

**EL DORADO COUNTY BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL  
MEETING OF January 23, 2007**

**AGENDA TITLE: Legal Services Agreement-Orrick, Herrington & Sutcliffe, LLP**

<b>DEPARTMENT: AUDITOR-CONTROLLER</b>	<b>DEPT SIGNOFF:</b>	<b>CAO USE ONLY</b>
<b>CONTACT: Joe Harn</b>		
<b>DATE: 01-16-07</b>	<b>PHONE: 621-5456</b>	

**DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:**  
 The Auditor-Controller recommends that the Board of Supervisors approve and enter an agreement with Orrick, Herrington, & Sutcliffe, LLC, to provide bond counsel services to the County of El Dorado pursuant to the formation of the Bass Lake Hills Community Facilities District. The Auditor-Controller further recommends that the Board of Supervisors authorize the County Counsel to make minor to this contract prior to the execution by the Board Chair.

2007 JAN 16 AM 11:26  
 RECEIVED  
 BOARD OF SUPERVISORS  
 EL DORADO COUNTY

**CAO RECOMMENDATIONS:**

Financial impact? ( ) Yes (x) No	Funding Source: ( ) Gen Fund ( ) Other Other:
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<p><b>BUDGET SUMMARY:</b></p> <p>Total Est. Cost _____</p> <p><b>Funding</b></p> <p>Budgeted _____</p> <p>New Funding _____</p> <p>Savings _____</p> <p>Other _____</p> <p>Total Funding _____</p> <p><b>Change in Net County Cost</b></p>	<p><b>CAO Office Use Only:</b></p> <p>4/5's Vote Required. (x) Yes ( ) No</p> <p>Change in Policy ( ) Yes ( ) No</p> <p>New Personnel ( ) Yes ( ) No</p> <p><b>CONCURRENCES:</b></p> <p>Risk Management _____</p> <p>County Counsel _____</p> <p>Other _____</p>
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**Explain**

**BOARD ACTIONS:**

<p><b>Vote: Unanimous</b> _____ <b>Or</b></p> <p><b>Ayes:</b></p> <p><b>Noes:</b></p> <p><b>Abstentions:</b></p> <p><b>Absent:</b></p>	<p><b>I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors.</b></p> <p><b>Date:</b> _____</p> <p><b>Attest: Cindy Keck, Board of Supervisors Clerk</b></p> <p><b>By:</b> _____</p>
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# County of El Dorado

OFFICE OF AUDITOR-CONTROLLER

360 FAIR LANE  
PLACERVILLE, CALIFORNIA 95667-4193  
Phone: (530) 621-5487 Fax: (530) 295-2535

JOE HARN, CPA  
Auditor-Controller

BOB TOSCANO  
Assistant Auditor-  
Controller

January 19, 2007

El Dorado County Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

Subject: **El Dorado County Community Facilities District #2007-1 ("Bass Lake Hills")**

Dear Board Members:

RECEIVED  
BOARD OF SUPERVISORS  
PLACERVILLE, CA  
2007 JAN 19 PM 2:18

**Recommendation:**

The Auditor-Controller recommends that the Board of Supervisors approve and enter into an agreement with Orrick, Herrington, & Sutcliffe, LLC, to provide bond counsel services to the County of El Dorado pursuant to the formation of the Bass Lake Hills Community Facilities District ("CFD"). The Auditor- Controller further recommends that the Board of Supervisors authorize the County Counsel to make minor amendments to this contract prior to the execution by the Board Chair.

**Reasons for Recommendation:**

The County has received an application from D.R. Horton to consider the formation of a CFD, and the possible issuance of Mello Roos Bonds within the Bass Lake Specific Plan. In accordance with the Bass Lake Hills Specific Plan Public Facilities Financing Plan, the County should assist the Developers in the formation of Mello Roos Community Facilities Districts (CFD) as a preferred financing mechanism for infrastructure within the Bass Lake Hills Specific Plan. In the event that bonds are eventually sold by the County, the debt service payments will be exclusively the responsibility of the property owners in the proposed CFD. The only foreseeable circumstance that would make the county partially responsible for debt service payments or damages to bond investors would be if an error or omission is made by the County in the formation of the district, in the preparation of the offering statement, in the ongoing SEC required disclosures, or in the administration of the CFD.

In order to take all practical steps to avoid the County committing an error or omission in the issuance of proposed bonds or the formation of the district, the Auditor-Controller recommends that the County contract with Orrick, Herrington and Sutcliffe, LLC, as the County's Bond Counsel through the process of this CFD financing.

Financing services are considered to be "special services" as described in section 3.12.135 of the County's Purchasing Ordinance and section 31000 of the Government Code, and accordingly, are exempt from any competitive procurement requirements.

**Fiscal Impact:**

The cost of this contract will be borne by the developer and/or the CFD. There is no anticipated financial impact to the County.

**Action to be Taken Following Approval:**

The Board Clerk's Office will forward the executed agreement to the Auditor-Controller's Office for distribution.

