

AGENDA REVISIONS AND SUPPLEMENTALS

**TUESDAY, OCTOBER 29, 2019, 10:00 A.M.
REGULAR MEETING**

Note: This revision and supplemental agenda shows items that have been added, continued, deleted or modified since release of the agenda to the public. No new supplemental items will be added to the agenda following close of business on the Friday before the meeting.

HOUSING TRUST MANAGER REPORT

± 8. Oral Report from the Housing Trust Manager

**REGULAR MEETING AGENDA
ORANGE COUNTY HOUSING FINANCE TRUST**

TUESDAY, OCTOBER 29, 2019, 10:00 A.M.

HALL OF ADMINISTRATION
COMMISSION ROOM, FIRST FLOOR
333 W. Santa Ana Blvd.
Santa Ana, California

JOHN MARK JENNINGS
Chair

ANDREW DO
Vice Chair

DON BARNES
Director

DOUG CHAFFEE
Director

DAVID PENALOZA
Director

JAMEY FEDERICO
Director

SHARI FREIDENRICH
Director

ED SACHS
Director

STEPHEN FAESSEL
Director

Trust Manger
Adam Eliason

Trust Counsel
Jacqueline Guzman

Clerk of the Trust
Robin Stieler

This agenda contains a brief general description of each item to be considered. The Orange County Housing Finance Trust encourages public participation. If you wish to speak during public comment, please complete a Speaker Request Form and deposit it in the Speaker Form Return box located next to the Clerk. Speaker Forms are located on the table next to the entrance doors. Except as otherwise provided by law, no action shall be taken on any item not appearing in the agenda. When addressing the Orange County Housing Finance Trust, please state your name for the record prior to providing your comments.

****In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Clerk of the Board's Office 72 hours prior to the meeting at (714) 834-2206****

*All supporting documentation is available for public review online at:
www.OCHFT.org and in the office of the Clerk of the Board of Supervisors located in the
Hall of Administration Building, 333 W. Santa Ana Blvd., 10 Civic Center Plaza, Room 465,
Santa Ana, California 92701 during regular business hours,
8:00 a.m. - 5:00 p.m., Monday through Friday.*

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

DISCUSSION ITEMS (Items 1-7):

At this time, members of the public may ask the Trust to be heard on the following items as those items are called.

1. Approve Orange County Housing Finance Trust minutes from the August 30, 2019 Regular Meeting.
2. Approve recommendation to hire outside legal counsel Orrick, Herrington & Sutcliffe to assist the Trust in evaluating options for structuring tax-deductible contributions from private sources; and authorize the Housing Trust Manager to execute an Agreement consistent with the attached Orrick engagement letter.
3. Approve Trust Budget for Fiscal Year 2019-2020.
4. Approve Notice of Funding Available (NOFA) policy criteria and authorize Housing Trust Manager to issue \$5,950,000 NOFA for the development of supportive housing.
5. Approve the appointment of Board Members to serve on a Funding Strategy Ad Hoc Committee to review and recommend to the Board various actions to obtain additional funding for the Trust.
6. Retroactively approve the Memorandum of Understanding (MOU) with the County of Orange for administrative services and authorize the Housing Trust Manager, or his designee, to execute the agreement; and appoint Shari Freindenrich as Treasurer and Frank Davies as Auditor-Controller for the Trust pursuant to the terms of the MOU, and direct both parties to file an Official Bond if their existing bonds are not extended to cover their obligations to the Trust.
7. Adopt by resolution the 2020 Orange County Housing Finance Trust meeting calendar.

HOUSING TRUST MANAGER REPORT

1. Oral Report from the Housing Trust Manager

PUBLIC & TRUST COMMENTS:

At this time members of the public may address the Trust on any matter not on the agenda but within the jurisdiction of the Trust. The Trust or Chair may limit the length of time each individual may have to address the Trust.

PUBLIC COMMENTS

DIRECTOR COMMENTS

ADJOURNED:

NEXT MEETINGS: To be determined.

Agenda Item # 1

Approve Orange County Housing Finance
Trust minutes from the August 30, 2019
Regular Meeting

**REGULAR MEETING SUMMARY ACTION MINUTES
ORANGE COUNTY HOUSING FINANCE TRUST**

FRIDAY, AUGUST 30, 2019, 9:00 A.M.

JOHN MARK JENNINGS
Chair

DAVID PENALOZA
Vice Chair

DON BARNES
Director

DOUG CHAFFEE
Director

ANDREW DO
Director

STEPHEN FAESSEL
Director

JAMEY FEDERICO
Director

SHARI FREIDENRICH
Director

ED SACHS
Director

Trust Manger
Adam Eliason

Trust Counsel
Jacqueline Guzman

Clerk of the Trust
Robin Stieler

ATTENDANCE: Doug Chaffee, Stephen Faessel, Shari Freidenrich, Jamey Federico, John Mark Jennings,
Ed Sachs and David Penaloza

ABSENT: Don Barnes and Andrew Do

PRESENT: Manager of the Trust Adam Eliason
Trust Counsel Jacqueline Guzman
Clerk of the Trust Robin Stieler

Call to Order

CHAIR JENNINGS CALLED THE MEETING TO ORDER AT 9:06 A.M.

Pledge of Allegiance

DIRECTOR FEDERICO LED THE PLEDGE OF ALLEGIANCE

Roll Call

THE CLERK CALLED THE ROLL AND CONFIRMED QUORUM

ACTION ITEMS (Items 1-5):

1. Approve Orange County Housing Finance Trust minutes from the June 27, 2019 Regular Meeting **ON THE MOTION OF DIRECTOR SACHS, SECONDED BY DIRECTOR FAESSEL, BY A VOTE OF 6 TO 0, WITH VICE CHAIR PENALOZA AND DIRECTORS BARNES AND DO BEING ABSENT, APPROVED THE ORANGE COUNTY HOUSING FINANCE TRUST MINUTES FROM THE JUNE 27, 2019 REGULAR MEETING AS AMENDED TO ADD: ON THE MOTION OF DIRECTOR CHAFFEE, WITH A UNANIMOUS VOTE OF THE BOARD AND WITH DIRECTORS BARNES AND SIDHU BEING ABSENT, THE BOARD CONFIRMED THE APPOINTMENTS OF DIRECTOR JENNINGS AS CHAIR AND DIRECTOR PENALOZA AS VICE CHAIR.**

2. Approve and adopt by resolution the proposed Orange County Housing Finance Trust Bylaws. **ON THE MOTION OF DIRECTOR CHAFFEE, SECONDED BY DIRECTOR FAESSEL, BY A VOTE OF 6 TO 0, WITH VICE CHAIR PENALOZA AND DIRECTORS BARNES AND DO BEING ABSENT, THE BOARD UNANIMOUSLY APPROVED ITEM AS RECOMMENDED**

RESO: 19-001-OCHFT

3. Election of Officers of Chair and Vice Chair for the Orange County Housing Finance Trust **ON THE MOTION OF DIRECTOR FEDERICO, SECONDED BY DIRECTOR SACHS, NOMINATED AS A SLATE DIRECTOR JENNINGS AS CHAIR AND DIRECTOR DO AS VICE CHAIR.**

ON THE MOTION OF DIRECTOR CHAFFEE, SECONDED BY DIRECTOR SACHS, BY A VOTE OF 6 TO 0, WITH DIRECTORS PENALOZA, BARNES AND DO BEING ABSENT, NOMINATED AND ELECTED BY ACCLAMATION DIRECTOR JENNINGS AS CHAIR AND DIRECTOR DO AS VICE CHAIR.

4. Authorize and adopt by resolution the Orange County Housing Finance Trust Manager, or his designee, to apply for the \$1million-dollar funding and accept the grant terms and conditions via the execution of the California Department of Housing & Community Development State Standard Agreement. **ON THE MOTION OF DIRECTOR FEDERICO, SECONDED BY DIRECTOR CHAFFEE, BY A VOTE OF 7 TO 0, WITH DIRECTORS BARNES AND DO BEING ABSENT, THE BOARD UNANIMOUSLY APPROVED ITEM AS RECOMMENDED.**

RESO: 19-002-OCHFT

5. Approve and adopt by resolution the initial Conflict of Interest Code for the Orange County Housing Finance Trust **ON THE MOTION OF CHAIR JENNINGS, SECONDED BY DIRECTOR PENALOZA, BY A VOTE OF 7 TO 0, WITH DIRECTORS BARNES AND DO BEING ABSENT, THE BOARD UNANIMOUSLY APPROVED ITEM AS RECOMMENDED.**

RESO: 19-003-OCHFT

DISCUSSION ITEMS: (None)

HOUSING TRUST MANAGER REPORT

6. Oral Report from the Housing Trust Manager
 - **PROVIDED A VIEW OF THE TRUST'S WEBSITE AND STATED THERE ARE 21 MEMBERS OF THE JOINT POWERS AUTHORITY INCLUDING THE CITIES OF**

WESTMINSTER, ALISO VIEJO AND LAGUNA HILLS.

- **WORKING WITH THE STATE AND COUNTY STAFF TO RECEIVE A \$1 MILLION GRANT DIRECTLY TO THE TRUST. THE \$1 MILLION WILL BE COMBINED WITH THE COUNTY'S \$5 MILLION TO CREATE THE TRUST'S FIRST NOTICE OF FUNDING AVAILABILITY OF \$6 MILLION FOR THE DEVELOPMENT OF PERMANENT SUPPORTIVE HOUSING WITH FUNDS AVAILABLE TO DEVELOPERS IN THE FIRST QUARTER OF 2020.**
- **WORKING WITH COUNTY STAFF TO APPLY FOR A NON COMPETITIVE GRANT FROM THE SB2 YEAR 1 PLANNING GRANT (\$310,000) FOR COUNTY PLANNING ACTIVITIES AND TRUST ADMINISTRATIVE TASKS WHICH WILL INCLUDE A BUSINESS/STRATEGIC PLAN, LEGAL COSTS TO ASSIST IN THE REVIEW AND POSSIBLE FORMATION OF A 501(c)(3) FOR DONATIONS, ADMINISTRATIVE POLICIES AND PROCEDURES, WEBSITE, UPDATES TO THE HOUSING FUNDING STRATEGY, AND PREPARATION OF REGIONAL HOUSING POLICIES AND ORDINANCES THAT CAN BE A TEMPLATE TO ASSIST IN PERMANENT SUPPORTIVE HOUSING UNITS IN THE COUNTY.**
- **THE COUNTY HOUSING FUNDING STRATEGY ESTABLISHED A GOAL OF CREATING 2,700 UNITS OF PERMANENT SUPPORTIVE HOUSING AS WELL AS 2,700 UNITS OF AFFORDABLE HOUSING. THE TRUST'S WEBSITE HAS AN INTERACTIVE TRACKING PAGE TO TRACK THE PROGRESS OF THE GOAL ESTABLISHED AND REPORTS THE DETAILS RELATED TO EACH PROJECT. ENCOURAGED EVERYONE TO SUBSCRIBE ON THE TRUST'S WEBSITE TO RECEIVE PERIODIC NEWS AND UPDATES.**
- **WAS INVITED TO SPEAK ON A PANEL AT THE KENNEDY COMMISSION FORUM ON AUGUST 16, 2019 WITH REPRESENTATIVES FROM THE HOUSING TRUST OF SILICON VALLEY, ORANGE COUNTY HOUSING TRUST AND LUCY DUNN FROM THE ORANGE COUNTY BUSINESS COUNCIL. THE PANEL SPOKE ABOUT THE COLLABORATIVE EFFORTS TO ADDRESS AFFORDABLE HOUSING AND PERMANENT SUPPORTIVE HOUSING IN THE COUNTY AND SHOWING SACRAMENTO THAT ORANGE COUNTY IS INVESTED AND HAS THE COLLECTIVE POLITICAL WILL AND PRIVATE CORPORATION WILL TO ADDRESS THE HOUSING CRISIS. WILL BE SPEAKING AT THE SOUTHERN CALIFORNIA ASSOCIATION OF NON-PROFITS CONFERENCE IN LOS ANGELES, CALIFORNIA ON OCTOBER 25, 2019.**
- **PROPOSED NEXT TRUST MEETING BE HELD ON OCTOBER 29, 2019 AT 10:00 A.M. DISCUSSION WILL INCLUDE THE RECOMMENDATION TO HIRE LEGAL COUNSEL/CONSULTANT TO EXPLORE THE FORMATION OF THE 501(c)(3) AND TAX-DEDUCTIBLE DONATIONS, DRAFT BUDGET/MEMORANDUM OF UNDERSTANDING WITH VARIOUS COUNTY DEPARMENTS FOR ADMINISTRATIVE AND FINANCIAL MATTERS AND A DRAFT NOTICE OF FUNDING AVAILABILITY FOR REVIEW AND APPROVAL BY THE BOARD. STAFF IS ALSO DRAFTING THE 2020 TRUST MEETING SCHEDULE FOR BOARD CONSIDERATION.**
- **CHAIR JENNINGS REQUESTED THE TRUST MANAGER INVITE BOARD MEMBERS TO FUTURE SPEAKING ENGAGEMENTS.**
- **CHAIR JENNINGS REQUESTED TO COMBINE EFFORTS WITH AND/OR INVITE THE ORANGE COUNTY HOUSING TRUST TO ORANGE COUNTY HOUSING FINANCE TRUST MEETINGS AND PROVIDE REPORTS AND UPDATES.**
- **CHAIR JENNINGS REQUESTED TO COORDINATE LOBBYING EFFORTS WITH BOARD MEMBERS FOR LEVERAGING OF FUNDS FOR THE TRUST AS WELL AS JOINING FORCES WITH THE ORANGE COUNTY HOUSING TRUST ON LOBBYING EFFORTS.**

