



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
April 21, 2009

**Honorable Mayor and
Members of the City Council**

Title: Consent to Orrick's serving as bond counsel for the State of California in connection with the city's purchase of state general-obligation bonds

Location/Council District: Citywide

Recommendation: Adopt a **resolution** consenting to Orrick's serving as bond counsel for the State of California in the city's purchase of state general-obligation bonds.

Contact: Joseph Cerullo, Senior Deputy City Attorney (916) 808-5346
Russell T. Fehr, City Treasurer (916) 808-5168
John Colville, Senior Investment Officer (916) 808-5168

Presenters: Not Applicable

Departments: City Attorney and City Treasurer

Division: City Attorney and City Treasurer

Organization No: 03001011 / 05001011

Description/Analysis: The City Treasurer proposes to purchase the State of California's general-obligation bonds as an investment in a private placement transaction. Orrick, Herrington & Sutcliffe LLP ("Orrick") will serve as the state's bond counsel on this transaction. But because Orrick also serves as bond counsel for the city when the city issues and sells its own bonds, the ethical rules that govern attorneys will prohibit Orrick from representing the state on this transaction unless the city has given its informed consent in writing. To that end, Orrick sent the City Attorney's Office a letter explaining the consequences to the city of Orrick's representing the state. A copy of the letter is attached to the resolution included with this report. We have reviewed the letter and are satisfied that Orrick's representation of the state will not prejudice the city. Adopting the attached resolution will authorize the City Attorney to sign a letter for the city, thereby indicating the city's consent.

Policy Considerations: The city is Orrick's client, and the city acts through the City Council. Hence, only the City Council may consent to Orrick's serving as bond counsel for the state on the proposed transaction.

Environmental Considerations: California Environmental Quality Act (CEQA):

This action is not subject to the CEQA because it is not a "project" as defined in section 15378 of the CEQA Guidelines. Even if it were a project, it would be exempt under section 15061(b)(3) of the CEQA guidelines, which provides as follows: "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Sustainability Considerations: None

Commission/Committee Action: None

Rationale for Recommendation: Orrick's representation of the state on this transaction will not prejudice the city.

Financial Considerations: None

Emerging Small Business Development (ESBD): Not Applicable

Respectfully Submitted by: Joseph Cerullo
Joseph Cerullo
Senior Deputy City Attorney

Recommendation Approved:

Eileen M. Teichert for
Eileen M. Teichert
City Attorney

Recommendation Approved:

Russell T. Fehr
Russell T. Fehr
City Treasurer

Table of Contents:

	Report	pg. 1
Attachments		
1	Background	pg. 3
2	Resolution	pg. 5
	Exhibit A	pg. 6

BACKGROUND

The City Treasurer is considering the purchase of the State of California's general-obligation bonds (the "Bonds") as an investment. Orrick, Herrington & Sutcliffe LLP ("Orrick") will serve as the state's bond counsel on this transaction, and the City Attorney's Office will represent the city.

Orrick's representation of the state raises a possible conflict of interest because Orrick also serves as the city's bond counsel when the city issues and sells its own bonds. As a result, under the ethical rules that govern attorneys, Orrick may not represent the state on this transaction unless both of the following have occurred:

- Orrick has informed the city and the state of the relevant circumstances surrounding the transaction and of the actual and the reasonably foreseeable adverse consequences to them of Orrick's representing the state on this transaction.
- Both the city and the state have given their informed written consent to Orrick's representation of the state. (Cal. Rules Prof. Conduct, rule 3-310.)

Orrick has informed the city of the relevant circumstances surrounding the transaction and of the actual and the reasonably foreseeable adverse consequences to the city of Orrick's representing the state. This information is set forth in a letter Orrick sent to City Attorney's Office, a copy of which is attached to the resolution included with this report. By adopting the resolution, the City Council will consent to Orrick's serving as bond counsel for the state and will authorize the City Attorney (or her designee) to sign and return Orrick's letter on the city's behalf.

The City Treasurer is considering the purchase of the Bonds for investment. The transaction has several unique features. The Bonds are voter-approved general obligations of the State, but the purchase will be performed under a direct contract between the State Treasurer and the City Treasurer (a "private placement" purchase). The arrangement is different from the typical public sales of state bonds, with usual disclosures dispensed with and special terms spelled out in the bond purchase contract. The City Treasurer will execute the purchase under City Charter authority to invest city funds. (Sacramento City Charter section 73).

The Bonds will have a three-year term, and the City must hold the bonds for the entire three-year term. The interest rate on the Bonds is attractive at over three times that of a comparable U.S. Treasury bond or note. The requirement to hold the bonds for three years puts a limit on the amount of City funds that may be devoted to the transaction. The City Treasurer believes that devoting between \$20 million and \$25 million to these Bonds will allow his office to retain necessary flexibility in the Treasury Pool to meet the cash flows needs of the City in the near term.

The unique and very attractive feature of this state bond purchase is a grant-back provision, where the state agrees to allocate the funds paid by the City back to the City for projects that have been approved and accepted for funding under various State grant programs. There have been delays in receipt of awarded grants because the State's source of grant funds, i.e. bond proceeds, have not been realized due to the delays in issuing the underlying bonds. There is such a large backlog of voter-approved state bonds issues which have yet to be sold, it may take years to sell the bonds. Hence, for some projects it may take years to receive the promised state funding. In an effort to keep local projects moving, the State Treasurer initiated this private placement offering with the added grant-back benefits.