Sincerely,  
  
Joe Harn  
Auditor-Controller

Enclosure

# CONTRACT ROUTING SHEET

Contract # 454-S0710

### PROCESSING DEPARTMENT:

Department: Auditor's Office  
Dept Contact: Heather Pence  
Phone #: 621A5854  
Dept Head: [Signature]  
Signature: [Signature]

### CONTRACTOR:

Name: Orrick, Herrington & Sutcliffe, LLP  
Address: 405 Howard Street  
San Francisco, CA 94105-2669  
Phone: (415) 773-5467

ELDERADO COUNTY COUL...  
2006 DEC -4 AM 10:05  
[Signature]

### CONTRACTING DEPARTMENT:

Auditor-Controller

Compliance with Human Resources requirements? Yes: \_\_\_\_\_ No: \_\_\_\_\_ N/A

Compliance verified by: \_\_\_\_\_

### COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved:  Disapproved: \_\_\_\_\_ Date: 12/6/06 By: [Signature]

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

*As to Form see attached memo [Signature]*

ASSIGNMENT

DATE 12/05/2006

ATTORNEY MIKE CROOK  
INDEX NO. 030000  
[Signature]

### RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved:  Disapproved: \_\_\_\_\_ Date: 12/7/06 By: [Signature]

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

### OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Department(s): \_\_\_\_\_

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

**1 AGREEMENT FOR LEGAL SERVICES BETWEEN EL DORADO COUNTY**  
**2 AND ORRICK, HERRINGTON & SUTCLIFFE LLP**

3  
4 This Agreement is made and entered into between EL DORADO COUNTY (County), a  
5 governmental entity organized and existing under the laws of the State of California, and  
6 ORRICK, HERRINGTON & SUTCLIFFE LLP, (Bond Counsel), a limited liability partnership  
7 duly authorized to do business in the State of California, whose address is 405 Howard Street,  
8 San Francisco, California 94105-2669, effective on the date services were first performed for the  
9 County in the matters described below, for the performance of specified legal services for the  
10 County.  
11

12 1. The County retains Bond Counsel as special legal counsel to perform the  
13 following legal services relating to a proposed community facilities district, preliminarily to be  
14 named "Community Facilities District No. 2007-1 (Bass Lake Hills), County of El Dorado, State  
15 of California" ("CFD No. 2007-1"):  
16

17 (a) As requested by County staff, participate in meetings and discussions  
18 preliminary to initiation of legal proceedings to establish local goals and policies of the  
19 County with respect to community facilities districts, as required by the Act, and to  
20 preliminarily establish (i) the basic structure of CFD No. 2007-1, including but not  
21 limited to the determination of whether separate improvement areas will be established  
22 within CFD No. 2007-1, (ii) the preliminary scope of capital facilities (the "Project") to  
23 be financed, in whole or in part, by proceeds of sale of special tax bonds of CFD No.  
24 2007-1 (the "Bonds") and proceeds of the special taxes to be authorized and levied on the  
25 taxable property within CFD No. 2007-1 (the "Special Taxes"), together with the scope of  
26

1 public services, if any, to be financed, in whole or in part, by proceeds of the Special  
2 Taxes, and (iii) <sup>✓</sup>and related considerations pertaining to the Bonds and related financing  
3 (the "Financing Program");

4 (b) Preparation of all forms of resolutions, ordinances, notices, affidavits, and  
5 other documents required by the laws governing the proceedings for formation of CFD  
6 No. 2007-1, conduct of the special election, and implementation of the Financing  
7 Program through issuance, sale and delivery of the Bonds in one or more series; provided  
8 that preparation of (i) the boundary map, (ii) the list of facilities authorized to be  
9 financed, (iii) the rate and method of apportionment of the Special Taxes (the "RMA"),  
10 (iv) the hearing report, (v) the bond purchase contract or notice of sale of the Bonds, as  
11 the case may be, (vi) the Preliminary Official Statement and the Official Statement to be  
12 derived therefrom, (vii) the continuing disclosure certificate of the County and any  
13 landowner within CFD No. 2007-1, as determined by disclosure counsel, and (viii) any  
14 appraisal report and/or absorption study report respecting the property within CFD No.  
15 2007-1, determined to be required in connection with establishing feasibility and amount  
16 of bond financing, shall be the responsibility of other members of the working group  
17 retained by the County to provide such services.

21 (c) Preparation of written instructions to the Clerk of the Board of  
22 Supervisors (the "Clerk") and other staff members concerning the performance of legally-  
23 required duties in connection with the Financing Program.

24 (d) Review of documents prepared by members of the County staff, special  
25 tax consultant, underwriter, disclosure counsel, or consulting engineers, including the  
26 description of authorized facilities to be financed, the RMA, the hearing report, the bond

Agreement 454-S0710

1 purchase contract, the Preliminary Official statement and the Official Statement to be  
2 derived therefrom, and the continuing disclosure undertaking or undertakings (but only  
3 for the limited purposes specified in paragraph 1 (i) below).

