

California Debt and Investment Advisory Commission

Mechanics of a Bond Sale: The Legal Documents

Presenters: Geoff Gibbs and Steve Walsh
Oakland , CA
March 13, 2008

Presenters

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The Roadmap Documents

■ Time and Responsibility Schedule

- Issuer must seize control of this document (you will live with it)
- Holidays, Super Bowl Sunday, etc.: they matter
- Allow enough time for the team to read your documents

■ Distribution List

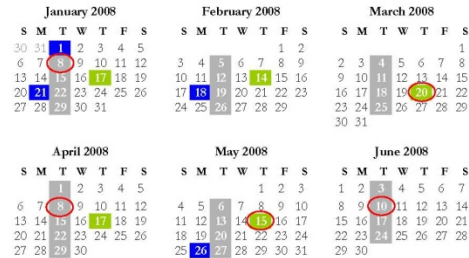
- The people on this list will be your “family” for 8-16 weeks

■ Closing Memo

- Review an earlier example sooner rather than later: you need to know now what you will have to produce at the end

Sample Time and Responsibility Schedule

COUNTY OF ALAMEDA
 ATR PROJECT COMMERCIAL PAPER PROGRAM
 IMPLEMENTATION SCHEDULE – JANUARY 4, 2008



Board of Supervisors meeting dates shaded in gray; Ad Hoc Finance Committee meetings shaded in green. Targeted action dates circled in red. Holidays are shaded in blue.

WEEK OF	DATE	EVENT	RESPONSIBILITY
Dec 31	Week of	<input type="checkbox"/> Distribute Meeting Agenda, Time and Responsibility Schedule and Distribution List to interested parties	FA
Jan 7	Jan 8	<input type="checkbox"/> Board of Supervisors meet to commit funding sources and appoint finance team <input type="checkbox"/> Kick-off meeting of Finance Team at CAO's Office, 2 p.m. – 4:00 p.m.	CAO, FA, BC, UC
	Week of	<input type="checkbox"/> Refine list of assets available to pledge to CP program <input type="checkbox"/> Conduct sensitivity analyses based on identified funding sources and other financing assumptions	CAO FA
Jan 14	Week of	<input type="checkbox"/> Distribute first drafts of LOC Bank and CP Dealer RFPs	FA
	Week of	<input type="checkbox"/> Discuss CP Program and LOC Sizing in context of sensitivity analyses and available assets	CAO, FA
Jan 21	MON, JAN 21	<input type="checkbox"/> MARTIN LUTHER KING, JR. HOLIDAY	
	Week of	<input type="checkbox"/> Order title reports for leased properties	CAO
	Week of	<input type="checkbox"/> Conference call/meeting to review LOC Bank and CP Dealer RFPs	CAO, FA, BC
	Week of	<input type="checkbox"/> Circulate revised LOC Bank and CP Dealer RFPs	FA
Jan 28	Week of	<input type="checkbox"/> Distribute CP Dealer RFP	CAO
	Week of	<input type="checkbox"/> Distribute LOC Bank RFP	CAO

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PARTICIPANTS

CAO County of Alameda / CAO's Office
 FA Financial Advisor: PRAG
 BC Bond Counsel: Nixon Peabody LLP
 LCB Letter of Credit Bank
 LCC Counsel to Letter of Credit Bank
 DC Disclosure Counsel: Lofton & Jennings
 D CP Dealers
 T Trustee and/or Paying Agent
 P Printer

The Right Schedule – Making The Timetable Work for You

- Work backwards from the closing date
- Be aware of notice periods for board meetings
- Allow enough time for the team to review documents
- Be realistic about weekends and holidays
- Consult all key players before you reschedule key all-hands sessions

Sample Closing Memo

**\$37,010,000
COUNTY OF ALAMEDA
REFUNDING CERTIFICATES OF PARTICIPATION,
SERIES 2007A
(SANTA RITA JAIL)**

CLOSING MEMORANDUM

The following memorandum will summarize the procedures to be followed in completing the execution and delivery of \$37,010,000 aggregate principal amount of the County of Alameda Refunding Certificates of Participation, Series 2007A (Santa Rita Jail) (the "Certificates").

