

(R-82-2146)

RESOLUTION NUMBER R- 256687

Adopted on JUN 29 1982

RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO FINANCE HEALTH FACILITIES IMPROVEMENTS AND EQUIPMENT ACQUISITION AND CONSTRUCTION BY SAN DIEGO HOSPITAL ASSOCIATION.

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

WHEREAS, The City of San Diego (the "City") is a municipal corporation and charter city duly organized and existing under a freeholders' charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 2 of the Charter of the City (the "Charter"); and

WHEREAS, the City Council of the City acting under and pursuant to the powers reserved to the City under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 2 of the Charter, has enacted The City of San Diego Health Facility Revenue Bond Law, constituting Article 7 of Chapter IV of the San Diego Municipal Code (the "Law"); establishing a program and procedure for the authorization, sale and issuance of revenue bonds by the City for the purpose, inter alia, of providing financing for health facilities; and

WHEREAS, the City Council of the City finds that the public interest and necessity require the authorization, sale and issuance of hospital revenue bonds by the City for the purpose of making loans such as that described herein; and

WHEREAS, the San Diego Hospital Association ("SDHA") has requested the financial assistance of the City in the improvement of health facilities and the acquisition or construction of various equipment for Sharp Memorial Community Hospital and Sharp Cabrillo Hospital located in the City (the "Project"); and

WHEREAS, the City desires to assist SDHA in the financing of the Project; and

WHEREAS, the City deems it necessary and essential and a proper public purpose that the Project be financed at the earliest practicable date, SDHA requires satisfactory assurance from the City that the proceeds of the sale of bonds of the City will be made available to assist in the financing of the Project, and the City requires satisfactory assurance from SDHA that certain costs of issuing such bonds will be paid by SDHA and that SDHA, as part of the consideration for such financial assistance, will provide certain health services for and within the City during the term of such bonds; and

WHEREAS, the City is authorized under the Law to issue its revenue bonds to provide funds to make loans to finance, refinance or provide reimbursement to such health institutions for the cost of acquisition or construction of equipment and other personal property; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as

follows:

Section 1. The City shall proceed to prepare, or cause to be prepared, the documentation necessary for the City to issue, at one time or from time to time, an aggregate of not to exceed \$10,000,000 principal amount of hospital revenue bonds of the City (the "Bonds") to finance the Project; provided that, prior to commencing such preparation, the City and SDHA shall have entered into a letter agreement in substantially the form attached hereto as "Exhibit A," with such additions or deletions as are considered necessary or appropriate by officers of the City and SDHA, and the Mayor or City Manager of the City is hereby authorized to execute said letter agreement for and in the name and on behalf of the City.

Section 2. The Bonds shall be payable solely from the revenues to be received by the City pursuant to loan or other agreements to be entered into by the City and SDHA in connection with the financing of the Project, and shall not be deemed to constitute a debt or liability of the City under any constitutional, charter or statutory debt limitation. Neither the faith and credit nor the taxing power of the City shall be pledged to be payment of the principal of or interest on the Bonds.

Section 3. Issuance of the Bonds shall be subject to the following conditions: (a) the City and SDHA shall have first agreed to mutually acceptable terms for the Bonds and the sale and delivery thereof and mutually acceptable terms and conditions for the loan or other agreements for the financing of the Project, and (b) all requisite governmental approvals shall

have first been obtained.

Section 4. Orrick, Herrington & Sutcliffe, a Professional Corporation, is hereby designated bond counsel to the City in accordance with the terms of their proposal dated April 23, 1982, a copy of which is attached hereto as "Exhibit B"; provided, however, as a condition precedent San Diego Hospital Association has executed the letter agreement authorized by Section 1 above.

Section 5. Goldman, Sachs & Co. is hereby designated underwriter of the Bonds for the City in accordance with the terms of its proposal dated June 2, 1982, a copy of which is attached hereto as "Exhibit C"; provided, however, as a condition precedent San Diego Hospital Association has executed the letter agreement authorized by Section 1 above.

Section 6. The City Manager be and he is hereby authorized to signify the City's agreement to the foregoing by executing, for and behalf of the City, the foregoing instruments, copies of which are attached hereto as "Exhibits A, B and C."

Section 7. This resolution shall take effect immediately upon its passage.