- **DIRECTOR FREIDENRICH SUGGESTED HAVING A POP-UP WINDOW DISPLAY IMMEDIATELY WHEN INDIVIDUALS LOG ON THE TRUST’S WEBSITE TO SUBSCRIBE AND RECEIVE PERIODIC NEWS AND UPDATES OF THE TRUST.**
- **DIRECTOR FREIDENRICH SUGGESTED AS PART OF THE MEMORANDUM WITH THE COUNTY TO USE SOCIAL MEDIA PLATFORMS THAT THE COUNTY HAS IN PLACE TO COMMUNICATE THE WORK OF THE TRUST (I.E., HAVE LINKS TO EACH CITIES WEBSITES WHO ARE MEMBERS OF THE TRUST).**
- **DIRECTOR FREIDENRICH SUGGESTED THE COUNTY ASSIST THE TRUST IN ENCOURAGING THE 21 MEMBERS OF THE JOINT POWERS AUTHORITY TO PROVIDE LINKS TO THE TRUST’S WEBSITE ON THEIR CITY WEBSITES.**
- **DIRECTOR FREIDENRICH REQUESTED TO ADD A SECTION TO THE TRUST’S AGENDA FOR DIRECTORS TO SUBMIT INFORMATIONAL AGENDA ITEMS.**
- **DIRECTOR PENALOZA ENCOURAGED THE 21 MEMBERS OF THE JOINT POWERS AUTHORITY TO PROVIDE LINKS TO THE TRUST’S WEBSITE ON THEIR CITY WEBSITES.**

PUBLIC & TRUST COMMENTS:

PUBLIC COMMENTS

Thomas Fielder – Oral re: Resident of the City of Anaheim; member of Housing is a Human Right OC; urged the Trust to act with urgency to find housing for the homeless; the County and State can provide more funding for the development of permanent supportive housing; urged the Board to request the County provide their discretionary funds for housing.

David Duran – Oral re: Member of Housing is a Human Right OC; homeless deaths in Orange County; County of Orange elected officials not speaking positively about the homeless and expressing negative rhetoric regarding homelessness.

DIRECTOR COMMENTS

Director Sachs – Oral re: Has heard negative comments regarding the homeless from elected officials; suggested adding a tab to the Trust’s website “Who are the homeless’ to share and communicate the work of the Trust.

Chair Jennings – Oral re: Has heard negative comments regarding the homeless from elected officials and residents; agrees with Director Sach’s suggestion to add a tab to the Trust’s website “Who are the homeless’ to share and communicate the work of the Trust; welcomed Director Faessel to the Trust; announced the next meeting of the Trust will be held on Tuesday, October 29, 2019, location to be determined.

ADJOURNED: 9:49 A.M

NEXT MEETING:

Tuesday, October 29, 2019 Location to be determined

JOHN MARK JENNINGS
Chair, Orange County Housing Finance Trust

ROBIN STIELER
Clerk of the Orange County Housing Finance Trust

Agenda Item # 2

Approve recommendation to hire outside legal counsel Orrick, Herrington & Sutcliffe, to assist the Trust in evaluating options for structuring tax-deductible contributions from private sources; and authorize the Housing Trust Manager to execute an Agreement consistent with the attached Orrick engagement letter.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

APPROVE RECOMMENDATION TO HIRE OUTSIDE LEGAL COUNSEL ORRICK, HERRINGTON & SUTCLIFFE, TO ASSIST THE TRUST IN EVALUATING OPTIONS FOR STRUCTURING TAX-DEDUCTIBLE CONTRIBUTIONS FROM PRIVATE SOURCES AND AUTHORIZE THE HOUSING TRUST MANAGER TO EXECUTE AN AGREEMENT CONSISTENT WITH THE ATTACHED ORRICK ENGAGEMENT LETTER.



Adam B. Eliason, Manager

BACKGROUND:

As part of their due diligence in forming the Trust, the County of Orange hired Orrick, Herrington & Sutcliffe (Orrick) to explore and provide their legal opinion on various options for structuring the Trust to facilitate tax-deductible contributions from private sources.

The ability to have tax-deductible contributions from private sources allows the Trust to have a variety of revenue sources other than government funding. Not only would cash be considered tax-deductible but real estate may also be eligible.

Orrick prepared the attached legal memorandum to the County of Orange dated January 29, 2019 and provided five different structuring options with corresponding factors to consider for each.

On June 27, 2019, the Trust Board approved the formation of an Ad Hoc Committee (Committee) to review and recommend Trust entity formation options. The Board appointed Directors Sachs, Freidenrich and Peñaloza to serve on this Committee.

The County of Orange waived the attorney client privilege on the attached memorandum to allow the Trust to use the January 29, 2019 advice as a starting point for the Committee to meet and explore the options and make a recommendation to the Board.

Orrick has provided a proposal to provide legal guidance to the Ad Hoc Committee and Board regarding this topic. Staff also requested Orrick to expand upon the January 29th memorandum and provide the pros and cons of establishing a separate 501c(3).

Orrick's legal costs (estimate between \$15,000 and \$22,000 in our fees based on hourly rates, in addition to necessary filing and user fees of approximately \$1,000) are contained in the proposal and are being reimbursed by part of the County of Orange's share of the SB2 planning grant.

Attachments:

- Orrick Letter dated January 29, 2019
- Orrick Standard Terms of Engagement Letter

To Suzanne Luster and Mark Servino

From Andrea Ball, Orrick, Herrington & Sutcliffe LLP

Date January 29, 2019

Re Orange County Housing Finance Trust—Structuring Options

This memorandum sets forth the options for structuring Orange County Housing Finance Trust (“OCHFT”). As we discussed, the main goals in structuring OCHFT are to (a) facilitate funding with tax-deductible contributions from private sources under Section 170,¹ (b) ensure that OCHFT has maximum flexibility with respect to funding privately-owned or operated housing facilities, and (c) avoid creating additional filing and reporting obligations. Based on these factors, the five options we considered for structuring and funding OCHFT include:

1. Encourage donations to the County of Orange (the “County”) and the city participants in OCHFT (the “Cities”) for the purposes of OCHFT, which funds the County and City would transfer to OCHFT;
2. Confer one of the three sovereign powers on OCHFT so that it is a “political subdivision” eligible to receive tax-deductible contributions;
3. Determine that OCHFT is an “instrumentality” eligible to receive tax-deductible contributions “for the use of” its political subdivision sponsors (the County and the Cities);
4. Seek recognition from the Internal Revenue Service that OCHFT is an organization described in Section 501(c)(3); or
5. Form a separate nonprofit corporation (“Newco”) that will seek Section 501(c)(3) status to be controlled by OCHFT.

¹ Unless otherwise noted, all “Section” references are to the Internal Revenue Code of 1986.

In describing each structure, we set forth the main advantages and disadvantages based on the three goals outlined herein. We welcome further discussion and exploration of the issues with each option, but at this time believe that forming Newco to seek Section 501(c)(3) status will prove the most advantageous route.

Background on Structuring Goals

Facilitate Charitable Fundraising. Provided certain requirements are satisfied, Section 170 states that contributions and gifts to, or for the use of, *states or political subdivisions for a public purpose* or domestic *Section 501(c)(3) organizations* are deductible against federal income. Given that both political subdivisions and Section 501(c)(3) organizations may offer deductibility, there are multiple options for achieving the main desired objective of attracting private donations to OCHFT's programs. However, only organizations described in Section 501(c)(3) receive a "determination letter" from the Internal Revenue Service confirming such status and corresponding deductibility. Although more sophisticated donors understand that contributions to governmental entities are deductible under Section 170 even without a determination letter, others may have concerns on making gifts. As indicated below, three of the options discussed herein do not involve obtaining a determination letter. In addition, some donors may be hesitant to write checks or make credit card payments simply to "County X" or "City Y" over concern that the funds may be directed to other purposes—e.g., appropriated for another program or made part of the general fund. To illustrate with an example, many governmental school districts form a separate, fundraising Section 501(c)(3) organization to give donors comfort that funds will only be directed to school purposes. This issue is a concern with the first option discussed herein.

Programmatic Flexibility. As political subdivisions, the County and the Cities may engage in programs or make specific grants or expenditures that benefit for-profit entities. For example, governmental economic development and housing programs often involve subsidies, below-market financing, or other specific benefits to for-profit businesses. Section 501(c)(3) organizations, on the other hand, are subject to stricter rules about the benefits that their charitable programs may confer on private parties. Even Section 501(c)(3) organizations engaged in "lessening the burdens of government" must navigate the "private benefit" doctrine that prohibits charitable assets unduly benefiting for-profit enterprises or private persons. Although a detailed description of the private benefit doctrine is beyond the scope of this memorandum, the general rule is that programs of a Section 501(c)(3) organization must convey more charitable benefit than benefit to a private party. Although we expect that all programs of OCHFT will satisfy this standard because serving the housing needs of low-income populations will outweigh any benefit conferred on an owner of a housing facility subsidized by OCHFT, it is possible that use of a Section 501(c)(3) organization would limit some grants or loans.

Filing and Reporting Obligations. The third issue we consider in structuring OCHFT is minimizing compliance obligations. Although this issue is ultimately less important than ensuring deductibility and program flexibility, we consider it with each option.

OCHFT—Purpose and Governance

The County and the Cities are authorized to create OCHFT as a joint powers authority pursuant to Section 6539.5 of the California Government Code (the "Act") for the purposes of funding housing

assisting the homeless population and persons and families of extremely low, very low, and low income within the County (together “Low Income County Persons”). The Act provides that OCHFT will be governed by a board of directors consisting of “elected officials representing” the County and the Cities. Although the specific purposes and programs of OCHFT have not been developed, the Act states that OCHFT is not authorized to “serve as an owner or operator of housing units.” Therefore we expect that OCHFT will fulfill its mandate under the Act of developing capital projects to respond to the homeless crisis and helping the County respond to the homeless crisis, by:

- Making grants or loans to support the development, conversion or retention of housing facilities serving Low Income County Persons that are owned by for-profit or nonprofit entities;
- Funding programs or services connected to the provision of housing for Low Income County Persons; and
- Otherwise encouraging and facilitating the provision of affordable housing to Low Income County Persons.

