

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO, THE SAN MATEO
COUNTY JOINT POWERS FINANCING AUTHORITY AND
CALIFORNIA FINANCIAL SERVICES**

THIS AGREEMENT, entered into this 1st day of May, 2013, by and between the County of San Mateo, California (hereinafter called the "County"), San Mateo County Joint Powers Financing Authority (hereinafter called the "Authority"), and California Financial Services (hereinafter called "Contractor");

W I T N E S S E T H:

WHEREAS, the County presently contemplates the refinancing of various capital projects and other capital improvements for the County (the "Project") through the issuance in conjunction with the San Mateo County Joint Powers Financing Authority (the "Authority") of Lease Revenue Bonds (Capital Projects); as follows:

- 1) Refinancing of 1997, 1999 and 2001 outstanding bonds and financing replacement of the Skylonda Fire Station; and
- 2) Financing of the Replacement Jail / Re-Entry Facility Project;

WHEREAS, it is contemplated that the Authority will issue and sell the Bonds for the benefit of the County;

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of Financial Advisory Services.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County and Authority (hereinafter for reference purposes only, jointly and severally referred to as the "Issuers") in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed One Hundred and Fifteen Thousand (\$115,000) per issuance, not to exceed Two Hundred Thirty Thousand Dollars (\$230,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from May 1, 2013 through December 31, 2014.

This Agreement may be terminated by Contractor, the County Manager, or his designee, at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County or the Authority and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless the Issuers and their officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the Issuers or their officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which Issuers have been found in a court of competent jurisdiction to be solely liable by reason of their own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of the Issuers. Any such assignment or subcontract without the Issuer's prior written consent shall give Issuers the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (a) Comprehensive General Liability | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance | \$1,000,000 |
| (c) Professional Liability | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto with regard to the terms and conditions contained herein and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of this agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties regarding the terms and conditions herein stated and not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

In the case of County or the Authority, to:

Reyna Farrales
County Manager's Office
400 County Center, 1st Floor
Redwood City, CA 94063
(650) 363-4130

In the case of Contractor, to:

Mark Epstein
412 Humboldt Street
Santa Rosa, CA 95404
(707) 544-7800

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands to this agreement for professional services.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

SAN MATEO COUNTY JOINT POWERS FINANCING AUTHORITY

By: _____ Date: _____

R. Mark Epstein
California Financial Services



Contractor's Signature

Date: 6/26/2013

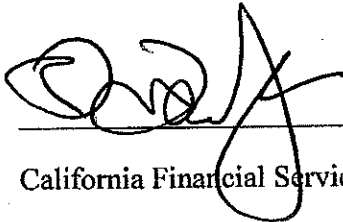
Long Form Agreement/Non Business Associate v 8/19/08

Exhibit A

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

- I. The County and the Authority (hereinafter jointly and severally referred to as the "Issuers") employ the Financial Advisor to provide the following financial consulting services relative to the COPs:
 - A. Review of proposals, as received, including a summary evaluation of each question or analysis received isolating objective criteria and subjective criteria and culminating in a recommendation of firms to be interviewed in the oral presentation phase (as necessary) of the selection process.
 - B. If elected by the Issuers, Schedule and conduct oral/telephonic interviews (as necessary) including formulation of standard and specialized questions for all of the firms to be interviewed as well as developing a system for evaluating the performance of firms so interviewed. This phase of the process will conclude with a recommendation as to which firm(s) should be selected to serve as the County's underwriter(s).
 - C. Develop or coordinate a project schedule, of which the financing schedule will be a component, and assign responsibilities for each discrete task that needs to be accomplished to complete the project on a timely basis.
 - D. Initially coordinate the various parties involved in the financing, including organizing and leading a kick-off meeting to commence the financing phase of the project.
 - E. Assist the Issuers in selecting an official statement printer through a competitive bid process, if required, limited to firms that provide reliable service and cost estimates.
 - F. Solicit credit enhancement from bond insurers to the extent that the resulting "all-in" costs of funds (including fees and expenses of the insurer) is less than would be available to the Issuers through selling COPs or Lease Revenue bonds under its own rating.
 - G. Assist in the preparation of a rating agency presentation (as necessary) to take place in San Francisco or by phone (to the extent that bond insurance is not economical or supplemental underlying rating improves the Count's cost of borrowing) to update the agencies on the County's financial condition, demographics, geoseismic exposure, economic environment, and infrastructure needs to apply for a bond rating at least equal to its current rating.

- H. Represent the Issuers at all document sessions and bond structuring discussions to ensure that the business terms of the legal documents and repayment requirements of the financing structure optimize the County's flexibility and minimize the interest rate and cash flow impact of the resulting financing.
- I. Advise the Issuers as to the pricing and marketing of COPs and lease revenue bonds as recommended by the underwriting team. Evaluate the market timing of the actual sale of securities and oversee the performance of each underwriting firm as well as ensure fair distribution of COPs and lease revenue bonds between firms.
- J. Evaluate and contribute to a post sale closing analysis to be distributed by the underwriter and delivered to the Issuers prior to the closing of the financing or prepare a separate analysis, as applicable..
- K. Attend all relevant meetings of the Board of Supervisors and the Joint Powers Financing Authority or such other meetings as the County may designate during the term of the financing schedule.



California Financial Services

County of San Mateo

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

The County agrees to pay and the Financial Advisor agrees to receive as full compensation for the rendering of the aforesaid services in section I of Exhibit "A" relative to the Lease Revenue Bonds (LRBs), Certificates of Participation (COPs), and for any services heretofore performed by Financial Advisor in connection therewith for the fee of One Hundred and Fifteen Thousand per issuance, for a not to exceed amount of Two Hundred Thirty Thousand Dollars (\$230,000) payable upon the delivery of and receipt of payment for the LRBs and/or COPs; as follows:

- 1) Refinancing of 1997, 1999 and 2001 outstanding lease revenue bonds and financing replacement of the Skylonda Fire Station
- 2) Financing of Replacement Jail / Re-Entry Facility Project

Total compensation for each financing shall not exceed \$115,000 or \$230,000 in the aggregate.



California Financial Services

County of San Mateo

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	California Financial Services	Phone:	707 544-7800
Contact Person:	Mark Epstein	Fax:	707 523-4082
Address:	412 Humboldt Street Santa Rosa, CA 95404	Email:	mepskin@catschools.com
		Number of employees:	11

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☐ Contractor complies with the County's Equal Benefits Ordinance by:
- ☐ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☒ Contractor is exempt from this requirement because:
- ☒ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

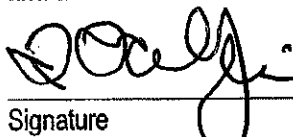
- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☐ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☒ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.
 - ☐ Contractor has no employees.
 - ☒ Contractor has no employees who live in San Mateo County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.



Signature
6/27/13

Date

R. Mark Epstein

Name
Managing Director

Title