



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 21-223

Board Meeting Date: 3/23/2021

Special Notice/ Hearing:None

Vote Required:Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager

Subject: Resolution authorizing agreements with Orrick, Herrington & Sutcliff LLP, and Norton Rose Fulbright US LLP for Legal Services Related to Bond Issuances and/or Refinancings

RECOMMENDATION:

Adopt a resolution waiving the Request for Proposals process and authorizing agreements with Orrick, Herrington and Sutcliffe LLP for Legal Services as Bond Counsel, and Norton Rose Fulbright US LLP as Disclosure Counsel, in connection with anticipated bond issuances to be issued within the next 18 months.

BACKGROUND:

The issuance of bonds presents unique legal and financial issues requiring specific expertise in bond financing and tax law. The County and the San Mateo County Joint Powers Financing Authority ("Authority") are currently working on the issuance of up to \$155 Million of Lease Revenue Bonds to finance the design, architecture, and construction of the Cordilleras Mental Health Rehabilitation Center Replacement Project. The issuance will include a refunding of prior bonds.

DISCUSSION:

Mary Collins and John Palmer, partners with the law firm of Orrick, Herrington & Sutcliffe LLP ("Orrick"), and Eric Tashman and Dave Sanchez of the law firm Norton Rose Fulbright US LLP ("Norton") have performed considerable work as bond counsel and disclosure counsel, respectively, for the County, the Authority, and other public entities. Ms. Collins, Mr. Palmer, and Mr. Tashman have provided services to the County in the past - including with lease revenue bonds that financed construction of the Maple Street Correctional Center in 2014, the refunding bonds for the 2015 refinancing of the San Mateo County Flood Control District's 1997 and 2004 Certificates of Participation, and the 2016 refinancing of the County's Series 2008 Series A bonds regarding the Youth Services Center, as well as in connection with the County's continuing disclosure requirements. Most recently, in 2018, this Board approved their retention in connection with the

County's 2018 Series A (Capital Projects) and 2019 Series A (Refunding) Lease Revenue Bonds. Counsel delivered excellent results for the County and the Authority in these engagements.

The County's prior agreements with counsel will expire or otherwise be completed in 2021. Over the next 18 months, the County and the Authority anticipate that one or more financings (through direct and indirect issuances) may be needed to with respect to other capital projects in the County's five-year capital improvements plan. Due to both firms' familiarity with the County and prior experience assisting the County in the issuance of lease revenue bonds and other debt instruments, we are requesting a waiver of the Request for Proposal process for these agreements.

Under the proposed bond counsel contract with Orrick, the firm has agreed to perform the legal services requested at fixed rates for the transactions as set forth in the agreement. The agreement with Orrick will cover the Authority's Lease Revenue Bonds (Capital Projects), 2021 Series A, for fees in the amount of \$175,000, and the Authority's 2021 Lease Revenue Refunding Bonds, for fees in the amount of \$125,000. The Orrick agreement will cover potential additional issuance of lease revenue bonds prior to July 1, 2022, with total compensation for all transactions not to exceed \$525,000.

Under the proposed disclosure counsel contract with Norton, amounts will be compensated at an hourly rate upon presentation of an invoice, payable solely upon the delivery and receipt of payment for the Bonds upon their sale. Norton attorneys will bill at a discounted blended rate of \$705 per hour, which is a competitive rate for the Bay Area. Norton paralegals will bill at a discounted blended rate of \$310 per hour. Both blended rates are subject to adjustment from time to time and will be \$715 per hour and \$330 per hour respectively commencing January 1, 2022. In addition to the aforementioned hourly rates, Norton charges for various out of pocket expenses such as secretarial overtime, document costs, and other similar expenditures. No travel by Norton personnel will be reimbursed.

The agreement with Norton, which sets forth the general terms of engagement, is accompanied by a fee letter supplement and will cover the Authority's Lease Revenue Bonds, 2021 Series A, and potential additional refunding lease revenue bonds, and continuing disclosure work related to such issuances and past issuances. Total compensation shall not exceed \$150,000.

County Ordinance Code Section 2.14.040 provides that the Board of Supervisors has the sole authority to retain outside counsel for legal services contracts exceeding \$100,000.

The resolution and agreements have been reviewed and approved by County Counsel as to form.

FISCAL IMPACT:

The maximum amount to be paid out under the bond counsel services agreement with Orrick will be \$525,000 and the maximum amount to be paid out under the disclosure counsel services agreement, and related fee letter supplements, with Norton will be \$150,000. All amounts paid will be paid out of the Bond proceeds. There is no additional Net County Cost.