Time and Place

The Closing will be held at the offices of Gibbs & Oliphant L.L.P., 300 Frank H. Ogawa Plaza, Suite 345, Oakland, CA 94612, , at 8:00 a.m., California Daylight Savings Time, on Tuesday, April 17, 2007 (or via teleconference). A pre-closing conference will be held at the same location on Monday, April 16, 2007, at 1:00 p.m., at which time all documents will be reviewed and deposited in escrow, with the exception of the documents to be recorded. *Special Counsel will arrange for such documents to be reviewed and signed prior to the pre-closing and recorded by the Title Company on the day of the pre-closing.*

Parties

The following parties are expected to be present or represented at the pre-closing conference or at the Closing:

County of Alameda (the "County")

Alameda County Public Facilities Corporation (the "Corporation")

County Counsel of the County (the "County Counsel") and
as General Counsel to the Corporation (in such capacity, the "Corporation Counsel")

Gibbs & Oliphant L.L.P. ("Disclosure Counsel")

U.S. Bank National Association, as trustee (the "Trustee")

U.S. Bank National Association, as trustee and escrow agent for the 1997 Certificates (the "1997 Escrow Agent" or the "1997 Trustee")

U.S. Bank National Association, as dissemination agent (the "Dissemination Agent")

Dorsey & Whitney ("Trustee's Counsel," "1997 Escrow Agent's Counsel" and "Dissemination Agent Counsel")

TKG & Associates (the "Financial Advisor")

Fulbright & Jaworski L.L.P. ("Special Counsel")

Lehman Brothers Inc. (the "Representative"), on its own behalf and on behalf of Loop Capital Markets, LLC (together, the "Underwriters")

Lofton & Jennings ("Underwriters' Counsel")

Ambac Assurance Corporation (the "2007A Certificate Insurer")

MBIA Insurance Corporation (the "2001A Certificate Insurer")

Grant Thornton LLP (the "Verification Agent")

Placer Title Company ("Title Company") (Order No. 804-16590)

PART I

PRE-CLOSING

EXECUTED DOCUMENTS TO BE DEPOSITED WITH SPECIAL COUNSEL

The documents listed below will be executed in advance of the Closing by the respective parties thereto in eight (8) executed counterparts and deposited in escrow with Special Counsel at the offices of Gibbs & Oliphant L.L.P., 300 Frank H. Ogawa Plaza, Suite 345, Oakland, CA 94612, not later than 1:00 p.m., California time, on Monday, April 16, 2007.

Document to be recorded by the pre-closing date must be provided to Placer Title Company, Attn: Jennifer Frye, Escrow Officer, at 400 Estudillo Avenue, #100, San Leandro, California 94577 (Telephone: 510-667-6405). The marketing agent is Mike McMahon at 510-614-2965.

The responsibility for preparing, assembling, or delivering counterparts of each of the documents is indicated in parenthesis. Unless otherwise indicated, all documents shall be dated the date of the Closing.

Documents Provided at Closing

MAJOR DOCUMENTS

1. Copy of Recorded Trust Agreement dated as of December 1, 1998, by and among the County, the Corporation and the Trustee. (Special Counsel)
2. Copy of Recorded First Amendment to Trust Agreement dated as of August 1, 2001, by and among the County, the Corporation and the Trustee. (Special Counsel)
3. Copy of Recorded Second Amendment to Trust Agreement dated as of April 1, 2007, by and among the County, the Corporation and the Trustee. (Special Counsel)

Sample Closing Memo (additional pages)

4. Copy of Recorded Site Lease dated as of December 1, 1998, by and between the County and the Corporation. (Special Counsel)
5. Copy of Recorded Facility Lease dated as of December 1, 1998, by and between the Corporation and the County. (Special Counsel)
6. Copy of Recorded First Amendment to Facility Lease dated as of April 1, 2001, by and between the Corporation and the County. (Special Counsel)
7. Copy of Recorded Second Amendment to Facility Lease dated as of August 1, 2001, by and between the Corporation and the County. (Special Counsel)
8. Copy of Recorded Third Amendment to Facility Lease dated as of April 1, 2007, by and between the Corporation and the County. (Special Counsel)
9. Escrow Agreement (1997 Certificates) dated as of April 1, 2007, by and between the County and the 1997 Escrow Agent. (Special Counsel)
10. Financial Guaranty Insurance Policy issued by the 2007A Certificate Insurer. (2007A Certificate Insurer)
11. Surety Bond issued by the 2007A Certificate Insurer. (2007A Certificate Insurer)
12. Financial Guaranty Agreement between the County and the Bond Insurer. (2007A Certificate Insurer)