4 (e) Upon request of the County and with reasonable notice, attendance at all  
5 meetings and public hearings pertaining to the Financing Program (including  
6 continuances of the hearings, if any).

7 (f) Telephone consultation with County officers and staff members, other  
8 Financing Program working group participants and representatives of the  
9 developer/property owner to answer legal questions about the proceedings and the  
10 Financing Program.

11 (g) Coordination with the Clerk's office in the scheduling and conduct of the  
12 public hearing and the landowner-voter election.

13 (h) Arrangements for the preparation of the Bonds.

14 (i) Assistance with the sale of the Bonds, whether by negotiation or  
15 competitive bidding, including a review of disclosure documents to be prepared by the  
16 County's disclosure counsel. Bond Counsel will give an opinion that the descriptions of  
17 the Bonds and of Bond Counsel's bond opinion in the Official statement are "accurate in  
18 all material respects." Bond Counsel will require a statement in the Official Statement to  
19 the effect that Bond Counsel expresses no opinion regarding the accuracy, completeness  
20 or fairness of the information contained in the Official Statement.

21 (j) Preparation of bond delivery documents and coordination of the  
22 closing.

23 (k) Rendition of the Bond Counsel's usual and customary legal opinion  
24 with respect to the validity of the Bonds, and, if appropriate, the tax exempt status of the  
25 interest payments thereon, but expressly not including enforceability of individual special  
26

1 tax levies.

2 (l) Preparation of the required reports to the California Debt and Investment  
3 Advisory Commission (pursuant to section 8855 et seq. <sup>8</sup>Of the Government Code)  
4 respecting the sale of the Bonds and Form 8038-G to the Internal Revenue <sup>5</sup>service  
5 (pursuant to Section 149 of the Internal Revenue Code of 1986).

6 (m) Preparation of a transcript of the legal proceedings in loose-leaf or CD  
7 ~~Rem~~ form for the use of the County and such other participants in the Financing Program  
8 as the County shall prescribe.

9  
10 2. The services of Bond Counsel under this agreement shall not include the  
11 following:

12 (a) Legal services in connection with the acquisition of interests in real  
13 property, whether through gift, negotiation or the exercise of the power of eminent  
14 domain.

15 (b) Legal services in connection with litigation.

16 (c) Legal services relating to the public improvement project (the "Project")  
17 including but not limited to compliance with the California Environmental Quality act  
18 with respect to the Project or any determinations pertaining to completion and readiness  
19 for acceptance.

20 (d) Legal services regarding continuing disclosure pursuant to securities and  
21 Exchange Commission Rule 15c2-12, except for review of the continuing disclosure  
22 undertaking or undertakings referred to in paragraph 1(d) above.

23 (e) Legal services or administrative services with respect to the on-going  
24 administration of the special tax, the levy thereof, the enforcement of payment thereof by  
25 individual property owners, or the on-going administration of the Bonds, including  
26

1           arbitrage tracking and rebate reporting and compliance.

2           Barring any conflict not otherwise waived or waivable, Bond Counsel would be willing to  
3 perform such excluded services on such terms as might be mutually agreed to at the time. The  
4 performance by Bond Counsel of services excluded by this paragraph, if required by the County,  
5 shall be under separate written agreement.

6           3.       In consideration of the services set forth in paragraph 1, the County shall pay  
7 Bond Counsel the following legal fees and (where applicable) out-of-pocket expenses:

8                   (a)     Legal Fees for Preliminary Consultation and Formation/Election  
9                   Proceedings. For all work performed under this Agreement up to and including the  
10 earlier to occur of (i) a written request by the proponent landowner in CFD No. 2007-1 to  
11 abandon the proceedings, (ii) recording of the Notice of Special Tax Lien following  
12 successful completion of the required special election respecting CFD No. 2007-1, or (iii)  
13 June 30, 2007, Bond Counsel shall be paid legal fees at the hourly rates assigned annually  
14 by Bond Counsel to the attorneys and Project Manager performing such work but not to  
15 exceed \$50,000, together with reimbursement of its out-of-pocket expenses (as described  
16 in subparagraph (c) below). It is anticipated that the work will be performed primarily by  
17 attorneys Sam Sperry and Dan Bort and by Project Manager Michael Eng, for whom the  
18 hourly rates assigned for 2006 are \$495 for Sam Sperry, \$330 for Dan Bort and \$240 for  
19 Michael Eng. Such rates are subject to increase as of January 1, 2007.

20                   Bond Counsel shall be entitled to payment of legal fees (subject to the \$50,000  
21 cap) and accrued out-of-pocket expenses upon the earlier to occur of the three events  
22 specified in the foregoing paragraph upon submission of an invoice for same.

23                   (b)     Compensation for Bond Issuance, Change and Annexation Proceedings.

