savings to the County and other factors. Based on the time required for the validation process and the limited time thereafter for completing the financing by the end of January 2007, similar to the 2006 POBs, the Treasurer may be requested to consider purchasing the bonds. CEO staff plan to return to PFAC and the Board with the documents to be filed for the validation action by the end of October 2006.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

EXHIBIT(S):

Agreement No. 06-005BC and Agreement No. 06-006FA

ATTACHMENT(S):

**AGREEMENT NO. 06-005BC
FOR BOND COUNSEL SERVICES**

This Agreement for bond counsel services (this "Agreement") is made and entered into as of this _____ day of _____, 2006 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" or "Issuer"), and the law firm of Orrick, Herrington & Sutcliffe LLP ("Orrick").

RECITALS

WHEREAS, the County desires to issue Pension Obligation Bonds (the "Bonds") pursuant to the Local Agency Refunding Law (Government Code Section 53550 et seq.) (the "Law") to refund a debenture (the "Debenture") reflecting a portion of the unfunded accrued actuarial pension liability and the normal annual contribution of the County to OCERS; and

WHEREAS, Orrick is ready, willing and able to provide services to the County as Bond Counsel with respect to the Bonds.

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 bond counsel services in connection with the Bonds, 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, Esquire, Philip C. Morgan, Esquire and John Wang, Esquire shall be the attorneys of Orrick principally responsible for performing the services described herein. Through the aforementioned persons and such other Orrick staff as are needed to carry out the responsibilities of Orrick under this Agreement, Orrick shall provide the following professional services:

A. ***Validation Action Services***

(1) Preparation and filing of the complaint and memorandum of points and authorities for an action under Code of Civil Procedure §860 et seq. to validate the Bonds (the "Validation Action") and representation of the County in the Validation Action through (and assuming) a default judgment based and no party entering the action and challenging such validity (and assuming no appeal).

(2) Preparation of bond documents required to be adopted or entered into by the County in connection with the Validation Action, including a Master Trust Indenture, Supplemental Indenture, Bond Forms, Debentures and the Resolution of the Board of Supervisors authorizing execution of the Bonds and related documents.

B. ***Bond Related Services***

(1) Consultation with representatives of the County, including County Counsel, OCERS, Kelling, Northcross & Nobriga, the financial advisor, and others, with respect to the timing, terms and legal structure of the proposed Bonds.

(2) Preparation of documents to be adopted or entered into by the County required for the authorization, sale and issuance of the Bonds, to the extent not included or completed under Section 1A (2) above, including a Bond Purchase Agreement if the Bonds are sold to the County Treasurer.

(3) Attendance at such meetings or hearings of the Public Financing Advisory Committee, Board of Supervisors, and working group meetings or conference calls as County may request.

(4) Preparation of resolution of the Board of Supervisors authorizing execution of any documents or actions in connection with the Bonds not fully authorized under Section 1A (2) above.

(5) Preparation of final closing papers to be executed by County required to effect delivery of the Bonds and coordination of the closing.

(6) Rendering of Orrick's customary form of final legal opinion to the County on the validity of the Bonds.

C. *Additional Services*

(1) Coordination of preparation of the Preliminary Official Statement and Final Official Statement (or Private Placement Memorandum) for the Bonds based on information provided by the County.

(2) Preparation of the Continuing Disclosure Agreement (if applicable).

(3) Rendering (or including in) a supplemental opinion to the underwriter in Orrick's customary form a so-called 10b-5 opinion (actually negative observations subject to certain exceptions) with respect to certain information contained in the Official Statement.

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 services with County Counsel to the extent requested by the County or County Counsel. Orrick shall be entitled to assume that County Counsel will assist in posting and publication of summons and court appearances (if any) in connection with the Validation Action and that County Counsel has reviewed all documents and matters submitted to the Governing Board for adoption or County officers for execution or the court for filing (although Orrick understands that County Counsel is not expert in matters relating to the Bonds, securities laws (federal or state) and tax laws, and shall not be assumed to be rendering any opinion or view with respect to these matters).

