

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

THIS AGREEMENT, entered into this ____ day of _____, 2015, 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 wishes to refinance the 1997 and 2004 Colma Creek Flood Control Zone Certificates of Participation as well as the Refunding Lease Revenue Bonds (Youth Services Center), 2008 Series A (collectively, "Bonds"), in conjunction with the San Mateo County Joint Powers Financing Authority;

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 Two Hundred and Thirty Thousand (\$230,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2014 through December 31, 2016.

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. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *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 upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, 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. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
 - ☐ Contractor complies with Chapter 2.84 by:
 - ☐ offering the same benefits to its employees with spouses and its employees with domestic partners.
 - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
 - ☐ Contractor is exempt from having to comply with Chapter 2.84 because it

has no employees or does not provide benefits to employees' spouses.

- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

E. *Discrimination Against Individuals with Disabilities.* The Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

F. *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☐ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

G. *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 the following:

- 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; and/or
- 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 Section and/or to set off all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement 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.

12. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

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:

Jim Saco
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: _____
Jim Saco, Assistant Secretary

Date: _____

CALIFORNIA FINANCIAL SERVICES
R. Mark Epstein

Contractor's Signature

Date: _____

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 and Refunding Lease Revenue Bonds:
 - 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. Review Underwriter's recommendations as to the investment of bond proceeds prior to the underwriter's delivery of funds, including overseeing the solicitation of three (3) bids for investments as required under Section 1.03(e) of the Federal Tax Code.
- K. 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..
- L. 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

Joint Powers Financing Authority

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 issuance of Lease Revenue Bonds (LRBs), Certificates of Participation (COPs), or other financing vehicle, and for any services heretofore performed by Financial Advisor in connection therewith, for a not-to-exceed amount of One Hundred and Fifteen Thousand (\$115,000) per issuance, for a not to exceed amount of Two Hundred Thirty Thousand Dollars (\$230,000) payable upon delivery of and receipt of payment for the LRBs and/or COPs, as follows:

- 1) Refinancing of the 1997 and 2004 Colma Creek Flood Control Zone Certificates of Participation
- 2) Refunding of the Lease Revenue Bonds (Youth Services Campus), 2008 Series A

California Financial Services

County of San Mateo

Joint Powers Financing Authority