APPROVED: John W. Witt, City Attorney

By Stuart H. Swett  
Stuart H. Swett  
Chief Deputy City Attorney

SHS:rc:502.1.7  
6/16/82  
Or. Dept:Mgr.  
Form=r.none

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EXHIBIT A

THE CITY OF

# SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE  
CITY MANAGER  
236-6363

San Diego Hospital Association  
7901 Frost Street  
San Diego, CA 92123

Ladies and Gentlemen:

Improvement of Health Facilities  
and Acquisition of Equipment

The purpose of this letter is to set forth certain terms and conditions under which The City of San Diego (the "City") will assist in the financing of the improvement of health facilities and the acquisition, construction and installation of certain equipment for Sharp Memorial Community Hospital and Sharp Cabrillo Hospital, both of which are located in the City (the "Project").

The City intends to enter into agreements with the law firm of Orrick, Herrington & Sutcliffe, A Professional Corporation, as bond counsel, and Goldman, Sachs & Co., as underwriter, to advise and assist the City in the sale of bonds (the "Bonds") for the financing of the Project. Copies of the agreements between the City and Orrick, Herrington & Sutcliffe, a Professional Corporation, and Goldman, Sachs & Co. are attached hereto.

By signing and returning the enclosed copy of this letter you hereby agree to the following on behalf of San Diego Hospital Association ("SDHA"):

1. SDHA agrees to pay, or cause to be paid, all costs involved in the issuance of the Bonds, including by way of example and not limitation, bond counsel's fee and disbursements, fees and disbursements of any other experts engaged by the Council, by SDHA or by the City in connection with the issuance of the Bonds, bond printing and other printing costs, publication costs and costs incurred in order to obtain ratings for the Bonds. Such costs may be paid from proceeds of the Bonds. In the event that Bonds are not issued for any reason, SDHA agrees to assume the City's obligations, if any, for payment of such costs.

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2. SDHA agrees to pay, or cause to be paid, the cost of preparation of any studies, reports or other documents necessary to be prepared by or for the City to comply with the California Environmental Quality Act.

3. SDHA agrees to pay, or cause to be paid, any and all costs incurred by the City in connection with any legal action challenging the issuance or validity of the Bonds or use of the proceeds thereof.

4. SDHA shall have the right to approve any contract not attached hereto which the City proposes to execute and for payments under which SDHA will be responsible pursuant to this letter agreement.

The City agrees to proceed, and to direct the aforementioned bond counsel and underwriter to proceed, with the planning and preparation of the necessary proceedings for the offering of the Bonds for sale to finance the Project. SDHA understands that this letter agreement does not exempt it from any requirements of the City, or any department or agency thereof or other governmental body, that would apply in the absence of the proposed Bond financing, and compliance with such requirements is an express precondition to the issuance of the Bonds by the City.

If the foregoing is satisfactory, kindly execute the enclosed copy of this letter and return it to The City of San Diego, 202 C Street, San Diego, California 92101, Attention: City Manager.

Very truly yours,

THE CITY OF SAN DIEGO

By \_\_\_\_\_  
Ray T. Blair, Jr.  
City Manager

CONFIRMED AND ACCEPTED:

SAN DIEGO HOSPITAL ASSOCIATION

By \_\_\_\_\_

Dated: \_\_\_\_\_

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EXHIBIT B

LAW OFFICES

ORRICK, HERRINGTON & SUTCLIFFE

A PROFESSIONAL CORPORATION

600 MONTGOMERY STREET

SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE (415) 392-1122

CABLE "ORRICK"

TELEX 34-0973

SAN JOSE OFFICE  
ONE ALMADEN BOULEVARD  
SAN JOSE, CALIFORNIA 95113  
TELEPHONE (408) 298-8800

SACRAMENTO OFFICE  
520 CAPITOL MALL  
SACRAMENTO, CALIFORNIA 95814  
TELEPHONE (916) 447-7752

April 23, 1982

San Diego Hospital Association  
7901 Frost Street  
San Diego, California 92123

City of San Diego  
202 "C" Street  
San Diego, California 92101

Re: City of San Diego Hospital Revenue Bonds  
(San Diego Hospital Association), Series A

Ladies/Gentlemen:

You have asked us if we would be willing to serve as bond counsel in connection with the proposed issuance of approximately \$15,000,000 aggregate principal amount of revenue bonds by the City of San Diego to finance certain improvements at Sharp Memorial Hospital and Sharp Cabrillo Hospital. We would be pleased to act as bond counsel in the proposed financing. This letter will summarize and confirm the terms of our possible engagement as bond counsel to the City in these proceedings.