24                           (i)     Bond Issuance. The compensation of Bond Counsel, including  
25 both legal fees and out-of-pocket expenses, for the first series of Bonds, payable at  
26 closing, shall be an amount equal to one percent (1%) of that portion of the principal



1 amount of Bonds up to \$5.0 million, plus one-half of one percent (0.5%) of that portion  
2 of the principal amount of Bonds between \$5.0 million and \$10.0 million, plus one-fourth  
3 of one percent (0.25%) of that portion of the principal amount of Bonds in excess of  
4 \$10.0 million, provided that the compensation for the first series of Bonds shall not be  
5 less than \$25,000.

6 For each subsequent series of Bonds, the compensation of Bond Counsel,  
7 including both legal fees and out-of-pocket expenses, payable at closing, shall be an  
8 amount equal to one-half of one percent (0.5%) of that portion of the principal amount of  
9 Bonds up to \$10.0 million, plus one-quarter of one percent (0.25%) of that portion of the  
10 principal amount of Bonds in excess of \$10.0 million, provided that the compensation for  
11 each subsequent series of Bonds shall not be less than \$20,000.

12 (ii) In addition to the foregoing subparagraph (b)(i), Bond Counsel  
13 shall be entitled to both legal fees and reimbursement of out-of-pocket expenses for work  
14 performed with respect to any change or annexation proceeding. Legal fees payable with  
15 respect to each change or annexation proceeding in which a 100% waiver of election  
16 requirements is obtained from the qualified electors, shall be \$5,000, and for each change  
17 or annexation proceeding in which such 100% waiver is not obtained, such compensation  
18 shall be \$10,000. Compensation payable pursuant to this subparagraph (b)(ii) shall be  
19 payable at closing of the next series of Bonds delivered following such change or  
20 annexation proceedings.

21 (c) Out-of-Pocket Expenses. In addition to the legal fees payable pursuant to  
22 subparagraph (a) and (b)(ii) above (but expressly not subparagraph (b)(i) above), Bond  
23 Counsel shall be reimbursed its normal and customary out-of-pocket expenses, including  
24 car travel at customary mileage rates; parking charges and bridge tolls as incurred,  
25 photocopies at 20 cents per page, telephone and facsimile charges as incurred, and  
26 postage and express delivery charges as incurred.

1           (d) Compensation of Bond Counsel pursuant to subparagraph (a) above shall  
2           be payable by either wire transfer or check, as the County shall determine, based upon an  
3           invoice to be submitted upon the occurrence of the appropriate event as described in said  
4           subparagraph (a) above. Compensation of Bond Counsel, including both legal fees and  
5           out-of-pocket expenses (where out-of-pocket expenses are separately reimbursable),  
6           pursuant to subparagraph (b) above shall be payable by wire transfer from the proceeds of  
7           sale of the Bonds on the date of delivery of the Bonds to the original purchasers thereof,  
8           based upon an invoice to be submitted to the County no later than the pre-closing for  
9           review. In the event no bonds are issued, the County shall have no obligation to pay any  
10          compensation to Bond Counsel, including either legal fees or reimbursement of expenses,  
11          except pursuant to subparagraph (a) above.

12          4.       **Bond Counsel certifies that it has no interest, either direct or contingent, in any**  
13          property or contract arising from or affected by the proposed financing, except as Bond Counsel  
14          under this agreement. Bond Counsel does not represent any owner of property within the limits  
15          of the proposed CFD No. 2007-1, and has not received a fee from any source for services  
16          connected with the Financing Program or the Project.

17          5.       Bond Counsel shall staff the Financing Program with Sam Sperry and Dan Bort as  
18          the bond attorneys, Charles Cardall as the tax attorney in the event bonds are issued, and Michael  
19          Eng as the Project Manager. Bond Counsel may use other attorneys and Project Managers on the  
20          engagement, who will always be under the direct supervision of Mr. Sperry or Mr. Bort, to  
21          provide the most efficient delivery of services and expertise to the Financing Program.

22          6.       The County understands that Bond Counsel regularly performs legal services for  
23          many private and public entities in connection with a wide variety of matters. Some of these  
24          clients may have some direct or indirect relationship with the County or the County's other  
25          consultants or agents, as, for example, underwriters, financial advisors, fiscal agents, paying  
26          agents, trustees, insurers, suppliers, lenders, bankers, landlords, developers or owners of property

1 within the jurisdiction of the County. Bond Counsel may represent or have represented or in the  
2 future may represent the underwriter, fiscal agent or other participants in the financing on other  
3 matters. With such varied client representation, there is always the possibility of other  
4 transactions between clients or disputes among them. It is agreed that the County does not object  
5 to Bond Counsel performing such services now or in the future in matters other than the  
6 Financing Program; provided, that Bond Counsel expressly warrants to the County that Bond  
7 Counsel does not represent any participant other than the County in connection with the  
8 Promontory development project, the Financing Program or the Project, and the County waives  
9 any actual or potential conflict which may be posted by such representation in matters other than  
10 the Financing Program.