Consistent with other County housing programs, it is anticipated that any loan, grant or other form of financial support to a for-profit owner or operator of affordable housing facilities will require covenants to maintain the affordability of units for a substantial number of years.

1. Contributions to County and Cities for Use by OCHFT

As set forth above, Section 170(c)(1) defines a charitable contribution to include gifts to, or for the use, of a State or political subdivision for exclusively public purposes. We assume that assisting in the provision of affordable housing to residents is a public purpose. Therefore, contributions or gifts to the County or a City for use in OCHFT programs are eligible for charitable contribution deduction assuming all other requirements applicable to specific donors are met.

- Ease of Charitable Fundraising. To the extent that the County and any particular City may transfer funds to OCHFT, this method of funding OCHFT indirectly through contributions to the County and Cities would offer donors a charitable contribution deduction. However, donors would be writing checks to the County or the applicable City, and may be concerned that all contributed funds be used for OCHFT rather than other governmental programs or expenditures. Therefore, fundraising may be more difficult than is desired.
- Program Flexibility. As political subdivisions, the County and the City are not subject to the “private benefit” doctrine which may limit certain OCHFT grants or loans by a Section 501(c)(3) organization. Therefore, this option provides maximum flexibility with respect to program structuring and expenditures.
- Filing and Compliance Obligations. The main benefit to funding OCHFT indirectly through the County and the Cities is that OCHFT would not need to obtain recognition of Section 501(c)(3) status and no separate nonprofit corporation must be formed, both of which involve some fees and reporting and compliance obligations.

2. Confer Governmental Power on OCHFT

As stated above, a contribution or gift to a State or political subdivision exclusively for public purposes qualifies for deductibility under Section 170. Generally, a “political subdivision” is defined as an entity with at least one of the three recognized sovereign powers—taxation, police, or eminent domain. Without specific delegation from the County or the Cities, we understand that OCHFT does not have one or more of such powers, and the Act restricts OCHFT from exercising any authority to levy, or advocate or incentivize the levying of, any fee, charge, dedication, reservation, tax assessment, or other exaction related to development projects.

- We discussed the option of conferring the power of eminent domain on OCHFT to qualify it as a political subdivision, but we understand this is not a desired approach and therefore are not discussing it in detail.

3. OCHFT as “Instrumentality” Eligible to Receive Tax-Deductible Contributions

The Internal Revenue Service has issued rulings that wholly-owned “instrumentalities” of one or more political subdivisions are qualified to receive tax-deductible contributions under Section 170. See, e.g., PLR 9424024 (March 16, 1994) (describing this as “long-standing position of the Service”). An “instrumentality” for this purpose is an entity without one of the three sovereign powers set forth above, but that is (a) formed and controlled by one or more political subdivisions, and (b) engaged in activities to support such political subdivisions at the direction of the political subdivisions. Based on the governance structure of OCHFT set forth in the Act and its intended programs in support of the County and the Cities, we expect that it will qualify as an instrumentality of the County and the Cities.

A key aspect of these rulings regarding donations to instrumentalities, however, is that deductibility arises from the fact that the funds are “for the use of” the political subdivision. In other words, the rulings do not determine that the instrumentality itself is a valid donee under Section 170, but instead that the instrumentality receives the funds on behalf of a valid donee—the political subdivision that formed the instrumentality. The distinction between “to” and “on behalf of” donations has potential consequences for donors that make substantial contributions in any tax year. Specifically, a donor is entitled to a deduction of up to 50% of his or her adjusted gross income for contributions “to” public charities, including political subdivisions (60% for certain cash contributions). However, contributions “for the use of” such organizations are limited to 30% of adjusted gross income.

- Ease of Charitable Fundraising. Under this option, donors would be permitted to write checks or make credit card payments directly to OCHFT, a positive result. However, OCHFT would not receive a determination letter to provide donors for comfort on deductibility. In addition, as set forth above, extremely large donations would be subject to the 30% adjusted gross income cap rather than the more substantial percentage. The practical implication of the 30% cap is likely limited for OCHFT as donors are entitled to carry forward unused deductions capped by the limit and corporate donors are not subject to the same limitation, but it is an issue that may require explanation to donors. Therefore, there are complications to fundraising with this option.

- Program Flexibility. If OCHFT does not seek Section 501(c)(3) status but instead is classified as an instrumentality, “private benefit” concerns are minimized. Grants or loans to private parties made in furtherance of assisting the County and the Cities, at the direction of the County and the Cities, should not raise particular concern for an instrumentality. Therefore, this option provides substantial flexibility with respect to program structuring and expenditures.
- Filing and Compliance Obligations. OCHFT would not seek recognition of Section 501(c)(3) status under this option, and no separate nonprofit corporation must be formed, both of which involve some expense and may trigger reporting and compliance obligations.

4. OCHFT Seeks Recognition of Section 501(c)(3) Status

Seeking recognition of Section 501(c)(3) status for OCHFT was one of the main options we discussed during our call. Although OCHFT is a joint powers authority and not a nonprofit corporation, we expect that OCHFT will engage in charitable activities of “lessening the burdens of government” by assisting the County and the Cities in meeting the housing needs of impoverished residents. However, learning more of the specific planned activities of OCHFT, we have concerns that certain grants may be interpreted by the Internal Revenue Service as problematic under the “private benefit” doctrine.

- Ease of Charitable Fundraising. In seeking Section 501(c)(3) status, OCHFT would be required to file Form 1023, an application to the Internal Revenue Service for recognition of such status. As a joint powers authority is not the typical structure for a Section 501(c)(3) entity, the Internal Revenue Service reviewer may have questions and require additional explanation to approve the status. However, by adding Section 501(c)(3) language to the agreement governing OCHFT, we are confident that such status could be obtained. Importantly with this option, OCHFT would receive a determination letter to furnish to donors, and the higher adjusted-gross-income cap would apply.
- Program Flexibility. Program flexibility is our main concern with this option. If OCHFT itself obtains recognition of Section 501(c)(3) status, grants or loans to for-profit owners and operators of housing facilities would face extra scrutiny under the “private benefit” doctrine. Engaging in such impermissible activities would put OCHFT’s entire status as a Section 501(c)(3) organization at risk and jeopardize future deductibility of contributions to the program.
- Filing and Compliance Obligations. As a Section 501(c)(3) organization, OCHFT would be required to file certain information returns and reports with federal and state authorities. Although we expect an exemption for government affiliates will be available to avoid the main annual form, Internal Revenue Service Form 990, some annual compliance and reporting will likely be required.

5. Form Newco as Separate 501(c)(3) Organization

As indicated in the introduction, we believe that forming Newco to seek Section 501(c)(3) status is the best option for structuring OCHFT programs and attracting tax-deductible contributions.

- Ease of Charitable Fundraising. Pursuant to this option, Newco is formed as a California nonprofit public benefit corporation to conduct most OCHFT activities. The board of directors of Newco will consist of the same individuals serving on the governing board of OCHFT (or potentially their respective appointees or designated representatives). The reviewer of the Internal Revenue Service Form 1023 will be more familiar with the nonprofit corporate form than a joint powers authority, and is therefore less likely to raise questions or concerns. Assuming the application is approved, Newco will receive a determination letter to furnish to donors. In addition, the higher deductibility cap of adjusted gross income would apply. Therefore, qualification as a Section 501(c)(3) organization and communications with donors would be straight forward with the Newco option.
- Program Flexibility. Forming a separate nonprofit corporation to qualify under Section 501(c)(3) preserves the ability of OCHFT itself to make those grants or loans to for-profit owners of housing that raise concerns of “private benefit” for a Section 501(c)(3) organization. Although we assume that most program activities and expenditures will be at the Newco level, those rare grants or loans that raise concern of private benefit may be made directly by OCHFT from funds other than charitable contributions. This preserves important flexibility for housing programs rather than limiting possible activities from the outset, which is the main reason we recommend this option.
- Filing and Compliance Obligations. As a Section 501(c)(3) organization, Newco will be required to file certain information returns and reports with federal and state authorities. However, we expect Newco to qualify for the governmental affiliate exception to filing annual Forms 990 with the Internal Revenue Service.

Based on this analysis, particularly ensuring that the private benefit doctrine does not limit OCHFT’s grant- or loan-making ability from the outset, we believe the formation of Newco will most effectively accomplish the structuring goals discussed herein.

* * * * *

Please contact us if you have any questions or concerns about the recommendation set forth above or the various options.

[ORRICK DRAFT SUBJECT TO CONFLICTS CHECK AND CONFIRMATION FROM THE COUNTY THAT IT DOES NOT VIEW THE ENGAGEMENT AS A CONFLICT]

October __, 2019

Orange County Housing Finance Trust
Adam B. Eliason, Manager
Via Electronic Mail -- aeliason@ochft.org

Re: Tax Planning to Facilitate Raising Funds for Charitable Programs

Dear Mr. Eliason:

On behalf of Orrick, Herrington & Sutcliffe LLP (“Orrick”), I would like to express our appreciation for your choice of our firm to provide legal services to Orange County Housing Finance Trust, a joint powers authority created pursuant to Section 6539.5 of the California Government Code (the “Trust”), in connection with tax planning to facilitate fundraising by the Trust for its charitable programs (the “Project”). The purpose of this engagement letter and the attached Standard Terms of Engagement (collectively, the “Agreement”) is to confirm the terms and conditions upon which Orrick will be providing legal services to the Trust. We believe that a mutual understanding of these terms and conditions at the outset is fundamental to establishing a good working relationship.

Orrick’s legal services to the Trust in furtherance of the Project are expected to consist of the following phases or tasks that you have identified, and an estimate for amounts of time or fees required to complete each task or phase of the Project are as follows:

1. Conference call with Staff to discuss January 29, 2019 Orrick letter and Ad Hoc Committee meeting/presentation (estimate 1 hour).
2. Revise January 29, 2019 Orrick letter to address feedback and questions from Staff (estimate 1 hour).
3. Conference call with Board Ad Hoc Committee/Staff to discuss options presented in January 29, 2019 letter (estimate 2 hours).
4. Conference call with Trust Board during the meeting to answer any Board questions (estimate 30 minutes).

5. If the Trust Board decides to go forward with seeking Section 501(c)(3) status for itself or with forming a separate nonprofit corporation and seeking Section 501(c)(3) status for that entity, complete corporate formation and IRS Form 1023 (estimate between \$15,000 and \$22,000 in our fees based on hourly rates, in addition to necessary filing and user fees of approximately \$1,000).

We note that you may decide to limit our legal services in furtherance of the Project to certain of the phases or tasks set forth above, and that this engagement letter in no way binds you to use our services for all of the items identified above. We also emphasize that the estimates of time in #1-#4 above, or fees in the case of #5 above, are initial estimates, and that time or fees may be more substantial.

In consideration of the services set forth above, the Trust shall pay Orrick a fee based on the amount of time expended by Orrick's attorneys and non-attorney professionals from date on which services relating to the Project were first performed at their hourly rates from time to time in effect. The current hourly rate of the attorney who is expected to provide the majority of the legal services pursuant to this engagement with the Trust, Andrea Ball, is \$870 per hour. Hourly rates are usually increased as of the beginning of each calendar year, and rates for other attorneys or professionals who may perform services pursuant to this engagement may be lower or higher than Ms. Ball's current rate.

Orrick shall be entitled to bill fees (together with expenses) on a monthly basis. The obligation to pay our invoices is solely the Trust's and is not contingent upon any right of the Trust may have for reimbursement, indemnification or insurance; or the Trust's receipt of any other form of payment the Trust may claim or expect to receive from some other party.

This engagement letter and the attached Standard Terms of Engagement represent the entire understanding and agreement between the Trust and Orrick with respect to the subject matter referred to herein. The Trust acknowledges that this engagement letter and the attached Standard Terms of Engagement have been carefully reviewed and their content understood and that the Trust agrees to be bound by all of the terms and conditions and represents that the person signing below has been authorized to do so on behalf of the Trust. Furthermore, the Trust acknowledges that Orrick has made no representations or guarantees to the Trust regarding the successful issuance of a determination letter by the Internal Revenue Service to the Trust or to another entity formed by the Trust or the time necessary to complete the Project.