Introduction

We are one of the relatively few law firms with a national reputation for expertise in municipal finance matters, and as such our firm's legal opinions concerning the validity of the issuance of bonds and the tax-exempt status of interest on bonds are generally accepted throughout the country. Our firm has practiced in this area for over 80 years, and during this period we have rendered opinions on a wide variety of financings, ranging from very large bond offerings (such as those for the State of California, the California Housing Finance Agency, the California Educational Facilities Authority, and the California Pollution Control Financing Agency) to relatively small bond offerings for a wide variety of local agencies within the State of California and other western states.

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At the present time our firm has slightly more than 100 lawyers, and approximately 20 lawyers engaged in the public finance practice. Over half of the members of our public finance department have substantial experience in hospital financings. In addition, we have an active practice in corporate securities and general business, real estate, taxation, litigation, labor, and wills and estates. Our tax department includes several people who are well-versed in questions relating to tax-exempt financing of hospitals.

During the past several years, we believe, we have been more active in tax-exempt financings for health care facilities in California than any other firm of bond attorneys. We would be pleased to supply you, upon request, with a brief description of financings for health facilities which are currently in progress or recently closed. These include financings through the City of San Diego for Mercy Hospital and Children's Hospital, nearly all the financings closed to date by the California Health Facilities Authority and charter city hospital financing for the cities of Arcadia, Grass Valley, Hayward, Marysville, Monterey, Oakland, San Leandro, Santa Cruz, Santa Rosa and Watsonville.

#### Description of Services

In connection with the contemplated financing our services would include the following:

1. consultation with representatives of the City, the Hospital, the underwriters and their respective counsel concerning the financing, its timing, terms and structure. This consultation will include matters of California law, federal tax law and municipal bond law as they affect the proposed financing;
2. preparation of legal proceedings for the authorization, sale and issuance of hospital revenue bonds by the City, including preparation of the necessary resolutions, indenture and other documents necessary for the issuance of the bonds; preparation of the letter of credit agreement between the Hospital and the bank issuing the letter of credit securing the bonds; preparation of an agreement or agreements between the City and the Hospital specifying the terms of the financing, the security for the bonds and other conditions to the financings; preparation of the proceedings

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for the sale of the bonds; preparation of the proceedings incidental to or in connection with the issuance of the bonds; and coordination of the bond closing;

3. the rendering of a final legal opinion on the validity and tax status of the bonds; and

4. such other legal services as may be incidental to the foregoing.

Our services as contemplated by this letter would not include representation of the City or the Hospital in any legal action challenging or affecting the transaction contemplated by this letter, but if such services became necessary, we would be pleased to perform them on such terms as shall be mutually agreeable at the time.

#### Fees

Our fee for the foregoing would be determined by the extent of the services rendered by us on an hourly basis at our full hourly rates then in effect, to a maximum of \$40,000. Our recent experience indicates that a fee of \$30,000-35,000 would be likely. If for any reason the City does not issue and sell the bonds, our fee will be determined on the same basis. Our fee does not include our out-of-pocket expenses, such as travel expense, long-distance telephone charges, word processing, reproduction of documents, and secretarial overtime necessary or requested because of the time demands of the transaction, and we will bill monthly for such out-of-pocket expenses.

In the event that we are requested by the City or the Hospital to perform any additional or extraordinary services not herein contemplated, we will be entitled to apply to the Hospital for additional compensation for such additional services, the amount of which shall be subject to the approval of the Hospital, but no such additional compensation shall be paid unless specifically authorized by the Hospital in its discretion.

The Hospital will be expected to pay all costs and expenses incident to the actual issuance and delivery of the bonds, including the cost and expense of preparing certified copies of proceedings required by us in connection with the

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bonds, the cost of preparing the bonds for execution and delivery, all printing costs and publication costs and any other expenses incurred by the City or the Hospital in connection with the issuance of the bonds, including fees and expenses of financial or feasibility consultants, accountants or other experts employed by the City or the Hospital.