Orrick's services are limited to those specifically set forth above. Other than the Validation Action (to the extent set forth above), Orrick's services do not include representation of the County, or any other party to any of the matters covered by this Agreement in any litigation or other legal or administrative proceeding, audit or investigation involving the County, the Bonds, any of the matters covered by this Agreement or any instruments entered into in connection with the legal services provided by Orrick under this Agreement. Other than as

provided in Section 1C (if applicable), Orrick's services do not include any responsibility for the preparation or content of any official statement or other disclosure material or, if bonds are to be sold other than to the County Treasurer, for the preparation or content of any Bond Purchase Agreement. Orrick's services also do not include any investment advice or financial advice or analysis or data or mathematical verification and do not include any responsibility for federal or state reimbursements of pension obligation or Bond costs. The listed services do not include any work in connection with swaps or other hedge instruments or marketing of bonds outside of the United States, but can be amended to include such services, if needed, on terms to be negotiated at that time. Also Orrick's services in connection with any of the matters covered by this Agreement (other than general interpretive services related to any documents drafted by Orrick, a reasonable amount of which interpretive services shall be provided to the County at no additional charge) will not extend past the date of closing of the Bonds.

Section 2. **Term.** This Agreement shall be effective as of the date first written above and shall continue in full force and effect until December 31, 2009. Notwithstanding the foregoing, either party may terminate this Agreement at any time either in whole or in part upon written notice to the other party regarding such termination. All services rendered by Orrick in accordance with Section 1 of this Agreement prior to execution hereof are hereby ratified and confirmed.

Section 3. **Compensation of Orrick.**

(a) Orrick will be paid a fixed fee with respect to each bond issue, as follows: \$45,000 for the services described under Section 1A above, plus \$75,000 for the services described in Section 1B above, plus \$35,000 for the services described in Section 1C above (if the bonds are sold to other than the County Treasurer making such services necessary), plus \$10,000 for any investment agreement or if the bonds are sold at competitive sale or in more than one series (at about the same time) or with credit or liquidity support (other than bond insurance), plus \$5,000 for expenses (excluding any court or publication costs, which will be paid or reimbursed by the County separately); provided that the maximum fee for the initial issue (including expenses) will not exceed \$190,000. After the first issue, Section 1A services should not be required.

Section 4. **Invoicing and Payment.** Orrick shall submit to the Contract Administrator invoices in acceptable 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 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. **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. During the term of this Agreement, 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, which has been retained by the County and which desires employment from some party other than the County, 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.

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 providers, lenders, investors, financial and other consultants/advisors, accountants, investment providers/brokers, and others who may have a role or interest in the Bonds, or that may be involved with or adverse to County in this or some other matter. Orrick agrees not to represent any such entity with respect to the Bonds during the term of this Agreement, without the prior written consent of the Orange County Board of

Supervisors. 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 8. **Compliance with Gift and Political Contribution Ban.** By executing this Agreement, Orrick covenants to the County that it has complied and will, during the term of this Agreement, comply 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 9. **Disclosure of Compensation.** Orrick agrees to disclose in writing to the Contract Administrator any and all forms of compensation (except compensation paid pursuant to this Agreement or any other agreement with the County) earned directly or indirectly from any services performed for, or in any way relating to, the Refunding or the Refunding during the term of this Agreement, whether services are performed on behalf of the County or any other person or entity.

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 (excluding entities wholly owned by Orrick) 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.

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.** Orrick shall maintain insurance acceptable to the County in full force and effect throughout the term of this Agreement. If Orrick fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

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

Coverage	Per Occurrence	Annual Aggregate
Comprehensive General Liability, Broad Form Property Endorsement, Comprehensive Automobile Liability, Employer's Liability	\$1,000,000 Combined including single limit per occurrence	\$1,000,000
Professional Liability	\$5,000,000	\$5,000,000
Workers' Compensation	Statutory	Statutory

Insurance as specified in this Section 19 shall be in force from the effective date of this Agreement and shall be maintained by Orrick in full force and effect, at all times during the term of this Agreement.

Each insurance policy required by this Agreement shall contain the following clauses:

1. "This insurance shall not be changed, canceled, limited in scope of coverage or non-renewed until after 10 days written notice has been given to County, CEO Public Finance, 10 Civic Center Plaza, 3rd Floor, Santa Ana, CA 92701 Attention: Public Finance Manager." (Endorsement must be attached to Certificates of Insurance.)

2. Solely with respect to Workers Compensation, "all rights of subrogation are hereby waived against the County and the members of the Board of Supervisors and elective or appointive officers or employees, when acting within the scope of their employment or appointment, and any Boards or Commissions which are governed by the County Board of Supervisors." (Endorsement must be attached to Certificates of Insurance.)

3. As respects operations of the named insured performed on behalf of the County, the following are added as additional insureds:

"The County of Orange." (Except to Workers' Compensation and Professional Liability. Endorsement must be attached to Certificate of Insurance.)