Nothing in the Agreement or in any of the documents contemplated hereby, expressed or implied, is intended or shall be construed to give any person other than the Trust and Orrick any legal or equitable right or claim under or in respect of the Agreement or with respect to services contemplated hereby, and the Agreement shall inure to the sole and exclusive benefit of the Trust and Orrick.

The provisions of this engagement letter may only be amended in writing and signed by both parties.

The Agreement will take effect upon execution of this engagement letter, but its effective date will be retroactive to the date Orrick first performed services. This engagement letter may be executed in counterparts, and an electronically transmitted signature shall be deemed to be the legal equivalent of an original signature.

If you have any questions, please feel free to contact the undersigned. If the foregoing, together with the attached Standard Terms of Engagement, is satisfactory, please sign and return a copy of this letter to me. We look forward to working with you and to a successful completion of this transaction.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By _____
Roger Davis

ACKNOWLEDGED AND AGREED TO:

ORANGE COUNTY HOUSING FINANCE TRUST

By _____

STANDARD TERMS OF ENGAGEMENT

Except as modified in writing by the engagement letter accompanying these Standard Terms of Engagement (the “Engagement Letter”) or in another agreement signed by the Trust (as defined in the Engagement Letter) and Orrick, Herrington & Sutcliffe LLP (“Orrick”) the following provisions shall apply to the relationship between Orrick and the Trust.

1. Trust

Orrick’s engagement is only on behalf of the Trust. In performing the services set forth in the Engagement Letter, Orrick will act as special counsel to the Trust with respect to the Project; Orrick will assist the Trust in a manner consistent with Orrick’s role set forth in the Engagement Letter. Orrick’s representation of the Trust does not encompass any governing board member, officer or employee of the Trust; any agency, department or office part of or affiliated with the Trust; or any other person or entity affiliated with the Trust. If any of these persons or entities require the services of counsel in connection with the Project, Orrick would be pleased to discuss whether Orrick might be able to represent any of them, but any such representation would need its own engagement letter, and would depend on Orrick’s review and disclosure to all concerned of any conflicts of interest that may arise in connection with any such concurrent representation, and on appropriate consents being obtained from the Trust and from those seeking such additional representation.

2. Scope of Engagement

The scope of Orrick’s representation of the Trust is limited to the specific services identified in the Engagement Letter and such additional matters as the Trust and Orrick may in their mutual discretion agree to in writing from time to time. In each case, Orrick’s agreement to any expansion of the scope of its representation of the Trust will be subject, among other things, to such additional conflict checks, waivers, approvals and other arrangements as Orrick may in its professional judgment deem necessary or appropriate in the circumstances and may be conditioned upon such fee adjustments or retainers as Orrick may require. Except as otherwise expressly provided in any written engagement letter (or a written amendment of a prior engagement letter) between Orrick and Trust entered into in connection with such expansion of the scope of Orrick’s representation, the agreement reflected in these Standard Terms of Engagement and in the Engagement Letter applies to Orrick’s current representation of the Trust and, to the fullest extent practicable, to any subsequent matters that Orrick agrees to undertake on the Trust’s behalf. Orrick’s services will not extend to other business or legal affairs of the Trust or to any other aspect of the Trust’s activities. Orrick’s receipt or use of confidential or other information from the Trust or others in the course of the representation described in the Engagement Letter does not mean that Orrick will render any advice or services other than those described in the Engagement Letter.

The parties agree that Orrick is not acting in a staff capacity or otherwise assuming the responsibilities for any public official currently designated in the Trust’s conflict of interest code. The parties also agree that Orrick is not being retained, and has no duty, to provide financial advice of any kind to the Trust in connection with the foregoing. The Trust, through its

governing board, staff and independent legal counsel, will be exercising its independent judgment regarding the Project.

3. Costs and Expenses

Unless otherwise provided in the Engagement Letter, the Trust will pay Orrick for costs and expenses (direct and indirect) incurred in connection with the services set forth in the Engagement Letter, including (without limitation) filing and user fees, document reproduction and delivery, travel, long distance telephone, telecopy, word processing, computer research, secretarial overtime, closing transcript and other similar expenses. Indirect costs, such as word processing, document reproduction and transcript costs, shall be payable at Orrick's standard cost recovery rates from time to time in effect.

Any filing or user fees may be paid directly by the Trust, but if paid by Orrick on behalf of the Trust, the Trust shall reimburse Orrick for such costs upon demand.

If any claim or action is brought against Orrick or any of its personnel which alleges negligence or wrongdoing of the Trust, or if Orrick or any current or former attorney or employee of Orrick is asked or required by a third party to testify or produce documents as a result of Orrick's representation of the Trust, the Trust agrees to pay Orrick for any resulting costs or expenses, including Orrick's time, even if Orrick's representation of the Trust has ended. This paragraph is not intended to apply to any claim brought by or on behalf of the Trust alleging wrongdoing by Orrick.

4. Waiver of Conflicts of Interest

Orrick's agreement to represent the Trust is conditioned upon the understanding that Orrick is free to represent any clients (including entities that may be adverse to the Trust) and to take positions adverse to either the Trust or an affiliate in any matters (whether involving the same substantive area(s) of law for which the Trust has retained Orrick or some other unrelated area(s), and whether involving business transactions, counseling, litigation or otherwise). Orrick agrees, however, to not represent any party other than the Trust in connection with the Project without the consent of the Trust. In this connection, the Trust should be aware that Orrick regularly provides legal services for many private and public entities in connection with a wide variety of matters. (A summary of Orrick's current practice areas and the principal industries in which Orrick represents clients can be found on Orrick's web site at www.orrick.com.) For example, Orrick has represented, is representing or may in the future represent the County of Orange, California as well as certain other public entities, underwriters, trustees, rating agencies, insurers, credit enhancement providers, lenders, borrowers, developers, contractors, suppliers, financial and other consultants/advisors, accountants, investment and swap providers/brokers, providers/brokers of derivative products and others who may have a role or interest in the Project

or that may be involved with or adverse to Trust. Orrick will, of course, hold in confidence the Trust's secrets and confidences. Similarly, the Trust understands that while Orrick may obtain confidential information from other clients that may be of interest to the Trust, Orrick cannot share such information with the Trust. The Trust acknowledges that it has had the opportunity to consult with its counsel about the consequences of the waiver set forth in this paragraph. The Trust consents to these other representations, agrees that it will not seek to disqualify Orrick from any such present or future representations, and waives any actual or potential conflict of interest that might arise or be deemed to arise, now or in the future, from this engagement of Orrick to serve as counsel with respect to the Project and any past, current or future representations.

5. Internal Communications

The occasion might arise for the Orrick attorneys providing service to the Trust to consult regarding Orrick's engagement for the Trust with Orrick's own counsel (e.g., Orrick's Chief Legal Officer, other firm lawyers working with Orrick's Chief Legal Officer who do not perform work for the Trust with respect to the Project, or Orrick's own outside counsel). To the extent that Orrick is addressing Orrick's own rights or responsibilities, a conflict of interest might be deemed to exist between Orrick and the Trust as to such consultation or resulting communications, particularly if a dispute were ever to arise between Orrick and the Trust regarding the Project. The Trust hereby consents to such consultation occurring, and waives any claim of conflict of interest based on such consultation or resulting communications that could otherwise disqualify Orrick from continuing to represent the Trust or from acting in Orrick's own behalf, even if such consultation or communications might be deemed adverse to the interests of the Trust. The Trust acknowledges and agrees that any such consulting and communications are protected by Orrick's own attorney-client privilege from disclosure to the Trust.

6. Responsibilities of Orrick and the Trust

In rendering opinions and performing legal services, Orrick shall be entitled to rely on the accuracy and completeness of information provided and certifications made by, and opinions provided by counsel to, Trust and other parties, counsel and consultants, without independent investigation or verification. Knowledge of attorneys and non-attorneys at Orrick not working directly on the Project will not be imputed to Orrick nor shall there be any duty on Orrick's part to make any inquiry of such other attorneys or non-attorneys.

Orrick will provide to the Trust legal counsel and assistance in accordance with the accompanying engagement letter and this Standard Terms of Engagement. The Trust will not look to or rely upon Orrick for any investment, accounting, financial or other non-legal advice or for any advice with respect to Governmental Decisions, including without limitation any advice

regarding the character or credit of any person with whom the Trust may be dealing. Although Orrick will at times communicate with the Trust by e-mail, letter, or other written form, Orrick may provide much of its counsel and assistance in telephone conversations and meetings with the Trust. In addition, Orrick shall have the right, subject to applicable rules of professional responsibility, to discard any files or other materials relating to the Project either before or after termination of Orrick's representation of the Trust.

For Orrick to represent the Trust effectively, Orrick needs the Trust to provide Orrick with complete and candid information regarding matters relating to the Project, and, if Orrick is providing Disclosure Counsel Services, regarding financial, operating and other information material to prospective investors in the Project, to keep Orrick informed of relevant developments, to make decisions necessary for Orrick to fulfill its responsibilities with respect to the Project and otherwise to provide to Orrick the Trust's reasonable assistance and cooperation.

Orrick shall maintain errors and omissions insurance coverage applicable to the services to be rendered pursuant to the Engagement Letter.

The Engagement Letter and these Standard Terms and Conditions shall not be the basis of any breach of contract claim that would have the effect of extending any statute of limitations pertaining to legal malpractice to the statute of limitations pertaining to breach of contract.

Orrick will not be responsible for any services performed by, or acts or omissions of, any co-counsel or other transaction participant.

7. Client Files (Cloud Storage, Retention and Disposition)

Orrick recognizes that cloud computing services offer valuable tools to Orrick's clients and has entered into arrangements with certain providers of those services to host, process, and analyze data, including client data. Like online services or platforms, cloud computing services are not immune from security compromises. While Orrick maintains a cyber security vendor risk management program, Orrick cannot guarantee the security of any cloud computing service, including third-party cloud computing services utilized by Orrick. If the Trust does not wish to have its information and data stored with third party cloud service providers, the Trust must advise Orrick not to do so. Orrick will not be responsible for security or confidentiality breaches that occur with respect to any cloud computing service.

Unless otherwise required by specific Trust instruction, Orrick will retain all hardcopy and electronic records for a period of years consistent with Orrick's internal record retention policy. When that time expires, Orrick's policy is to destroy all records related to the Project in a manner that preserves confidentiality. The Trust understands and agrees that records related to the Project will be destroyed in the absence of such alternate instruction. For these purposes

“records” includes paper files as well as information in other mediums of storage including voicemail, email, printer files, electronic document files, facsimiles, dictation recordings, video files, and other formats.

Orrick reserves the right to make, at Orrick’s expense, certain copies of all documents generated or received by Orrick in the course of Orrick’s representation of the Trust. Orrick will maintain the confidentiality of all documents throughout this process.

Orrick’s own files pertaining to the Project will be retained by the firm (as opposed to being sent to the Trust) or destroyed. These firm files may include internal communications, firm administrative records, time and expense reports, personnel and staffing materials, and credit and account records. Orrick reserves the right to destroy or otherwise dispose of any of Orrick’s own files within a reasonable time after the engagement has concluded.

8. Termination

The Trust may terminate Orrick’s representation of the Trust at any time, with or without cause. Orrick may terminate its representation of the Trust at any time, with or without cause, subject to applicable rules of professional responsibility, including if, among other things, the Trust fails to cooperate or follow Orrick’s advice on a material matter, or any fact or circumstance arises that, in Orrick’s view, renders Orrick’s continuing representation unlawful or unethical. Orrick may terminate or suspend its representation of the Trust, subject to applicable rules of professional responsibility, if the Trust fails to make timely payment on any invoice. In the event of termination by either the Trust or Orrick, the Trust shall pay Orrick fees and costs for work performed prior to termination and Orrick will have no responsibility or liability whatsoever for any subsequent use of documents prepared or advice provided by Orrick prior to termination. The Trust acknowledges that it has had an opportunity to consult with its counsel about the consequences of Orrick’s disclaimer of responsibility and liability herein.