Pursuant to an agreement to be entered into by the City and the Hospital, our fees and disbursements would be paid by the Hospital. We would therefore submit our bills for services and disbursements directly to the Hospital for payment.

If the foregoing is satisfactory, please execute the enclosed copy of this letter and return it to me. We look forward to working with you on this transaction.

Very truly yours,

JOHN R. MYERS

John R. Myers

Enclosure

CONFIRMED AND ACCEPTED:

SAN DIEGO HOSPITAL ASSOCIATION

CITY OF SAN DIEGO

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT C

June 2, 1982

City of San Diego  
City Administration Building  
San Diego, California 92101

San Diego Hospital Association  
7901 Frost Street  
San Diego, California 92123

Re: City of San Diego - Hospital Revenue Bonds  
(San Diego Hospital Association Project)

Ladies and Gentlemen:

This will confirm our commitment to provide investment banking services to the City of San Diego, California, in connection with the development and implementation of tax exempt hospital revenue bond financing for San Diego Hospital Association (the "Hospital"), located at 7901 Frost Street in San Diego, California, the revenue bonds for which are to be issued by the City of San Diego (the "City") under its charter powers, subject to all applicable federal, state and local laws and regulations.

The proposed financing would be secured by a letter of credit from a major commercial bank in addition to the payments by the Hospital under a loan agreement with the City. As has been the case with previous charter city financings through the City, the bonds will not be an obligation of the City nor will there be any pledge of the City's taxing power.

The following is a description of the services which Goldman, Sachs & Co. will provide as the City's investment banker:

1. Meeting with City Officers and other interested parties, the City's legal counsel and bond counsel, and reviewing with them the financing and the benefits which can be expected;
2. Participating in discussions among City representatives and your legal, accounting and other consultants,

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San Diego Hospital Association

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3. Participating in meetings among City representatives and your personnel concerning the Hospital and implementation of the financing;
4. Reviewing applicable federal and state legislation with bond counsel, Orrick, Herrington & Sutcliffe and our legal counsel, Brown, Wood, Ivey, Mitchell & Petty of San Francisco and New York, and preparing expert testimony and memoranda for use in the course of hearings before the City Council and other governmental bodies with respect to the financing;
5. If necessary, developing materials to be submitted to Standard & Poor's Corporation which establish credit ratings for publicly sold securities in the course of obtaining a rating for tax exempt bonds, and actively participating in meetings with rating agency personnel;
6. Organizing and participating in pre-marketing presentations designed to introduce this financing to the investment community and to cultivate interest among investors for this revenue bond financing;
7. Assisting in the preparation of necessary documentation relating to the issuance of the revenue bonds; and
9. Depending on market conditions at the time of sale, and based on discussions with the City and the Hospital, acting as sole placement agent in a private placement of the City's hospital revenue bonds or acting as sole managing underwriter in a public offering of the City's hospital revenue bonds. Our responsibilities as sole managing underwriter in a public offering would include: (a) organizing the syndicate of firms which would participate in the marketing of the revenue bonds to the public; (b) running the books on the transaction; (c) speaking for the underwriting syndicate on matters pertaining to the marketing of the revenue bonds; and (d) generally having the principal responsibility for making sure that the revenue bonds are marketed on an orderly basis which will achieve the lowest financing cost to you.

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It is our understanding that, should a financing of the type under discussion result, Goldman Sachs will be designated as the sole placement agent or sole managing underwriter by the City and the Hospital. Our compensation will be consistent with industry practice and will be negotiated with you; we will also look to our compensation for reimbursement of all prior out-of-pocket expenses. There will be no separate statements for financial advisory services rendered to the City. If the financing is not in fact implemented, there will be no cost to the City.

If the above arrangement is satisfactory to you, please sign in the place provided below and return one executed counterpart of this letter to me as soon as possible.

Very truly yours,

GOLDMAN, SACHS & CO.

By \_\_\_\_\_  
Preston R. Miller, Jr.  
Vice President

Accepted and agreed to by  
the undersigned for and on  
behalf of the City of San Diego:

By \_\_\_\_\_

Accepted and agreed to by  
the undersigned for and on  
behalf of San Diego Hospital Association:

By \_\_\_\_\_

EXHIBIT C

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JUN 29 1982

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_,  
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By Barbara Berridge, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-256687 Adopted JUN 29 1982