The City Treasurer believes this grant-back feature provides an opportunity to better the fiscal position of the City vis-à-vis the projects whose timing of the receipt of state funding remains uncertain. There are three high priority categories of projects to which the bond funds should be applied:

1. Reimburse to the City where City funds were advanced to projects. These projects are completed, and the City is owed reimbursement through state grants;
2. Project funding for projects currently under construction or about to begin construction. These projects depend on a variety of funding sources, including the state funding awards. The state funding is necessary for successful completion of the projects and the severe adverse financial effects of ceasing work mid-project can be avoided by the grant-back funding; and
3. Funding the City's share of projects being done in conjunction with other local agencies in order to fulfill the City's commitment to those projects.

The Mayor and City Council have approved the application for and the acceptance of the state bond awards for City projects. The City Manager and the City Treasurer will report back to the Mayor and City Council the status of the allocation of funds back to the City.

RESOLUTION NO.

Adopted by the Sacramento City Council on

CONSENT TO ORRICK'S SERVING AS BOND COUNSEL FOR THE STATE OF CALIFORNIA IN CONNECTION WITH THE CITY'S PURCHASE OF STATE GENERAL-OBLIGATION BONDS

BACKGROUND

- A.** The city is considering purchasing the State of California's general-obligation bonds as an investment. Orrick, Herrington & Sutcliffe LLP ("Orrick") will serve as the state's bond counsel on this transaction, and the City Attorney's Office will represent the city.
- B.** Orrick's representation of the state on this transaction raises the possibility of a conflict of interest because Orrick serves as the city's bond counsel when the city issues and sells its own bonds. Thus, under the California Rules of Professional Conduct, Orrick may not represent the state on this transaction unless both of the following have occurred. First, Orrick has informed the city and the state of the relevant circumstances surrounding the transaction and of the actual and the reasonably foreseeable adverse consequences to them of Orrick's representing the state on this transaction. And second, the city and the state have each given their informed written consent to Orrick's representation of the state. (Rules Prof. Conduct, rule 3-310.)
- C.** Orrick has informed the city of the relevant circumstances surrounding the transaction and of the actual and the reasonably foreseeable adverse consequences to the city of Orrick's representing the state. This information is set forth in a letter Orrick sent to City Attorney's Office, dated April 15, 2009, a copy of which is attached (Exhibit A) to this resolution.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council hereby consents to Orrick's serving as bond counsel for the State of California on the transaction described in the Background.

Section 2. The City Attorney (or her designee) is hereby authorized to sign the letter attached to this resolution and to deliver the signed letter to Orrick, thereby indicating the city's consent to Orrick's representation of the State of California on the transaction described above in the Background.



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April 15, 2009

Richard I. Hiscocks
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Joseph P. Cerullo, Esq.
Senior Deputy City Attorney
Office of the City Attorney
915 I Street, Room 4010
Sacramento, CA 95814

Re: City of Sacramento Purchase of State of California General Obligation Bonds

Dear Joe:

As we have discussed, Orrick, Herrington & Sutcliffe LLP ("**Orrick**") has for many years served as bond and disclosure counsel to the State of California, acting by and through the Treasurer of the State (the "**State**") for various financing matters, including the State's General Obligation Bonds. Of course, we are also pleased to serve as bond counsel to the City of Sacramento (the "**City**"). I understand from Russ Fehr, the City Treasurer, that the City and the State propose that the City enter into a private placement transaction whereby the City will purchase up to \$20 million of State General Obligation Bonds to finance various projects in the City. The State has requested that Orrick serve as bond counsel in this transaction. The transaction is separate from and unrelated to Orrick's ongoing representation of the City in other transactions. The City will rely upon you and your colleagues in the City Attorney's Office to represent the City in the transaction.

In order for Orrick to serve as bond counsel to the State in this transaction, we need a written waiver from the City of any conflict or potential conflict of interest between the City and the State with regard to this matter, and consent to Orrick continuing to represent the City in matters other than this transaction.

This letter will serve to confirm that the City has agreed after consulting with its counsel to grant such a waiver, to consent to Orrick's continued representation of the City in matters other than this transaction and not to seek Orrick's disqualification from representing the City in matters unrelated to this transaction. The State is providing a corresponding waiver of conflict of interest to permit Orrick to act as bond counsel for this transaction.

Historically, the Orrick public finance (but not tax) attorneys working with the City have been different than the attorneys working with the State on its general obligation bonds. This will continue to be the case on this transaction, and the bond attorneys working for the State



ORRICK

Joseph P. Cerullo, Esq.
April 15, 2009
Page 2

on this transaction (specifically Robert Feyer, Virginia Magan, Bryan Victor and Patricia Eichar) and the bond attorneys working on the City's finance matters which are unrelated to this transaction (specifically Rick Hiscocks) will not discuss this transaction with each other. This will ensure that no information obtained from either party that may be relevant to this transaction will be shared with the other party. Orrick agrees not to represent the City or the State in any litigation between or among them relating to this transaction.

If the understanding set forth in this letter is correct and you agree to the terms and conditions of the waiver, kindly sign a copy of the letter and return it to me at your earliest convenience by e-mail or facsimile.

We appreciate very much your understanding and cooperation on this matter.

Best regards,

Richard I. Hiscocks

For Orrick, Herrington & Sutcliffe LLP

ACKNOWLEDGED AND AGREED:

CITY OF SACRAMENTO

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

Date: April __, 2009