9. Date of Termination

Orrick’s representation of the Trust with respect to the matters covered by the Engagement Letter will be considered terminated at the earliest of (i) the Trust’s termination of the representation, (ii) Orrick’s termination of the representation, (iii) the completion of the Project or (iv) the Trust’s abandonment of the Project. Sections 3, 4, 5 and 7 of this Standard Terms of Engagement shall survive termination of the representation.

10. Arbitration Right – Applicable to State of New York Transactions Only

Please note that in the event that a dispute arises relating to Orrick’s fees, the Trust may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief

Page 6

Administrator of the Courts, a copy of which will be provided to the Trust upon the Trust's request.

Agenda Item # 3

Approve Trust Budget for Fiscal Year
2019-2020.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

APPROVE TRUST BUDGET FOR FISCAL YEAR 2019-2020.



Adam B. Eliason, Manager

BACKGROUND:

The approved Trust Joint Powers Agreement (JPA) and Bylaw's specify financial accounting, reporting, budget, and audit requirements. Particularly, the JPA requires the Board of Directors to adopt a general budget for the first fiscal year "*within 120 days after the first meeting of the Board of Directors*"

The JPA specifies that the County shall be responsible for the Trust's administrative costs for one year following the creation of the Trust. While the Trust officially formed in March 2019, the County will continue to fund the administrative costs until June 30, 2020. After this initial year, the JPA specifies that the members to the Trust have agreed to make annual contributions towards the budgeted administrative costs of OCHFT in accordance with Director approved cost allocation formula. The JPA specifies that a parties (Member's) contribution to the OCHFT's administrative costs shall be in the form of money unless the Board approves another form of contribution such as services, personal property, or use of real or personal property, or other in-kind contributions. The acceptance and valuation of any such non-monetary contributions shall be determined by the Board.

The County has received \$185,000 in grant funding to help offset administrative expenses.

The Budget includes Administrative Costs for County Staff, Professional Services, and General Operating Expenses. Professional Services includes the Manager and sub-consultants, outside legal counsel, project financial services and underwriting of NOFA applications, marketing and communication services, and advocacy and lobbying services.

The Budget includes two grants awarded to the Trust for the development of Permanent Supportive Housing totaling \$5,950,000 and are noted in the budget under Project Revenue.

After the approval of this initial budget, and in accordance with the JPA and Bylaws, the Board of Directors will be required to approve an annual budget in May or June of each year in advance of the start of the Trust's fiscal year, which runs from July 1 to June 30.

Staff recommends that the Board approve the attached FY 2019-20 Budget.

Attachments:

- FY 2019-2020 Budget

Orange County Housing Finance Trust

FY 2019-20 Estimated Annual Expenses

DESCRIPTION		AMOUNT
Professional Services		
County Staff (Includes County Counsel, Clerk of the Board, Accounting, Auditing, County Indirect Costs, etc.)		\$257,000
CivicStone LLC. Contract		\$194,825
General Operating Expenses		\$24,400
TOTAL ADMINISTRATIVE EXPENSES		\$476,225
Project Costs		
NOFA Project Awards		\$5,950,000
TOTAL PROJECT EXPENSES		\$5,950,000
ESTIMATED TOTAL ANNUAL EXPENSES		\$6,426,225
FY2019-20 Estimated Annual Revenue		
Administrative Revenue		
2019-2020 State Budget Line Item (5% of Grant) from General Fund		\$50,000
SB2 Planning Grant		\$155,000
County		\$271,225
TOTAL ADMINISTRATIVE REVENUE		\$476,225
Project Revenue		
2019-2020 State Budget Line Item from General Fund		\$950,000
County of Orange General Fund Allocation (2019)		\$5,000,000
TOTAL PROJECT REVENUE		\$5,950,000
ESTIMATED TOTAL ANNUAL REVENUE		\$6,426,225

Agenda Item # 4

Approve Notice of Funding Available (NOFA) policy criteria and authorize Housing Trust Manager to issue \$5,950,000 NOFA for the development of supportive housing.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

APPROVE NOTICE OF FUNDING AVAILABLE (NOFA) POLICY CRITERIA AND AUTHORIZE MANAGER TO ISSUE \$5,950,000 NOFA FOR THE DEVELOPMENT OF SUPPORTIVE HOUSING.



Adam B. Eliason, Manager

BACKGROUND:

The Orange County Housing Finance Trust's 2020 Permanent Supportive Housing Notice of Funding Availability (NOFA) will provide funding requirements and application procedures for the Trust's currently available \$5,950,000 for gap financing of Permanent Supportive Housing developments in Orange County. Funding for this NOFA comes from the County General Fund and State of CA General Fund.

Staff recommends the Board review and approve the attached NOFA policy criteria that will be the basis to finalize the final NOFA document. The NOFA document will be completed and issued prior to the end of 2019 and allow developers 60 days to apply for Trust funding before the NOFA deadline.

The NOFA will be posted on the Trust's website and be sent out to the Trust's email distribution list, which interested parties can sign up for on the website at <https://ochft.org/>. In addition, the NOFA will be emailed to developers that have worked with the County of Orange in the past.

Attachment: NOFA Policy Criteria

NOFA Policy Criteria

1. Developments within Trust member jurisdictions
2. Permanent Supportive Housing (PSH)
3. All PSH units funded by the Trust will be referred and required to go through the Coordinated Entry System (a process developed to ensure that a fair and equal access to housing are quickly identified, assessed for, referred, and connected to housing and assistance based on their strengths and needs).
4. Household income at 30% of Area Median Income or less with utility costs deducted
5. Trust funding is contingent upon the proposed PSH units having supportive services funding to help achieve maximum possible self-sufficiency. A defined list of minimum services will be defined in the NOFA.
6. All PSH units must have project-based rental assistance (e.g. project-based vouchers) or Capitalized Operating or Subsidy reserve.
7. Trust funding will be available as a source of construction financing and permanent financing. Loan terms will be 3% simple interest over a maximum 58 years with repayment as a residual receipts loan and subordinated to other financing.
8. Affordability Covenant: 55 years
9. Capitalized Reserve will include an adequate amount towards lease up expenses and operating expenses
10. Replacement Reserve to cover replacement of capitalized cost items = \$350/unit/year
11. Maximum Trust Investment = \$1,000,000/development
 - a. Studio \$90,000
 - b. 1 Bedroom \$100,000
 - c. 2 Bedroom \$110,000 (2 bedrooms will be allowed on a case-by-case basis at the sole discretion of the Trust)
12. Developer Fee Limits tied to the same limits as State Tax Credit Allocation Committee criteria.
13. Application Deadline: 60 days from issuance of NOFA to respond
14. Award Letter: Must have all financing committed within 18 months with the right of the Trust to extend or withdraw at the sole discretion of the Trust.
15. Initially applications will compete within each Service Planning Area (SPA). Each SPA will be allocated an equal amount of the total NOFA. If no qualified applications are received within a SPA, that amount will be available to other SPA locations at the discretion of the Trust.
16. Applicant scoring based upon the following categories
 - a. Project readiness with extra time allotted for new construction versus acquisition/rehabilitation
 - b. Cost effectiveness & PSH units committed
 - c. Developer experience
 - d. Service enriched location for amenities nearby such as Grocery Store, Hospital, Urgent Care, Recreation Center or Public Park, Public Library, Frequent bus transit.

Agenda Item # 5

Approve the appointment of Board Members to serve on a Funding Strategy Ad Hoc Committee to review and recommend to the Board various actions to obtain additional funding for the Trust.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

APPROVE THE APPOINTMENT OF BOARD MEMBERS TO SERVE ON A FUNDING STRATEGY AD HOC COMMITTEE TO REVIEW AND RECOMMEND TO THE BOARD VARIOUS ACTIONS TO OBTAIN ADDITIONAL FUNDING FOR THE TRUST.



Adam B. Eliason, Manager

BACKGROUND:

The mission of the Trust is to strengthen the communities in Orange County by financing the development of housing for the homeless and low-income individuals and families.

The key to achieving that mission is to seek out and obtain funding that will support the administrative costs and provide a source of financing to aid in the development of affordable and supportive housing.

Some funding sources will be offered to the Trust via a public notice of funding available and an application process. However, in order to achieve much greater results it becomes necessary to develop a funding strategy that will explore legislative efforts on the federal and state level, private charitable donations of cash and/or real state, and work with cities within the County to explore available local housing money to aid in this regional housing crisis.

This Ad Hoc Committee can consist of four (4) or fewer Directors. Staff will lead discussions with the Committee and create a variety of action items and research needed to apply and request funding from all possible sources.

Staff will update the Board at future meetings and provide progress reports from the Committee and related actions and funding.

Staff is recommending the appointment of no more than four (4) Board Members to volunteer on the Funding Strategy Ad Hoc Committee.

Agenda Item # 6

Retroactively approve the Memorandum of Understanding (MOU) with the County of Orange for administrative services and authorize the Housing Trust Manager, or his designee, to execute the Agreement, and appoint Shari Freindenrich as Treasurer and Frank Davies as Auditor-Controller for the Trust, pursuant to the terms of the MOU, and direct both parties to file an official bond if their existing bonds are not extended to cover their obligations with the Trust.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

1. RETROACTIVELY APPROVE THE MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF ORANGE FOR ADMINISTRATIVE SERVICES AND AUTHORIZE THE ORANGE COUNTY HOUSING FINANCE TRUST MANAGER, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT.
2. APPOINT SHARI FREINDENRICH AS TREASURER AND FRANK DAVIES AS AUDITOR-CONTROLLER FOR THE TRUST PURSUANT TO THE TERMS OF THE MOU AND DIRECT BOTH PARTIES TO FILE AN OFFICIAL BOND IF THEIR EXISTING BONDS ARE NOT EXTENDED TO COVER THEIR OBLIGATIONS TO THE TRUST.



Adam B. Eliason, Manager

BACKGROUND:

Under the powers conferred by the Joint Powers Agreement (the “Agreement”), the Board of Directors may contract with any party to provide the necessary administrative services to the Orange County Housing Finance Trust (the “Trust”). The attached memorandum of understanding (the “MOU”) outlines the administrative services the County of Orange (the “County”) is providing to the Trust, a separate legal entity, during the 2019-2020 fiscal year. As established in the Agreement, the County has agreed to reimburse the Trust’s costs for the first year of its creation. Therefore, the County will reimburse the cost of the services provided in the MOU.

The MOU outlines the various types of administrative services the County will provide to the Trust, including Auditor-Controller services, Legal Counsel to the Trust, Clerk for the Trust and even the parking reimbursement services provided through OC Public Works. Consistent with the Agreement, the MOU specifically states that County employees working on Trust matters are independent contractors and not Trust employees.

The Agreement also requires the Board of Directors to appoint either an officer or employee of the Trust or member public agency or a certified public accountant to hold the offices of treasurer and auditor for the Trust. Given the existing model for the provision and reimbursement of administrative services, appointing existing County officers to the roles of Treasurer and Auditor-Controller would allow a seamless provision of services under the MOU.

The Agreement requires the treasurer and auditor for the Trust to file an official bond with the Board of Directors. It also allows for existing officer bonds that are extended to cover the obligations to the Trust to be the official bond required under the Agreement. Staff is working with County Risk Management to ascertain whether their bonds presently cover their duties with outside public entities or, if not, whether they can be extended. Staff will report on the status of the official bonds at the next Trust Board of Directors meeting.