11 7. Bond Counsel and all persons who perform services for or through Bond Counsel  
12 pursuant to this Agreement shall be an independent contractor and shall not be deemed to be an  
13 employee of the County for any purpose. Bond Counsel's services shall be under the general  
14 direction of County Counsel's Office, which shall also be responsible for administering this  
15 agreement.

16 8. Bond Counsel and every employee thereof shall provide their services, advice and  
17 any reports in full compliance with all applicable law and professional standards. Bond Counsel  
18 represents that it is specially trained, experienced, expert and competent to perform the services  
19 required under this agreement, and that each individual providing legal services is a member in  
20 good standing of the State Bar and is licensed to practice in California. Further, Bond Counsel  
21 certifies that it will not accept representation in any matters, including litigation, under this  
22 Agreement if it or any employee thereof has any personal or financial interest therein.

23 9. Bond Counsel certifies that it accepts this retention because it has the time,  
24 energy, skills and ability necessary to perform the duties required in an efficient, trustworthy,  
25 professional and businesslike manner. It is understood that the services under this Agreement  
26 must be provided immediately, and that they are time-critical. Bond Counsel is engaged by

1 County for its unique qualifications and skills. Bond Counsel shall not subcontract, delegate or  
2 assign the services to be provided under this Agreement, in whole or in part, to any other person  
3 or entity not employed in Bond Counsel's firm without consent of County.

4 10. Bond Counsel shall maintain insurance in a form acceptable to County to be in  
5 full force and effect from the first day of the term of this Agreement, as set forth in Exhibit A  
6 attached hereto and incorporated herein. Bond Counsel specifically represents that it maintains  
7 errors and omissions insurance applicable to the services to be rendered under this Agreement.

8 11. Bond Counsel agrees that it will comply with all ethical duties, will maintain the  
9 integrity of the Bond Counsel-client relationship, and will take all steps available to preserve all  
10 applicable legal privileges, confidences, and records from disclosure. All documents and  
11 information obtained by or generated by Bond Counsel pursuant to this contract, all opinions and  
12 conclusions of Bond Counsel, any reports, information, data, statistics, forms, procedures,  
13 systems, studies and all communications with County, are confidential. Bond Counsel agrees to  
14 take all steps reasonably necessary to maintain this confidentiality. Bond Counsel is responsible  
15 for insuring that it and all of its employees faithfully adhere to the confidentiality requirements of  
16 law and this Agreement.

17 12. Bond Counsel shall immediately notify County if any services to be performed  
18 under this Agreement involves an actual or potential conflict of interest, financial or otherwise.  
19 Bond Counsel shall not engage in any activity under this Agreement that involves any actual or  
20 potential conflict of interest unless Bond Counsel first makes a full and complete disclosure of all  
21 relevant facts and obtains a written waiver of such conflict in advance from County. County  
22 acknowledges the disclosures in paragraph 6, above.

23 13. Bond Counsel shall be responsible for performing the work under this agreement  
24 in a safe, professional, skillful and workmanlike manner, and shall be liable for its own  
25 negligence and the negligent acts of its employees. Without limiting the generality of the  
26 foregoing sentence, Bond Counsel agrees to the following:

1           (a)     Indemnification - Professional Malpractice. Bond Counsel is skilled in  
2           the professional calling necessary to the services and duties agreed to be performed and  
3           County relies upon the skills and knowledge of Bond Counsel. Bond Counsel shall  
4           perform such services and duties in conformance to and consistent with the standards  
5           generally recognized as being employed by professionals in the same discipline in the  
6           State of California. Bond Counsel agrees to indemnify and hold harmless the County, its  
7           officers and employees, from any and all liability, losses, damages, costs and expenses  
8           finally determined by a court of competent jurisdiction to have been proximately caused  
9           by any professional malpractice of Bond Counsel, their officers, employees, agents or  
10          subcontractors in the performance of services under this agreement, provided that nothing  
11          herein is intended to deprive Bond Counsel of the benefit of the application of the  
12          doctrine of comparative fault as it would otherwise be applicable to reduce Bond  
13          Counsel's liability as a result of the negligence or other misconduct of the County and any  
14          of its officers, employees or agents.

15          (b)     Indemnification - Personal Injury or Death, or Property Damage. Bond  
16          Counsel shall defend, indemnify and hold harmless the County, its officers, agents and  
17          employees, against any claim, loss or liability regarding the personal injury or death of  
18          any person, or property damage, caused by Bond Counsel, its officers, agents or  
19          employees while engaged in performance of this agreement, due to the willful or  
20          negligent acts (active or passive) or omissions by Bond Counsel's officers, employees or  
21          agents. The acceptance of said services and duties by the County shall not operate as a  
22          waiver of such right of indemnification.