SALE DOCUMENTS

13. Preliminary Official Statement dated March 29, 2007, together with 15c2-12 Deemed Final Certificate. (Disclosure Counsel and the County)
14. Official Statement dated April 4, 2007. (Disclosure Counsel)
15. Certificate Purchase Agreement, dated April 4, 2007, by and among the County, the Corporation and the Representative. (Underwriters' Counsel)
16. Continuing Disclosure Agreement dated April 1, 2007, executed and delivered by the County to U.S. Bank National Association as the dissemination agent. (Underwriters' Counsel)

COUNTY AND CORPORATION DOCUMENTS

17. Resolution No. R-2007-134 of the Board of Supervisors of the County adopted on March 27, 2007, certified by the Clerk of the Board of Supervisors (Retention Resolution). (County Counsel)

18. Resolution No. R-2007-133 of the Board of Supervisors of the County adopted on March 27, 2007, certified by the Clerk of the Board of Supervisors (Approving Resolution). (County Counsel)
 19. Resolution No. R-2007-136 of the Board of Directors of the Corporation adopted on March 27, 2007, certified by the secretary of the Corporation (Retention Resolution). (Corporation Counsel)
 20. Resolution No. R-2007-135 of the Board of Directors of the Corporation adopted on March 27, 2007, certified by the secretary of the Corporation (Approving Resolution). (Corporation Counsel)
 21. Certificate of the County as to Incumbency, Signatures and Other Matters. (Special Counsel)
 22. Certificate of the Corporation as to Incumbency, Signatures and Other Matters, together with Articles of Incorporation, By-Laws and Certificates of Good Standing from the Secretary and State and the Franchise Tax Board. (Special Counsel)
 23. Certificate of Essentiality and Value. (Special Counsel)
 24. Certificate of the Risk Manager of the County. (Special Counsel)
 25. Request of the County to the Trustee. (Special Counsel)
 26. Requisition - Costs of Issuance Fund. (Special Counsel)
 27. Report of Proposed Debt Issuance filed with the California Debt and Investment Advisory Commission. (Special Counsel)
 28. Report of Final Sale filed with the California Debt and Investment Advisory Commission. (Special Counsel)
 29. Tax Certificate As To Arbitrage and The Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986, executed by the County, including Underwriters' Certificates, the Certificate Insurer, and the Escrow Bidding Agent. (Special Counsel)
 30. Specimen Certificate. (Special Counsel)
 31. Internal Revenue Service Form 8038-G. (Special Counsel)
 32. Copy of DTC Blanket Letter of Representations. (Special Counsel)
- ## TRUSTEE AND 1997 ESCROW AGENT DOCUMENTS
33. Authentication and Signature Certificate of the Trustee and Escrow Agent. (Trustee/Escrow Agent)

Types of Financings

- Bonds
 - General Obligation
 - Lease Revenue
 - Enterprise
 - Fixed or Variable Rate
- Certificates of Participation
- Notes
- Refundings

Financing Documents -- Resolution

- Approves and Authorizes the Financing
 - Establishes Financing Parameters:
 - Maximum interest rate (or minimum savings)
 - Maximum amount of borrowing
 - Underwriter's discount
 - Other provisions (delegation of authority, insurance, credit enhancement, ratification and approval of all other necessary actions)
 - Approves the other documents and the Preliminary Official Statement in substantially final form

Remember signature authority and "all other necessary actions"

Financing Documents -- Indenture

- This document lays out the legal structure and terms of the financing. It will specify:
 - The maturities of the bonds
 - The principal and interest payment dates
 - The revenues and accounts pledged to the repayment of the bonds
 - The flow of funds for the accounts (the mechanics of the cashflow)
 - Parity debt provisions (ability to issue future bonds)
 - Default and remedy provisions (what happens if something goes wrong?)