Attachment:

1. Memorandum of Understanding between the County of Orange and the Orange County Housing Finance Trust for the Provision of Services

**MEMORANDUM OF
UNDERSTANDING BETWEEN THE
COUNTY OF ORANGE AND THE
ORANGE COUNTY HOUSING FINANCE
TRUST FOR THE PROVISION OF
SERVICES**

This Memorandum of Understanding (MOU) is entered into on _____ between the County of Orange ("County"), a political subdivision of the State of California, and the Orange County Housing Finance Trust (the "Trust"), a California public agency formed pursuant to California Government Code section 6500 *et. seq.*

RECITALS

WHEREAS, the Trust requests that the County, through certain County departments, provide the Trust certain services as specified in this MOU; and

WHEREAS, County is willing and able to provide said services to the Trust and the Trust agrees to pay County for said services; and

WHEREAS, the services which the County will provide to the Trust will be at a rate that shall not exceed the costs of providing same or similar services to County departments; and

WHEREAS, the County and the Trust desire to set forth certain policies, procedures, and provisions of such County services.

NOW, THEREFORE, County and the Trust agree as follows:

I. PURPOSE

This MOU, including Attachments A through H, outlines the understanding between County and the Trust related to the provision of certain services ("Services") by County to the Trust.

II. TERM

This MOU for Services (as described in Section III.) provided by County to the Trust ("Parties" collectively) is for the initial term of June 1, 2019 to June 30, 2020 ("Initial Term"). The MOU shall renew yearly and remain in full effect until termination as provided herein.

III. SERVICES PROVIDED BY COUNTY

ATTACHMENT 1

The Trust requests County to perform the following Services in the same manner as for County departments except as the Trust otherwise approves:

1. Auditor-Controller Attachment A
2. Treasurer Attachment B
3. OC Public Works (OCPW)-Pony Mail Attachment C-1
4. OC Public Works –Parking services Attachment C-2
5. Information Technology Attachment D
6. Publishing Services Attachment E
7. County Counsel Attachment F
8. Clerk of the Board Attachment G
9. OC Community Resources..... Attachment H

County shall provide the Services at the levels specified and defined in Attachments A through H. County shall allocate the resources and perform the duties, and fulfill the responsibilities set forth in Attachments A through H. The provision of Services under this MOU shall be under the administrative supervision and direction of the Trust Executive Director on behalf of the Trust and the County Executive Officer on behalf of County.

IV. RECORDS

All records generated by or as a result of this MOU shall become and remain the property of County; provided that the Trust shall be entitled to obtain copies of such records at the same rates as those charged to County departments and special districts.

V. COMPENSATION FOR SERVICES

Where applicable, the County will provide the Trust the estimated annual cost of providing the Services described in Attachments A through H. The County will provide this information to the Trust on or before March 31 of each year for the next fiscal year. The rates charged to the Trust for such Services provided shall be the same rates as those charged to County departments and special districts for the same or similar Services, and shall be subject to adjustment annually at the sole and exclusive discretion of the County. The Trust agrees to compensate County at such rates in consideration for the Services provided by the County. Failure to provide the estimated annual cost to the Trust shall not constitute a waiver by the County to increase its rates in the following fiscal year; provided that, and despite anything to the contrary, (1) no such increase shall be effective until and unless the Trust receives written notice of such increase at least one hundred twenty (120) days before the effective date of the increase, and (2), within thirty (30) days after receipt of such notice of increase in rates, the Trust may terminate this MOU upon ninety (90) days written notice to County. The termination provision in this section applies only to rate increases subsequent to the start of the Trust fiscal year.

VI. PAYMENT

The Parties agree that payment for the Initial Term of Services under this MOU shall be borne by the County. The following payment provisions apply in terms subsequent to the Initial Term:

If a payment method is not specifically provided in the Attachment covering the provision of the Service, a journal voucher with supporting documentation shall be issued to Trust within five (5) working days after the 15th day following the month of Services rendered to record payment. County failure to follow the deadlines specified above shall not constitute a waiver of the County's right to process a journal voucher and receive payment from the Trust for Services rendered under this MOU. All journal vouchers for Services provided as part of this MOU shall be posted to the Trust Fund Number 163.

The Parties agree to act in good faith and to use their best efforts to resolve all questions regarding journal vouchers within thirty (30) days following either Party's notification to the other Party that there is dispute regarding a journal voucher and identifying the journal voucher and the basis of the dispute. Disputes shall be resolved using the dispute resolution process set forth in this MOU.

Enhanced routine backup documentation beyond that customarily submitted to County departments and special districts will be provided by mutual consent of the County and Trust, at a reasonable cost to Trust. However, nothing in the above shall limit the Trust's right to request and receive from the County, additional supporting information from a Service department for billings which contain significant, unexplained anomalies that are inconsistent with the annual usage and expected cost plan for that given Service. Any such additional information required shall be provided at a reasonable cost to Trust. Trust and County shall agree upon appropriate audit procedures and testing should any Service become the subject of an audit.

The Trust will receive a journal voucher for any Service not included in this MOU at the same rate that County departments or special districts are billed for the same Service.

VII. CHANGES, EXTRA WORK, AMENDMENTS

Neither Party shall make changes to this MOU without the other Party's written consent. Such changes shall be incorporated into an amendment to be signed by both Parties before becoming effective. Such an amendment may be authorized by the County Executive Officer or designee and the Trust if the changes are merely ministerial, but will be subject to approval by the County Board of Supervisors and the Trust Board of Directors if material changes are involved.

VIII. TERMINATION

Except as provided herein or as may otherwise be provided by law, either Party may terminate this MOU or the provision of all or any of the Services under it by giving notice to the other Party in the manner specified in this Section. Written notice shall be given at least ninety (90) days prior to the end of the fiscal year and shall become effective only

upon the first day of the succeeding fiscal year. After receipt of a Notice of Termination, and except as otherwise agreed:

1. The County shall no longer be obligated to perform the Services required of it under this MOU on the date specified and to the extent specified in the Notice of Termination even if Trust should thereafter request that said Services be performed under this MOU.
2. Upon termination, Trust agrees to pay County in accordance with this MOU for all Services performed to the date of termination, as well as Services rendered during any transition to a new Service provider.
3. It is understood and agreed that change in membership of the Trust's Board of Directors or a member of the County's Board of Supervisors during the term of this MOU shall not affect the enforceability or cause the termination of this MOU.

The above termination provision does not apply to those Services in which the County is otherwise required to provide under Business and Professions Code Section 6361.

IX. DELEGATION, ASSIGNMENT AND SUBCONTRACTING

Neither Party may delegate performance of its obligations hereunder, either in whole or in part, without the prior written consent of the other Party provided; however, that obligations undertaken by County pursuant to this MOU may be carried out by means of subcontracts which meet the requirements of this MOU as they relate to the Service or activity under subcontract subject to the written consent of the Trust which shall not be unreasonably withheld or delayed. No subcontract shall terminate or alter the responsibilities of either Party pursuant to this MOU. Trust may not assign its rights hereunder, either in whole or in part, without prior written consent of the County.

X. INDEMNIFICATION

- a. Pursuant to Government Code section 895.4, the Parties hereby waive the pro rata (per capita) risk allocation provided by Government Code section 895.6.
- b. Each Party (referred to herein in such capacity as Indemnitor) shall defend, indemnify, and hold the other Party, and its officers, board members, employees, representatives, and agents (as indemnitees) harmless, to the maximum extent permitted by law, from all claims, damages, expenses, or liabilities, including attorney fees and costs, that arise out of the performance by Indemnitor of its duties or obligations under this MOU, or the performance of Indemnitor's officers, board members, employees, representatives, or agents under this MOU, or out of the negligence or willful misconduct of Indemnitor, or of Indemnitor's officers, board members, employees, representatives, or agents, under this MOU.

XI. INDEPENDENT CONTRACTOR

County shall perform this MOU as an independent contractor, exercising due care and shall provide the Services with such skill as is customarily employed by providers of such Services. County and the officers, agents and employees of County are not, and shall not be deemed, Trust employees for any purpose, including workers' compensation and shall not be entitled to any of the benefits accorded to Trust employees, if any. County shall determine, at its own risk and expense, the method and manner by which the duties imposed on County in general by this MOU shall be performed. Trust shall not deduct or withhold any amounts whatsoever from the reimbursement paid to County, including, but not limited to amounts required to be withheld for state and federal taxes or employee benefits. County alone shall be responsible for all such payments.

XII. NOTICES

Where required to be given under this MOU, notice shall be in writing and deemed given when delivered personally or deposited in the United States mail, postage prepaid, certified, addressed as follows:

County's address: County of Orange
County Executive Office/Budget 333
West Santa Ana Boulevard Santa Ana,
CA 92701

Trust's address: Orange County Housing Finance Trust
Housing Trust Manager
1501 E. St. Andrew Place, 1st Floor,
Santa Ana 92705

XIII. ENTIRE AGREEMENT

This MOU contains the entire and complete understanding of the Parties with respect to the provision of services as specified and defined in Attachments A through H of this MOU.

XIV. COMPLIANCE WITH LAW

Notwithstanding anything to the contrary contained in this MOU, the Parties agree that no provision of this MOU shall require any Party to violate any applicable statute, rule of law or regulation.

XV. DISPUTE RESOLUTION

Whenever County and Trust disagree as to any matter governed by this MOU, the dispute resolution process set forth discussed in this Section shall govern. Until the dispute is resolved, County shall continue to provide the Services and Trust shall continue to make payment for the non-disputed portion of each journal voucher.

If after thirty (30) days, Trust and County cannot resolve any dispute, either Party may give the other Party a written request for a meeting between the Trust Manager and the County Executive Officer for the purpose of resolving a disagreement between the Parties. If such meeting is requested, the meeting shall be held within ten (10) business days of the receipt of such request.

If after the meeting between the Trust Manager and the County Executive Officer the dispute between the Parties is not resolved, the dispute shall be submitted to non-binding mediation in the City of Santa Ana, California, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Parties shall equally share the cost of mediation. If a dispute between the Parties regarding the interpretation or performance of this MOU is not resolved by non-binding mediation, either Party may bring legal action to interpret or enforce this MOU.

XVI. CONFIDENTIAL INFORMATION

Each Party may disclose the other Party's Confidential Information on a "need to know" basis to its own employees that are working on a project, or its own employees who are involved in the Services under this MOU. Additionally, each Party may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons, subpoena, or request for public records; or (iii) enforce its rights under this MOU, provided that Party shall give advance written notification to the other Party that such disclosure is being made.

XVII. NEGOTIATED INSTRUMENT

This MOU was negotiated at arms-length between the Trust and County, and neither Party "prepared" this MOU for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.

XVIII. APPROPRIATION/CONTINGENCY OF FUNDS

All obligations of the County herein are subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this MOU.

XIX. RESERVATION OF RIGHTS

Each party reserves all rights and remedies arising under other contracts, if any, and/or under the law, including, without limitation, obligations imposed by statute, and/or obligations arising by reason of the application of principles of equitable and/or promissory estoppel. Nothing in this MOU releases or relieves either party from any obligation otherwise imposed by contract and/or law.

XX. AUTHORIZED SIGNATURES

Both Parties to this agreement represent that the signatories executing this document are fully authorized to enter into this MOU.