4. Cancellation clause in the insurance policy must include language as follows, which edits the pre-printed accord certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

Orrick agrees to deposit with the Contract Administrator within thirty (30) days of the effective date of this Agreement, Certificates of Insurance including copies of 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 and the certificates therefor on deposit with the County during the entire term of this Agreement. Orrick shall submit the Certificate of Insurance form.

The County shall retain the right at any time to review the coverage, form, and amount of the insurance required.

The procuring of such required policy or policies of insurance shall not be construed to limit Orrick's liability hereunder.

Section 20. **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, California
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, Esquire
Telephone: (415) 773-5758
Facsimile: (415) 773-5759

Section 21. **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.

This Agreement constitutes the entire agreement between the County and Orrick with respect to the Refunding and supersedes any previous agreement(s), negotiations, proposals or understanding, whether written or oral concerning such matter, unless expressly included in this Agreement.

Section 22. **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 23. **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.

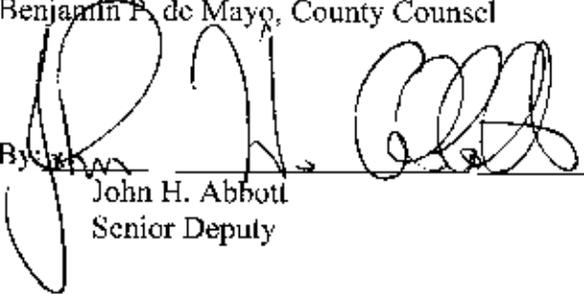
Section 24. **Counterparts.** This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

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: _____
Thomas L. Beckett
Public Finance Manager

Approved to Form
Benjamin P. de Mayo, County Counsel

By:  _____
John H. Abbott
Senior Deputy

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
Roger L. Davis, Partner

**AGREEMENT NO. 06-006FA
FOR FINANCIAL ADVISORY SERVICES**

This Agreement for Financial Advisory Services (this "Agreement") is made and entered into this ___ day of _____, 2006 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 Kelling, Northross & Nobriga, a Division of Zions First National Bank ("Kelling").

RECITALS

WHEREAS, the County desires to issue Pension Obligation Bonds (the "Bonds") pursuant to the Local Agency Refunding Law (Government Code Section 53550 et seq.) (the "Law") to refund a debenture (the "Debenture") reflecting a portion of the unfunded accrued actuarial pension liability and the normal annual contribution of the County to OCERS; and

WHEREAS, Kelling is experienced in matters of county finance and willing and able to provide financial advisory services to the County as more fully specified herein.

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 Kelling***. The County engages the services of Kelling as an independent contractor to provide financial advisory services relating to the Bonds, as more fully described below. Kelling is willing and able to perform such services for and on behalf of the County. It is understood that David Brodsky and Joanna Bowes shall be the employees of Kelling principally responsible for performing the services described herein. Through the aforementioned persons and such other Kelling staff as are needed to carry out the responsibilities of Kelling under this Agreement, Kelling will provide the following professional services:

A. General Financial Advisory Services

1. Assist County staff in coordinating the efforts of County staff, bond counsel, County Counsel, and any other financing professionals with respect to the preparation and approval of the financing and financing documents by the County's Public Financing Advisory Committee and Board of Supervisors.
2. Advise the County on preparation and review of all, including, but not limited to, reviewing and providing appropriate comments, revisions and recommendations to legal documents, and other documents relating to the financing and recommending specific financial covenants, terms and provisions, including, amortization schedule and redemption features, and related matters.
3. Attendance at such meetings or hearings of the Public Financing Advisory Committee,

Board of Supervisors and working group meetings or conference calls as the County may request.

4. Prepare a financing schedule and update schedule with refinements as necessary.
5. Review taxable market supply and demand variables in connection with the financing and advise on appropriate interest rates.
6. Advise on the structure of any financing, including the size, timing and method of sale.
7. Assist the County in coordination of activities between the County Executive Office, Auditor-Controller, Treasurer-Tax Collector and OCERS.
8. Coordinate and assist County staff on presentation materials for bond rating agencies.
9. Assist bond counsel in closing of the transaction.
10. Perform other services normally provided by financial advisors related to County financings, including but not limited to, delivery of a final report after closing.