23          14.     **This Agreement shall be terminable by the County at any time for any reason upon**  
24          a 10-day notice to Bond Counsel. Funds for the purpose of compensation pursuant to  
25          subparagraph (a) of paragraph 3 of this Agreement are made available by deposit(s) of such funds  
26          by the proponent landowner of CFD No. 2007-1, and such deposit(s) may be depleted and require

1 supplementation at any time. Should the amount available to the County from such deposit(s) be  
2 insufficient from time to time to pay the compensation due Bond Counsel under said  
3 subparagraph (a) of paragraph 3, the County agrees to require an additional deposit of funds in an  
4 amount sufficient to pay all compensation due Bond Counsel, but under no circumstances shall  
5 the County become obligated to pay Bond Counsel such compensation from any other source  
6 than such deposit(s) of funds from the proponent landowner. Bond Counsel may terminate this  
7 Agreement upon sufficient written notice to County, made in such a manner so that the County  
8 shall not be prejudiced. The obligation of confidentiality shall continue and shall not terminate  
9 when this Agreement ends.

10 15. All independent consultants providing services to the County must file a State of  
11 California Form 590 certifying their California residency or, in the case of a corporation,  
12 certifying that it has a permanent place of business in California. Bond Counsel will be required  
13 to submit a Form 590 prior to execution of this Agreement or County shall withhold seven (7)  
14 percent of each payment to be made to Bond Counsel during the term of this Agreement. This  
15 requirement applies to any Agreement exceeding \$1,500.00.

16 16. Bond Counsel shall provide proof of a policy of insurance satisfactory to the El  
17 Dorado County Risk Manager and documentation evidencing that Bond Counsel maintains  
18 insurance that meets the following requirements:

19 (a) Full Worker's Compensation and Employer's Liability Insurance covering  
20 all employees of Bond Counsel as required by law in the State of California.

21 (b) Commercial General Liability Insurance of not less than \$1,000,000  
22 combined single limit per occurrence for bodily injury and property damage.

23 (c) Automobile liability insurance of not less than \$500,000 is required in the  
24 event motor vehicles are used by the Bond Counsel in the performance of the contract.

25 (d) In the event Bond Counsel or any of its personnel are licensed  
26 professionals, and are performing professional services under this contract, professional

1 liability (for example, malpractice insurance) covering such services is required with a  
2 limit of liability not less than \$1,000,000 per occurrence.

3 (e) Bond Counsel shall furnish a certificate of insurance satisfactory to the El  
4 Dorado County Risk Manager as evidence that the insurance required above is being  
5 maintained.

6 (f) The insurance will be issued by an insurance company acceptable to the  
7 Risk Management Division, or be provided through partial or total self-insurance likewise  
8 acceptable to the Risk Management Division.

9 (g) Bond Counsel agrees that the insurance required above shall be in effect at  
10 all times during the term of this contract. In the event said insurance coverage expires at  
11 any time or times during the term of this contract, Bond Counsel agrees to provide at least  
12 thirty (30) days prior to said expiration date, a new certificate of insurance evidencing  
13 insurance coverage as provided for herein for not less than the remainder of the term of  
14 the contract, or for a period of not less than one year. New certificates of insurance are  
15 subject to the approval of the Risk Management Division and Bond Counsel agrees that  
16 no work or services shall be performed prior to the giving of such approval. In the event  
17 the Bond Counsel fails to keep in effect at all times insurance coverage as herein  
18 provided, County may, in addition to any other remedies it may have, terminate this  
19 contract upon the occurrence of such event.

20 (h) The certificate of insurance must include the following provisions stating  
21 that:

22 (i) The insurer will not cancel the insured's coverage without thirty  
23 (30) day prior written notice to the County; and

24 (ii) The County, its officers, officials, employees, and volunteers are  
25 included as additional insured, but only insofar as the operations under this  
26 contract are concerned. This provision shall apply to all liability policies except

1 worker's compensation and professional liability insurance policies.

2 (i) The Bond Counsel's insurance coverage shall be primary insurance as  
3 respects the County, its officers, officials, employees and volunteers. Any insurance or  
4 self-insurance maintained by the County, its officers, officials, employees or volunteers  
5 shall be excess of the Bond Counsel's insurance and shall not contribute with it.

6 (j) Any deductibles or self-insured retentions must be declared to and  
7 approved by the County. At the option of the County, either: the insurer shall reduce or  
8 eliminate such deductibles or self-insured retentions as respects the County, its officers,  
9 officials, employees, and volunteers; or the Bond Counsel shall procure a bond  
10 guaranteeing payment of losses and related investigations, claim administration and  
11 defense expense.

12 (k) Any failure to comply with the reporting provisions of the policies shall  
13 not affect coverage provided to the County, its officers, officials, employees or  
14 volunteers.

15 (l) The insurance companies shall have no recourse against the County, its  
16 officers and employees or any of them for payment of any premiums or assessments  
17 under any policy issued by any insurance company.