County of Orange

Frank Kim
County Executive Officer

**Orange County
Housing Finance Trust**

Adam B. Eliason
Manager

AUDITOR-CONTROLLER

I. SCOPE OF SERVICES

The Services described below are intended to be the same type of Services as provided to Trust prior to this agreement and amended to reflect the Trust's requested Services unless otherwise amended. Additional Services are not included and will be charged to Trust in accordance with the provisions of the MOU.

a. Payroll

- i. Process routine payroll payments (e.g., standard payroll adjustments, supplemental pay adjustments, Annual Leave termination payments) and data reports in the same manner as for County departments, with the exception of employee reimbursements for out of pocket expenses and educational reimbursements, which shall be processed by the Trust through its Revolving Fund. Employee mileage claims will continue to be processed by the County through the payroll system.
- ii. Process employee payroll deductions (including deferred compensation contributions, retirement account contributions, credit union deposits, and wage garnishments required by law) on the same basis as County departments.
- iii. Maintain payroll records in the same manner as for County departments and as required complying with applicable laws.
- iv. Act as agent for the Trust, including the Trust's payroll reporting, payroll tax deposits and reports, and year-end W-2 forms as part of the normal reporting for such items for the County.
- v. Provide access to State Quarterly Unemployment Report in ERMI to enable Trust to process state required unemployment insurance quarterly reports.
- vi. All other reports, payroll runs, new deductions (does not include new deductions required because of changes to the payroll system) or other items not specifically mentioned above will be considered extra work and costs will be calculated in accordance with the MOU.
- vii. Payroll activity shall be charged to the fund, budget control, and account coding associated with each Trust employee, if any, as provided by the Trust and in accordance with the existing capabilities of the County's payroll and timekeeping systems. The Trust agrees to maintain adequate cash on hand in such fund to allow for the smooth and automated processing of Trust payroll charges.
- viii. The County shall not be required to make custom modifications to its current or future payroll or timekeeping systems to accommodate specific Trust needs. The County shall only make any minor changes or alterations to its systems based on the County's ability and willingness to do so from time to time. The Trust uses the CAPS+ Human Resources/Payroll System and Virtual Timecard

Interface to manage its employee information and timekeeping. The Trust reimburses the County through the billings for Cost of Services. Training available to County staff will be available to Trust staff at the same rate that County departments or special districts are billed for the same Service by the Auditor-Controller.

b. Claims

The Trust does not submit and the Auditor-Controller does not process employee reimbursements, or travel advances on behalf of the Trust, except for mileage reimbursements and items specifically requested by the Trust on an exception basis and paid as a convenience to the Trust. The Trust continues to submit vendor payments and Cal Card payments.

c. Check Writing

Check Writing shall continue to reissue lost or damaged County issued checks and stale dated County issued checks in the same manner as for all County departments as long as the Trust maintains a fund on the County's financial system from which such checks can be reissued. If, at a future date, the Trust no longer maintains an accounting fund from which checks can be reissued, the County and the Trust will mutually determine how County issued checks can be reissued by the Trust. Auditor-Controller will recover direct costs associated with mailings for the Trust.

d. General Accounting

Includes Services provided by General Accounting Unit. Those Services include:

- i. Maintain accounting records for Trust expenditures, encumbrances, revenues, and balance sheet accounts through the accounting system for Fund 161.
- ii. Input and approve transactions affecting Trust financial records to the accounting system. The Trust shall timely issue 1099 Forms for reportable payments.
- iii. Any additional reports or system modifications required by Trust over and above current levels will be charged to Trust at incremental cost including system and labor costs in accordance with the MOU.

e. Countywide Accounting and Personnel System (CAPS+) Administration and Systems

Maintain CAPS+ in support of Services identified in the preceding sections.

County shall maintain all current Services and access levels currently provided to the Trust at the same rates that County departments or other special districts are charged including, but not limited to the following:

- i. CAPS+ home page access

- ii. CAPS+ Finance/Procurement, CAPS+ Human Resources/Payroll Systems as detailed on Trust Users' approved CAPS+ Access Request Forms
- iii. CAPS+ CLC-Finance/Procurement, CAPS+ CLC - Human Resources/Payroll
- iv. CAPS+ Financial/ Procurement, and CAPS+ Human Resources/Payroll Data Warehouse access
- v. ERMI access
- vi. Available training for CAPS+ Finance/Procurement, CAPS+ Human Resources/Payroll Systems, CAPS+ Finance/Procurement Data Warehouse and CAPS+ Human Resources Data Warehouse, and ERMI
- vii. Master Agreement/Purchasing Internet page
- viii. Online Bidding – Trust shall continue to have the ability to access historical records, documents, bids, etc., originally created and processed on the County Online bidding system to the same extent that other County users have access to the data
- ix. Trust will continue to use the Extended Purchasing System to review and access historical purchase order contract data in a manner consistent with the County's decentralized purchasing program

The services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination as provided in the MOU.

II. COST OF SERVICES

Auditor-Controller will provide written notification of the annual cost of Services. All annual costs will be based on the current fiscal year CWCAP (Countywide Cost Allocation Plan approved by the State) report, which uses actual cost data that is two years in arrears. In the event the MOU is terminated, the County will compute a final adjustment within one year from the end of the fiscal year in which Services are last received by Trust from the County. The adjustment is needed to reflect the actual costs of Services provided. A journal voucher for the adjustment will be promptly posted to the Trust Fund as applicable. If an audit or review identifies that a transaction would result in an adjustment to Trust, then the adjustment should be provided to Trust regardless of the number of days after which the services were received from the County.

III. PAYMENT PROCESS

After approval of the charges by the Trust, payment for Auditor-Controller Services shall be made annually via journal voucher at the same rate that county departments or special districts are billed for the same Service.

TREASURER-TAX COLLECTOR

I. SCOPE OF SERVICES

The Services described below are intended to be the same type of Services as provided to the Trust prior to this agreement. If the Trust requests additional Services, costs for those Services will be charged to the Trust in accordance with the MOU.

- a. Banking Services:
 - i. Bank relationship management
 - ii. Cash management services
 - iii. Merchant card services management (set-up, ordering equipment, customer service liaison, management of transaction settlement, and fees)
 - iv. Armored car contract and service management
- b. Investment Services including investment of all monies on deposit with the Treasurer in accordance with the current Orange County Treasurer Investment Policy Statement
- c. Fund accounting and bank reconciliation Services

The Services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination as provided in the MOU.

II. COST OF SERVICES

Cost of Services is determined by two methodologies:

- a. Pass-through of actual costs charged by processors for credit card fees, debit card fees, and actual costs charged by armored car service providers.
- b. Actual administrative costs associated with investing, depositing or handling of funds and distributing interest or income authorized by California Government Code Section 27013, will be charged via a basis point calculation on the average monthly cash balance of Trust funds on deposit with the Treasurer.

III. PAYMENT PROCESS

- a. Actual costs for Services identified in Section 11, Paragraph 1 of this Attachment B will be charged to the Trust using a journal voucher. These journal vouchers will be processed on a monthly basis and will include appropriate back up documentation.
- b. Costs as identified in Section II, Paragraph 2 of this Attachment B will be charged to the Trust using a journal voucher. These journal vouchers will be processed as part of the interest earnings apportionment process on a monthly basis using the current basis point estimate. A fiscal year-end accounting of the actual cost for these Services is expected to be completed within six (6) months of the County's year-end. At that time, charges will be adjusted, positively or negatively, to reflect the actual cost of Services.

**OC PUBLIC WORKS
Pony Mail**

I. SCOPE OF SERVICES

OC Public Works/Pony Mail will deliver mail to the Trust, 1501 E. St. Andrew Place, 1st Floor, Santa Ana 92705 one time per day.

The services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination as provided in the MOU.

II. COST OF SERVICES

The Trust will be billed the rates associated with Pony Mail Services at the same rate as County Departments or other special districts.

III. PAYMENT PROCESS

OC Public Works will journal voucher the Trust for Pony Mail Services annually based upon the agreed upon number of pony mail stops.

**OC PUBLIC WORKS
Parking Services**

I. SCOPE OF SERVICES

The County will provide parking services requested by the Trust to accommodate both visitor and employee parking. These Services include, but are not limited to, monthly employee parking, and visitor parking validation services.

Parking services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination of the MOU.

II. COST OF SERVICES

The Trust will pay the prevailing hourly and monthly parking rates as established by the Board of Supervisors.

III. PAYMENT PROCESS

Payment for Parking Services shall be made via the journal voucher method as specified in the MOU.

INFORMATION TECHNOLOGY

I. SCOPE OF SERVICES

The Services described below are intended to be the same Services as provided to all County agencies, departments and non-County customers, although the Trust does not use all these Services. During FY 2018-2019, the County awarded a 5-year contract to Science Applications International Corporation to provide Information Technology data center services and to implement a Countywide converged data network and VoIP solution and provide ongoing support.

The County will continue to provide the Trust, at the same rates that County departments or other special districts are charged, access to the County Intranet to allow Trust to use Telephone Services portal, Network Services portal, ELVIS system, Telecom & IT Billing System, Enterprise IT Billing System, and OCIT's Service Desk web page.

a. Data Systems

Services related to programming, analysis, and data center support. Additional specialized Services negotiated on a project basis upon request by the Trust.

b. Network Systems

The County will provide or be responsible for the following services which are included in the Converged Network Service rated charged to the Trust:

- i. Ongoing maintenance of the Orange County enterprise wide area network (WAN). Said maintenance will be defined as the network connection between the County's enterprise WAN and the Trust's WAN.
- ii. Intranet access to the County's website through the demarcation(s) between the County's enterprise WAN and the Trust's WAN. Acquisition and maintenance of hardware and software necessary to secure County's network.
- iii. Ability for the Trust to forward all Hosts with County Domain Names to the County's Domain Name Server.
- iv. Notification shall be provided to the Trust designee of "planned network changes" for modification to the County Network that may affect the Trust's WAN, prior to, and after completion. Notification shall also be provided to the Trust's designee for "unplanned critical failures." The "Notification for an 'unplanned critical failure or outage" shall be made as soon as possible after the incident has been discovered. The web Change Request (CRQ) process shall be the method of notification. Notification shall specify required technical resources within the Trust showing the date and times that the resource must be made available to ensure any changes were completed successfully and successfully tested to the satisfaction of the Trust. The Request for Change (RFC) procedures dictate that a normal CRQ must be submitted ten (10) working days prior to actual work. In the absence of the identified notification, the changes will be considered an emergency CRQ.
- v. OCIT Service Desk shall coordinate response/resolution of trouble tickets placed

by Trust designee within the scope of OCIT area of responsibility, and within the guidelines of the Service Level Agreements as published on the OCIT Service Desk web page. Trust staff is expected to perform extensive testing and troubleshooting before opening trouble tickets. The trouble ticket shall be the method for placing, updating, and closing service calls.

- vi. OCIT shall make available such technical resources as necessary to work with Trust project management on any modification that impacts the technical performance, policy, procedures, or security of either the Trust's network or the County's.

The Trust will provide or be responsible for the following:

- i. Notification shall be provided to OCIT designee of "planned network changes" for modification to the Trust's network that may affect the County's WAN, prior to, and after completion. Notification will include project title, task requirement specifications, technical resource allocations, target start and completion dates and times, and contact information. Notification shall also be provided to the OCIT'S designee for "unplanned critical failures." The "Notification for an "unplanned critical failure or outage" shall be made as soon as possible after the incident has been discovered. Notification shall specify required technical resources within the County showing the date and times that the resource must be made available to ensure any changes were completed successfully and successfully tested to the satisfaction of the County. All requests will be made a minimum of two (2) weeks in advance.
- ii. The Trust shall submit an OCIT Service Desk ticket to report failure between the County's WAN and the Trust's WAN only after a complete check and test of the internal Trust network. The trouble ticket shall be the method for placing, updating, and closing service calls.
- iii. Trust shall make available such technical resources as necessary to work with OCIT project management on any modification that impacts the technical performance, policy, procedures, or security of either the Trust's network or the County's.

Prohibitions

- a. OCIT and Trust explicitly agree to never plug in any applications or appliances, or resources which shall offer Services to the other users by bridging the private networks without prior written consent. Instances of this type of Service are: VOiP, video conferencing, data exchange, VPN, etc. Any existing traffic arrangements shall be immediately disclosed via email to appropriate designees including the Service, target users, usage, location, band and protocol. Both Parties reserve the right to immediately disconnect all network connectivity until foreign traffic is resolved to both Parties satisfaction.
- b. OCIT and the Trust agree not to troubleshoot any technical issue beyond their respective demarcation point or network edge. These restrictions can be modified on a case-by-case basis but in no instance shall they be abrogated without prior written approval.