B. Additional Services: Private Placement or Public Offering.

1. Advise County on preparation and review of disclosure documents including the official statement or private placement memorandum, as required, and other documents related to a third-party financing.
2. Coordinate and assist County staff in the preparation of presentation materials for bidders and potential investors, as needed.
3. For a private placement, solicit potential purchasers and negotiate terms and rates.
4. For a negotiated underwriting, advise the County on the pricing and fee negotiations with underwriters and assist in negotiating underwriting spreads and interest rates.
5. For competitive sale, assist bond counsel in the preparation of the notice of sale, solicit bids, and confirm the winning bid.
6. Assist bond counsel in closing of the transaction.
7. Prepare written reports, as necessary, before and after pricing, or review reports prepared by the senior managing underwriter, indicating market comparables (including gross spread, management fee and takedown comparables) and overall market conditions.

Section 2. ***Term.*** This Agreement shall be effective as of the date first written above and shall continue in full force and effect until December 31, 2007. This Agreement may be extended for one additional year upon the written direction of the Contract Administrator. Extension of the

term of this Agreement shall not result in the amendment or alteration of any of the terms and conditions of this Agreement.

Notwithstanding the foregoing, either party may terminate this Agreement at any time either in whole or in part following written notice to the other party regarding such termination.

Section 3. Compensation of Kelling.

(a) Kelling will be paid a fixed fee with respect to each Bond issue, as follows:

(i) For services rendered in accordance with Section 1A. of this Agreement, Kelling shall be paid a fee of \$55,000

(ii) For services rendered in accordance with Section 1B of this Agreement, Kelling shall be paid an additional fee of \$10,000.

(b) In addition to the compensation provided for in (a) above, County will pay Kelling for costs and expenses incurred in connection with the services performed pursuant to this Agreement, including, without limitation, filing and publication, document production and delivery, travel, long distance telephone, telecopy, transcripts, computer research, secretarial overtime and similar expenses. Travel and secretarial overtime expenses must be pre-approved by the Contract Administrator. Any filing, publication or printing costs required in connection with the financing shall be paid directly by County, but if paid by Kelling on behalf of County, shall be reimbursed to Kelling on demand. Kelling shall not be entitled to reimbursement for expenses generally considered as overhead.

(c) All services rendered by Kelling as provided in this Agreement prior to this Agreement's effective date are hereby ratified and confirmed.

(d) Notwithstanding any other provision of this Agreement to the contrary all obligations of the County under this Agreement shall be expressly contingent upon appropriation of sufficient funds by the County Board of Supervisors.

Section 4. Invoicing and Payment. Kelling 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 Kelling 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 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.** Kelling agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to highest professional standards as exist in Kelling's profession, industry or field of practice.

Section 7. **Errors and Omissions.** All work submitted by Kelling shall be completed and shall be carefully checked prior to submission. Kelling understands that the County's examination of Kelling's work product is discretionary and Kelling shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions, Kelling's work may be returned to Kelling 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 Kelling after the County's acceptance thereof, the County's approval of Kelling's work shall not be a defense by Kelling.

Section 8. **Indemnification.** Kelling agrees to indemnify and hold harmless the County and its officers, agents and employees against any claims, losses or liability arising or alleged to arise out of the negligent acts or errors or omissions of Kelling, its officers, agents, employees or subcontractors in the performance of this Agreement.

Section 9. **Conflict of Interest.** Prior to its execution of this Agreement, Kelling has submitted to the Contract Administrator a list of clients represented by Kelling in matters which may be adverse to the County. As to future representations, Kelling shall promptly notify and seek the written approval of the Contract Administrator before undertaking any future employment which may be adverse to the interests of the County.

Kelling 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.

Kelling 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. Kelling 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.

Section 10. **Compliance with Gift and Political Contribution Ban.** By executing this Agreement, Kelling 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 11. **Disclosure of Compensation**. Kelling agrees to disclose in writing to the Contract Administrator any and all forms of compensation (except compensation paid pursuant to this Agreement) earned directly or indirectly from any services performed for, or in any way relating to the Bonds, whether services are performed on behalf of the County or any other person or entity.

Section 12. **Confidentiality of Work**. All work performed by Kelling, including but not limited to all drafts, data, correspondence, proposals, reports and estimates compiled or composed by Kelling 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 13. **Independence of Kelling**. Kelling and the agents and employees of Kelling, in performance of this Agreement, shall act in an independent capacity and not as employees, officers or agents of the County.

Section 14. **Subcontracts**. Kelling 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.

Kelling 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 15. **News Releases**. Kelling 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 16. **Examination of Accounts, Audit and Records**. Kelling'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. Kelling shall preserve and make available records (1) for a period of three years from the date of final payment under this Agreement and (2) 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 17. **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. Kelling shall deliver to the Contract Administrator all copies of any and all materials pertaining to this Agreement.