Parity debt provisions bind you now and in future years ---
make sure you understand their effect

Financing Documents – Indenture (II)

- This document lays out the legal structure and terms of the financing. It will specify:
 - Prepayment or redemption provisions
 - optional, extraordinary, or sinking fund
 - Permitted Investments
 - Amendment process
 - With Bondholder consent
 - Without Bondholder consent
 - Defeasance provisions (in the event the bonds are refunded or prepaid)
 - Issuer Covenants (tax covenants, rate covenants, or foreclosure covenants, depending on type of financing)
- Many of the key points in your financing will be addressed within the “defined terms” at the beginning of this document

Parties to the Agreement: Issuer and Trustee

Covenants you enter into re: taxes and rates will directly affect your budgets and operations for years to come.

Sample Indenture-Table of Contents

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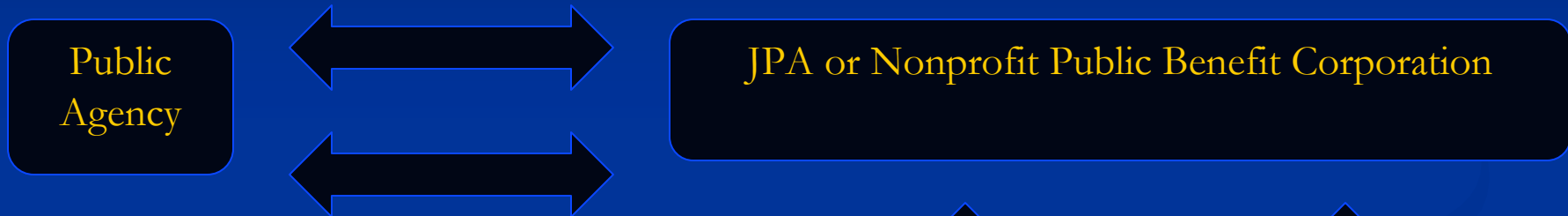
ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

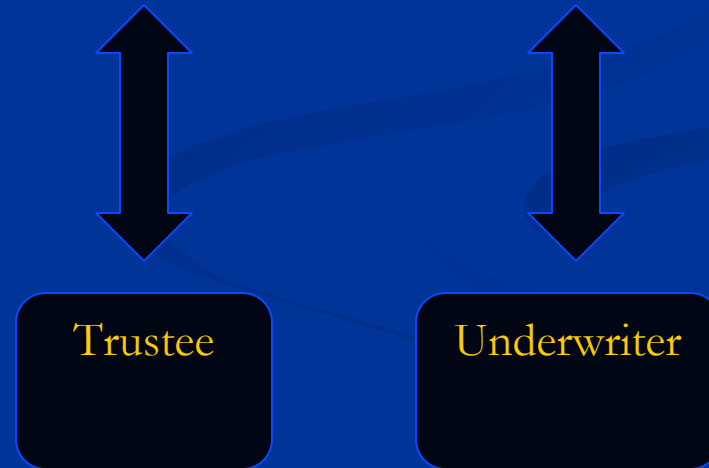
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Financing Documents – COP or Lease Revenue Structure

(1) Site lease: Public agency leases property to JPA



(2) Facility Lease: JPA leases back property to public agency in return for ongoing lease payments



(3) Indenture: JPA pledges to repay bonds

(4) Bond purchase agreement: Underwriter commits to purchase of bonds

Financing Documents – COP or Lease Revenue Agreements

■ Site Lease

- Lease from public agency to financing entity
- Sets up leaseback to public agency

■ Lease

- Lessor is Joint Powers Authority or Nonprofit Public Benefit Corporation
- Lessee is public agency

■ Important Provisions:

- Lease Payments (Interest and Principal Components)
- Abatement (Beneficial use and occupancy)
- Insurance (Liability, Hazard, Title, etc.)
- Remedies (Re-enter and re-let)
- Restrictions on Use of Facility

Financing Documents – COP or Lease Revenue Agreements (II)

- Assignment Agreement
 - Assigns rights under the Lease to the Trustee

Parties: Public Agency (lessee) and Authority (lessor)...Trustee (Assignment Agreement)