- c. VOiP traffic is not planned to pass through the County's network; should this plan change, the Trust will communicate the need in advance and in writing to OCIT designee.
- d. The Trust agrees that modifications to their firewall(s) and other security devices present between the Trust and County network will not be modified without prior written notification and consultation as they apply to the County's network.
- e. The County agrees that modifications to their firewall(s) and other security devices present between the County and Trust network will not be modified without prior written notification and consultation as they apply to the Trust's network.
- f. If at any time it is identified that any internal Trust host(s) is negatively impacting the County enterprise WAN or any of its supporting Services, OCIT reserves the right to immediately disconnect said host(s) from the County's enterprise WAN. Notification will be attempted prior to disconnection if possible. OCIT will notify Trust on all incidents and threats identified as emanating from the Trust's internal network.

Additional Services

Additional specialized Services may be negotiated on a project basis upon request of the Trust.

The services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination as provided in the MOU.

II. COST OF SERVICES

Network Systems

Network Systems Connectivity - Actual units/Services/equipment used by the Trust that do not exceed the rates charged to County agencies, departments and non-County customers for such Services, including overhead. The project cost for additional specialized Services shall be negotiated and agreed upon before said additional specialized Services can begin.

I. PAYMENT PROCESS

OCIT shall bill the Trust monthly in arrears for Services provided in the previous month, at the rates approved by the County of Orange Board of Supervisors for the applicable fiscal year. The monthly billings will be made via the County's journal voucher (JV) billing method.

PUBLISHING SERVICES

I. SCOPE OF SERVICES

The County will provide publishing Services (print business cards, pamphlets, brochures, etc.) as needed by the Trust and as requested via the County on-line Publishing Services Automated Request form. County shall provide access to this system to the Trust at the same rates that County departments or other special districts are charged.

The services to the Trust will continue to automatically renew on its anniversary date until the parties agree to any modification or changes to this MOU or until termination as provided in the MOU.

II. COST OF SERVICES

The County will provide the Trust with a quote for Services per specific project via the County Publishing Services on-line request. Costs charged to the Trust for Services provided include overhead and shall be consistent with the rate schedule included annually in the Orange County Budget Instruction Manual.

III. PAYMENT PROCESS

Billing for actual cost will be made via the journal voucher billing method as specified in the MOU and will use fund codes designated by Trust.

COUNTY COUNSEL

I. SCOPE OF SERVICES

The Legal Services described below are intended to be the same type of Legal Services as provided to the Trust prior to this agreement. If the Trust requests additional Legal Services, costs for those Services will be charged to the Trust in accordance with the MOU.

1. ATTORNEYS shall provide the Trust with the necessary representation by staff qualified to perform the legal tasks at the least costly billing category as is acceptable to County Counsel.
2. ATTORNEYS shall provide all legal services requested by The Trust within the Scope of Services described below.
 - a. Advise Trust staff as to procedures, legality of documents, policy concerns, and legal implications concerning the Trust activities.
 - b. Prepare resolutions, notices, pleadings, and other legal documents necessary for the Trust activities.
 - c. Provide representation in hearings, arbitration, mediation, and any related litigation, as necessary, arising out of the Trust activities.
 - d. Attend all Trust meetings and advise the Trust Directors to procedures, legality of documents, policy concerns, and legal implications concerning the Trust actions.
 - e. Coordinate and contract with outside counsel for specialized matters.

II. COST OF SERVICES

County Counsel will provide written notification of the annual cost of Services. The Trust will be billed the administration fee associated with this Attachment G at the same rate as County Departments or other special districts.

III. PAYMENT PROCESS

Reimbursement to County Counsel for Legal Services is handled through the biweekly payroll process, and via the journal voucher method, as needed. For example, missed deductions during the biweekly process for an employee on a leave of absence would be reimbursed to the County via the journal voucher method.

CLERK OF THE BOARD OF SUPERVISORS

I. SCOPE OF SERVICES

The Services described below are intended to be the same type of Services as provided to the Trust prior to this agreement. If the Trust requests additional Services, costs for those Services will be charged to the Trust in accordance with the MOU.

a. Administrative Preparation of Regular and Special Meeting Agendas

The Clerk of the Board or designee as the primary clerk and a deputy clerk assigned as the back-up clerk will perform the administrative preparation of agendas pursuant to the Ralph M. Brown Act, Government Code Section 54950 et seq.

- i. Collaborate with the Housing Trust Manager for the filing of agenda items with the Clerk of the Board.
- ii. Prepare and update agendas in compliance with the Ralph M. Brown Act for regular and special meetings of the Trust.
- iii. Distribute agenda packets to the Board of Directors electronically and make available for review to the general public. Copies of all documents submitted to the Trust will be on file with the Clerk of the Board's office and will be posted on the Trust's website.
- iv. Prepare list of directives from Trust members (if applicable).
- v. Process legal publication requirements for the Trust prior to a meeting, as required.

b. Administrative Preparation and Clerking of Meetings

The Clerk of the Board or designee as the primary clerk and a deputy clerk assigned as the back-up clerk shall attend each meeting of the Trust and maintain a record of all proceedings as required by law.

- i. Prepare and set up meeting room.
- ii. Attend and clerk each meeting, capturing votes/action taken during meetings.
- iii. Facility where meetings are held must provide audio and/or video services.
- iv. Meetings should take place during regular business hours. Travel to and from meetings located at a site other than the Hall of Administration will be subject to mileage reimbursement for travel to and from meetings and parking fees (if applicable).

c. Administrative Preparation of Regular and Special Meeting Summary Action Minutes

The Clerk shall prepare and distribute Summary Action Minutes of meetings. The minutes shall consist of the brief statement of each item posted on the agenda and supplemental agenda items plus all motions, resolutions, and ordinance numbers related to the item, all votes recorded and the final action taken by the Orange County Housing Finance Trust.

ATTACHMENT G

- i. Prepare the Summary Action Minutes after each meeting and schedule for Trust approval at their next scheduled meeting.
- ii. Distribute the approved Summary Action Minutes to the Trust members and make available for review to the general public.
- iii. Process legal publication requirements for the Trust after a meeting, as required.

d. Other Administrative Matters

- i. Maintain the official records for the Orange County Housing Finance Trust.
- ii. Assist the public and the Trust departments/agencies with research of records and respond to public records act requests.
- iii. Provide Oath of Office to Board of Directors of the Trust.
- iv. Handle noticing and posting requirements for the Trust as required.
- v. Order supplies for meetings of the Trust.
- vi. Perform the services as the filing official for the Trust.

II. Cost of Services

The Trust will be billed the administration fee associated with this Attachment H at the same rate as County Departments or other special districts. The Clerk of the Board shall bill the Trust monthly in arrears for services provided in the previous month at the rates approved by the County of Orange Board of Supervisors for the applicable fiscal year. Any meeting beyond regular business hours require deputy clerks covered under the Orange County Employees Association - Office Services Unit to be compensated at one and one-half (1 ½) times the regular hourly rate.

III. Payment Process

Billings for actual cost will be made via the journal voucher billing method and will use fund codes designated for the Trust.

OC COMMUNITY RESOURCES

I. SCOPE OF SERVICES

The Services described below are intended to be the same type of Services as provided to the Trust prior to this agreement. If the Trust requests additional Services, costs for those Services will be charged to the Trust in accordance with the MOU.

Contractor shall provide consulting services to support the newly formed OCHFT on an as-needed basis. The actual scope of work will be based upon mutual agreement between the County and Contractor. Contractor services may include the following:

- a. Facilitate and manage OCHFT Team Meetings to discuss and determine action items needed prior to presentation to the OCHTF Board or Advisory Board. The OCHFT Team shall include the following:
 - i. County Representative(s).
 - ii. Assigned person from the Clerk of the Board to assist with agendas, minutes, and administrative duties.
 - iii. Assigned person from the Treasurer/Tax Collector to assist with the budget and audit issues.
 - iv. Assigned person from County Counsel to opine on legal matters related to the organization and others as deemed necessary.
 - v. Other invitees as deemed necessary by the Team.

- b. Establish policies & procedures for all aspects of the OCHTF including:
 - i. Notice of Funding Availability (NOFA) guidelines;
 - ii. Project fund requests;
 - iii. Fund management for sourcing new funds and handling existing funds;
 - iv. Compliance monitoring; and
 - v. Various other administrative duties necessary for a typical startup organization.

- c. Evaluate and prepare funding sustainability analysis to determine both long-term project funding and administrative funding.

- d. Coordinate various administrative duties and assignments including:
 - a. Creation and management of OCHTF website;
 - b. Non-profit/For-profit Developer and City inquires;
 - c. Coordinate budget with Treasurer/CPA with anticipation for annual audit;
 - i. Establish D&O and Liability Insurance; and
 - ii. Create meeting agenda/reports/minutes with Board Secretary.

ATTACHMENT H

5. Prepare and/or coordinate all items for OCHTF Board meetings for the first 12 months and attend and/or manage/lead meetings.
6. Prepare and/or coordinate all items for OCHTF Advisory Board meetings for the first 12 months and attend and/or manage/lead meetings.
7. Prepare a staff level study to determine appropriate hiring and job descriptions for sustainable organization. Assist in the hiring of permanent staff and provide necessary training and transition.
8. Interview and/or meet with other organizations with similar mission and vision statements.
9. Other duties and assignments as may be deemed necessary and requested by the County Project Manager/OCHTF Team or designee.

II. COST OF SERVICES

The Trust will be billed the administration fee associated with this Attachment H at the same rate as County Departments or other special districts. OC Community Resources (OCCR) shall bill the Trust monthly in arrears for services provided in the previous month at the rates approved by the County of Orange Board of Supervisors for the applicable fiscal year. Any meeting beyond regular business hours require OCCR staff covered under the Orange County Employees Association - Office Services Unit to be compensated at one and one-half (1 ½) times the regular hourly rate.

III. PAYMENT PROCESS

Payment for OCCR services shall be made via the journal voucher method as specified in the MOU.

Agenda Item # 7

Adopt by resolution the 2020 Orange County Housing Finance Trust meeting calendar.

REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION

BOARD MEETING DATE: OCTOBER 29, 2019

RECOMMENDED ACTION:

ADOPT BY RESOLUTION THE 2020 ORANGE COUNTY HOUSING FINANCE TRUST MEETING CALENDAR.



Adam B. Eliason, Manager

SUMMARY:

The Orange County Housing Finance Trust (Trust) desires to conduct regularly scheduled meetings throughout the year. This item recommends approval of the 2020 meeting calendar.

DISCUSSION:

The 2020 calendar proposes six meetings throughout the year including January, March, May, July, September, and November. The meetings will be held at 10:00 a.m. on the third Wednesday of the designated month at the Orange County Hall of Administration, Commission Hearing Room located at 333 W. Santa Ana Blvd. (Building 10), Santa Ana, CA 92701.

The specific dates include the following:

January 15th

March 18th

May 20th

July 15th

September 16th

November 18th

The Trust Bylaws further specify that the Board of Directors shall select a Chair and a Vice-Chair on an annual basis at the July Board Meeting.

Attachments: Resolution

RESOLUTION OF THE BOARD OF DIRECTORS OF
THE ORANGE COUNTY HOUSING FINANCE TRUST
October 29, 2019

WHEREAS, Government Code section 54954 requires the Board of Directors to adopt by ordinance, resolution, or bylaws the time and place for holding regular meetings; and

WHEREAS, the Orange County Housing Finance Trust Joint Powers Agreement authorizes the Board of Directors to fix the dates and times for its regular meetings by resolution; and

WHEREAS, it has been determined that establishing a calendar for Orange County Housing Finance Trust for regular meetings on the 3rd Wednesday of odd months, from 10am-11:30am will fulfill both the requirements of the Brown Act and the Joint Powers Agreement.

NOW, THEREFORE, BE IT RESOLVED that

1. The regular meetings for the 2020 calendar shall be held in accordance with Attachment A.

2020 Orange County Housing Finance Trust Meeting Calendar

January 15th

March 18th

May 20th

July 15th

September 16th

November 18th