18 (m) Bond Counsel's obligations shall not be limited by the foregoing insurance  
19 requirements and shall survive the expiration of this agreement.

20 (n) In the event Bond Counsel cannot provide an occurrence policy, Bond  
21 Counsel shall provide insurance covering claims made as a result of performance of this  
22 contract for not less than three years following completion of performance of this  
23 agreement.

24 (o) The certificate of insurance shall meet such additional standards as may be  
25 determined by the contracting County either independently or in consultation with the  
26 Risk Management Division, as essential for protection of the County.



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17. For the purpose of administering this Agreement, the County shall be represented by its County Counsel. Sam Sperry is designated as the person associated with Bond Counsel who has the responsibility to administer this Agreement on behalf of Bond Counsel. This Agreement and the exhibits thereto are the entire agreement between the parties and they supersede all prior written or oral agreements or understandings between the parties. This Agreement may only be modified by mutual consent of the parties in writing fully executed by duly authorized officers of the parties. Any dispute resolution action arising out of this Agreement, including but not limited to litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Bond Counsel waives any removal rights it may have under Code of Civil Procedure section 394.

Dated: \_\_\_\_\_ EL DORADO COUNTY

By: \_\_\_\_\_  
Chairman, Board of Supervisors  
"County"

ATTEST:  
CINDY KECK  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_ ORRICK, HERRINGTON & SUTCLIFFE, LLP

By: \_\_\_\_\_  
Samuel A. Sperry  
"Bond Counsel"

# MARSH

# CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
SEA-000989839-01

PRODUCER  
MARSH RISK & INSURANCE SERVICES  
P. O. BOX 193880  
SAN FRANCISCO, CA 94119-3880  
CALIFORNIA LICENSE NO. 0437153

Attn: RICHARD E. COWAN  
19025 -FINPR-E&O-2007

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

### COMPANIES AFFORDING COVERAGE

COMPANY  
**A** LEXINGTON INSURANCE COMPANY

COMPANY  
**B**

COMPANY  
**C**

COMPANY  
**D**

INSURED  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
THE ORRICK BUILDING  
405 HOWARD STREET  
SAN FRANCISCO, CA 94105-2669

**COVERAGES** This certificate supersedes and replaces any previously issued certificate for the policy period noted below. **2**

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	<b>GENERAL LIABILITY</b>				GENERAL AGGREGATE	\$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED EXP (Any one person)	\$
	<b>AUTOMOBILE LIABILITY</b>				COMBINED SINGLE LIMIT	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	\$
					AGGREGATE	\$
	<b>EXCESS LIABILITY</b>				EACH OCCURRENCE	\$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATUTORY LIMITS	OTHR
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				EL EACH ACCIDENT	\$
					EL DISEASE-POLICY LIMIT	\$
					EL DISEASE-EACH EMPLOYEE	\$
<b>A</b>	<b>LAWYERS PROFESSIONAL LIABILITY</b>	3598668	04/15/06	04/15/07	CLAIM / AGGREGATE	\$1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

EVIDENCE OF PROFESSIONAL LIABILITY COVERAGE

### CERTIFICATE HOLDER

COUNTY OF EL DORADO  
ATTN: RISK MANAGER, COUNTY OF EL DORADO  
330 FAIR LANE  
PLACERVILLE, CA 95667

### CANCELLATION

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.

BY: Richard E. Cowan

MM1(3/02)

*Richard E. Cowan*

VALID AS OF: 12/01/06

# CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER  
SEA-000989817-01

**PRODUCER**  
MARSH RISK & INSURANCE SERVICES  
P. O. BOX 193880  
SAN FRANCISCO, CA 94119-3880  
CALIFORNIA LICENSE NO. 0437153  
  
Attn: Gene Williams (415)743-8320  
19025 -STAND-MM-

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

### COMPANIES AFFORDING COVERAGE

- COMPANY  
A FEDERAL INSURANCE CO
- COMPANY  
B
- COMPANY  
C
- COMPANY  
D

**INSURED**  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
THE ORRICK BUILDING  
405 HOWARD STREET  
SAN FRANCISCO, CA 94105-2669

**COVERAGES** This certificate supersedes and replaces any previously issued certificate for the policy period noted below. 1

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS																												
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$																												
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$																												
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$																												
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$																												
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>  THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL	71631266	10/01/06	10/01/07	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">X</td> <td style="width: 15%;">WC STATUTORY LIMITS</td> <td style="width: 10%; text-align: center;">OT</td> <td style="width: 10%; text-align: center;">TH</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td>EL EACH ACCIDENT</td> <td></td> <td></td> <td></td> <td>\$</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td></td> <td>EL DISEASE-POLICY LIMIT</td> <td></td> <td></td> <td></td> <td>\$</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td></td> <td>EL DISEASE-EACH EMPLOYEE</td> <td></td> <td></td> <td></td> <td>\$</td> <td style="text-align: right;">1,000,000</td> </tr> </table>	X	WC STATUTORY LIMITS	OT	TH					EL EACH ACCIDENT				\$	1,000,000		EL DISEASE-POLICY LIMIT				\$	1,000,000		EL DISEASE-EACH EMPLOYEE				\$	1,000,000
X	WC STATUTORY LIMITS	OT	TH																														
	EL EACH ACCIDENT				\$	1,000,000																											
	EL DISEASE-POLICY LIMIT				\$	1,000,000																											
	EL DISEASE-EACH EMPLOYEE				\$	1,000,000																											
	OTHER																																