Section 18. **Name Change**. Kelling shall provide written notice to the Contract Administrator at least thirty (30) days prior to any changes to Kelling'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 19. **Changes in Staff**. The Contract Administrator has the reasonable right to approve or disapprove any proposed changes in Kelling'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 20. **Child Support Compliance**. Unless provided contemporaneously with its execution of this Agreement, Kelling 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 Kelling;
- B. A certification that Kelling has fully complied with all applicable federal and state reporting requirements regarding its employees;
- C. A certification that Kelling 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 Kelling 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 Kelling 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 21. **Insurance** Kelling shall maintain insurance acceptable to the County in full force and effect throughout the term of this Agreement. If Kelling fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

The policy or policies of insurance maintained by Kelling shall provide the limits and coverages as set forth herein below.

<u>Coverage</u>	<u>Per Occurrence</u>	<u>Annual Aggregate</u>
Comprehensive General Liability, Broad Form Property Endorsement, Comprehensive Automobile Liability, Employer's Liability	\$1,000,000 Combined including single limit per occurrence	\$1,000,000
Professional Liability	\$2,000,000	\$2,000,000
Workers' Compensation	Statutory	Statutory

Insurance as specified in this Section 21 shall be in force from the effective date of this Agreement and shall be maintained by Kelling in full force and effect, at all times during the term of this Agreement.

Each insurance policy required by this Agreement shall contain the following clauses:

1. "This insurance shall not be changed, canceled, limited in scope of coverage or non-renewed until after 10 days written notice has been given to County, CEO Public Finance, 10 Civic Center Plaza, 3rd Floor, Santa Ana, CA 92701 Attention: Public Finance Manager." (Endorsement must be attached to Certificates of Insurance).
2. "All rights of subrogation are hereby waived against the County and the members of the Board of Supervisors and elective or appointive officers or employees, when acting

within the scope of their employment or appointment, and any Boards or Commissions which are governed by the County Board of Supervisors.” (Endorsement must be attached to Certificates of Insurance).

3. As respects operations of the named insured performed on behalf of the County, the following are added as additional insureds:

“The County of Orange.” (Except to Workers’ Compensation and Professional Liability, Endorsement must be attached to Certificate of Insurance).

4. It is agreed that any insurance maintained by the County will apply in excess of and not contribute with, insurance provided by this policy. (Endorsement must be attached to Certificate of Insurance).
5. To the extent not in conflict with applicable law, any losses shall be payable notwithstanding any act or failure to act or negligence of the County, nor any other person.
6. Cancellation clause in the insurance policy must include language as follows which edits the pre-printed accord certificate:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

Kelling agrees to deposit with the Contract Administrator within thirty (30) days of the effective date of this Agreement, Certificates of Insurance including copies of 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 and the certificates therefor on deposit with the County during the entire term of this Agreement. Kelling shall submit the Certificate of Insurance form.

The County shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby and to require reasonable changes to such coverage, as determined by the County’s Risk Manager.

The procuring of such required policy or policies of insurance shall not be construed to limit Kelling’s liability hereunder.

Section 22. ***Notices.*** Any and all notices between the County and Kelling 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: Thomas Beckett, Public Finance Manager
Telephone: (714) 834-5969 Facsimile: (714) 834-3346

If to Kelling:

Kelling, Northercross & Nobriga
1333 Broadway, Suite 1000
Oakland, CA 94612
Attn: David Brodsky
Telephone: (510) 839-8200 Facsimile: (510) 208-8282

Section 23. **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, Kelling 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.

This Agreement constitutes the entire agreement between the County and Kelling with respect to the matters addressed herein and supersedes any previous agreement(s), negotiations, proposals or understanding, whether written or oral concerning such matter, unless expressly included in this Agreement.

Section 24. **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 25. **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.

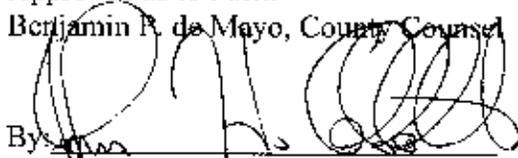
Section 26. **Counterparts**. This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

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: _____
Thomas L. Beckett
Public Finance Manager

Approved as to Form
Benjamin R. de Mayo, County Counsel

By: 
John H. Abbott, Senior Deputy

KELLING, NORTHCROSS & NOBRIGA

By: _____
David Brodsky, Vice President