Pay attention to important economic concepts
of Fair Rental Value and Useful Economic Life

Financing Documents – Refunding Transactions

- Escrow Agreement
- Verification Report
- Defeasance Opinion

Financing Documents – Preliminary Official Statement

- Distributed by Underwriter to prospective investors prior to sale so investor can make informed purchase decisions. Should be as close as final as possible (must be “deemed final” pursuant to executed certificate by Issuer) with actual pricing terms (interest rates and principal amounts) left blank pursuant to Rule 15c2-12
- Final Official Statement, including all final pricing information, distributed by underwriter to all actual purchasers no later than 7 business days after date of bond purchase agreement.

POS Threshold Issues

- Who Prepares?
 - Disclosure Counsel
 - Underwriter's Counsel

- Who Reviews?
 - Staff
 - Public Officials
 - Working Group

Financing Documents – Preliminary Official Statement (II)

- Rule 10b-5 Materiality Standard:
- Do not omit or misstate a material fact
- What is “material”?
- A misstatement or omission is material if there is a reasonable likelihood that a reasonable (not “any”) investor would (not “could”) consider it important (not “interesting”) in making the decision to purchase or sell the securities

Do not fall into the 3 Big Materiality Traps:

- (1) “It’s not in writing”
- (2) “It’s only a draft report”
- (3) “There’s a difference of opinion”

Financing Documents – Preliminary Official Statement (III)

- Contents of POS (Describes the Debt, Issuer, and Sources of Repayment)
 - The Bonds or Certificates
 - Purpose of the financing
 - Security and sources of payment
 - Estimated sources and uses of bond proceeds
 - The project(s)
 - The Issuer
 - Risk factors
 - Other (e.g., tax matters, ratings, litigation, continuing disclosure obligation)
 - Appendices (audited financial statements, issuer economic and statistical data, form of bond counsel opinion credit enhancement, summary of legal documents)

Executed by the Issuer --- THIS IS THE ISSUER'S DOCUMENT

The Dual Purpose of the POS and Basic Cost-Benefit Analysis

- Offering document serves not only as the sales document to investors but also as an insurance policy with respect to lawsuits
- Accordingly, there is little benefit to:
 - Not telling the whole story
 - Trying to save a paragraph or two in a 75-page document

Financing Documents – Bond Purchase Agreement

- This contract, executed on the day of the bond sale, specifies:
 - Principal amount of bonds to be sold, maturity schedule, interest rates and prices.
 - Underwriter commits to purchase bonds at Closing and issuer commits to sell bonds
 - Underwriter's Discount

Financing Documents – Bond Purchase Agreement (II)

■ Representations and Warranties

- Due authorization
- No conflict
- No litigation
- No prior continuing disclosure default
- Duty to update Official Statement

■ Termination Provisions (Pay Particular Attention to These)

- “War out”
- Other market or regulatory disruptions (e.g. recent rating downgrades)

■ Closing Documents and Opinions

- This is the final roadmap: understand what is called for

Parties: Issuer and Underwriter

Financing Documents – Tax Certificate

- Specifies factual information on which Bond Counsel relies for tax analysis
- Contains covenants and obligations of the Issuer regarding matters such as use of proceeds and arbitrage calculations

Financing Documents – Continuing Disclosure Certificate

- Contents of Annual Report
 - Certain relevant “annual financial information”
 - Audited financial statements
 - Notice of occurrence of 11 “material events”
 - Notice of any failure to file the above
- Dissemination Agent
- NRMSIRS

This document establishes the annual reporting requirements for the Issuer for the term of the bonds. Make sure your agency has the capacity to meet these disclosure requirements before you finalize the document.

Financing Agreements – Credit Enhancement Documents

- Bond Insurance
 - Commitment Letter
 - Bond Insurance Policy
- Letters of Credit
 - Reimbursement Agreement

If You Don't Remember Anything Else.....

- Issuers need to read and understand their bond documents—it's hard work and it takes time.
- If you don't understand what a provision in a document means, ask the members of your finance team.
- Give yourself plenty of time, especially when you're starting out on your first few deals.

Thank You

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