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**  
\$250,000 PER OCCURRENCE DEDUCTIBLE

**EVIDENCE OF INSURANCE ONLY**

**CERTIFICATE HOLDER**  
  
 COUNTY OF EL DORADO  
 ATTN: RISK MANAGER, COUNTY OF EL DORADO  
 330 FAIR LANE  
 PLACERVILLE, CA 95667

**CANCELLATION**  
  
 SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

MARSH USA INC.  
BY: Gene Williams

MM1(3/02)

VALID AS OF: 12/01/06

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID J3  
ORRIC-1

DATE (MM/DD/YYYY)  
12/01/06

**PRODUCER**  
Jenkins Athens Ins Concord  
License No. 0545478  
P. O. Box 5668  
Concord CA 94524-2029  
Phone: 925-798-3334 Fax: 925-609-5381

**INSURED**  
  
Orrick Herrington & Sutcliffe  
LLP  
2121 Main St  
Wheeling WV 26003

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Vigilant Insurance Company	
INSURER B: Federal Insurance Company	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	35821151	01/01/06	01/01/07	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ included
B	X	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	74996569	01/01/06	01/01/07	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The certificate holder, The County, it's officers, officials, employees, and volunteers are included as additional insured general liability and automobile liability per the attached endorsements. Insured's coverage is primary and non-contributory. 10 day notice of cancellation will apply if cancelled for non-payment of premium.

### CERTIFICATE HOLDER

County of El Dorado  
Risk Manager, County of El Dorado  
330 Fair Lane  
Placerville CA 95667

ELDO-01

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE


*[Signature]*



**OFFICE OF COUNTY COUNSEL  
INTER-DEPARTMENT MEMORANDUM**

---

**TO:** Heather Pence  
Auditor/ Controller's Office

**FROM:** Michael Ciccozzi   
Deputy County Counsel

**RE:** County Counsel Contract No. 454-S0710

**DATE:** 12/7/06

Your office has requested that our department review and comment upon the above listed contract.

I have reviewed the contract and can approve it as to form. I would note the following:

1. Page 1, Paragraph 1(a) line 19 refers to "the ACT" but the contract does not identify which ACT is being referred to. The particular Act should be specified.
2. Page 4, Paragraph 1(l), line 3 "Of" should be "of"
3. Page 4, Paragraph 1(l), line 4 "Internal Revenue service" should be "Internal Revenue Service" (change underlined)
4. Page 4, Paragraph 1(m), line 8 "Rom" should be "ROM"
5. Page 5, Paragraph 3(a) indicates that the hourly rates for the attorneys are subject to increase as of January 1, 2007. There is no cap on the amount of the increase. Consider placing a cap on the increase.
6. Page 6, Paragraph 3(c) Out of pocket expenses are usually tied to the Board policy which is attached as an exhibit. There is no limit on the amount of expenses to be paid other than to say normal and customary.
7. Page 7, paragraph 5 refers to the fact that Charles Cardall will be the

- tax attorney in the event bonds are issued. His hourly rate is not mentioned in Para 3(a) or anywhere else in the contract.
8. Page 7, Para 6, line 23 “may” should be “many”.
  9. Page 8, Para 6, line 3 “matters” should be “matters”.
  10. Page 8, Para 6, line 8 refers to the Promontory development project which seems awkward because the contract relates to the Bass Lake Hills Community Facilities District (Para 1).
  11. Page 8, Para 7, line 12 “no” should be “not”
  12. Page 10, Para 13(a) entitled Indemnification – Professional Malpractice does not provide for any defense obligation on the part of the vendor. It is questionable whether the County would be entitled to recover the attorney fees incurred in defense of any action which comes under this provision. Although the paragraph does provide for indemnification of costs and expenses...to have been proximately caused by the professional negligence of Bon Counsel, courts have interpreted the phrase cost and expenses to not include attorney’s fees.
  13. Page 10, Para 13(b) entitled Indemnification- Personal Injury or Death, or Property Damage does not include language referencing the negligence of the County and its effect on the County’s right to indemnity. This could result in even the slightest degree of negligence on the part of the County defeating the County’s right to defense and indemnification. I would recommend that the following language be added on line 21 as part of the sentence ending in “agents”. : “regardless of the existence or degree of fault or negligence on the part of the County, except for the sole or active negligence of the County.”

If you have any questions, please feel free to call.

mjc

S:auditor/corr/Orrick contract memo