

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



*agf*

**FROM:** Purchasing and Fleet Services Dept.

**SUBMITTAL DATE:**  
August 11, 2010

**SUBJECT: APPROVAL OF THE MULTIPLE SERVICE AGREEMENTS TO PROVIDE FINANCIAL ADVISORY SERVICES FOR THE EXECUTIVE OFFICE**

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and execute the one-year (1) professional service agreements with KNN Public Finance, C.M. de Crinis & Company, Inc., and Fieldman/Rolapp & Associates for an annual aggregate amount of \$255,000, which contains options to renew the agreements for four additional one-year (1) periods, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459.4, to exercise the renewal options, based on the availability of fiscal funding, to move funds amongst the vendors, and to sign amendments that do not change the substantive terms of the agreements, including amendments to the compensation provision that do not exceed the annual CPI rates.
3. Direct the Clerk of the Board to retain one original copy, and to return two originals to the Purchasing Office.

**BACKGROUND:** (Continued on Page 2)

*[Signature]*  
ROBERT J. HOWDY SHELL, Director  
Purchasing and Fleet Services Dept.

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 255,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 50,000	Budget Adjustment:	No
	Annual Net County Cost:	\$ 50,000	For Fiscal Year:	10/11

<b>SOURCE OF FUNDS:</b> General Fund (20%), and Bond Proceeds (80%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**

County Executive Office Signature

BY:

*[Signature]*  
Christopher M. Hans

☐ Consent    ☒ Policy  
☐ Consent    ☒ Policy

Dep't Recomm.:  
 Per Exec. Ofc.:

Prev. Agn. Ref.:

District:

Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**3.68**

FORM APPROVED COUNTY COUNSEL  
 BY: NEAL R. KIRNIS  
 DATE: 8/12/10  
 Departmental Concurrence

**BOARD OF SUPERVISORS****FORM 11: APPROVAL OF THE MULTIPLE SERVICE AGREEMENTS TO PROVIDE  
FINANCIAL ADVISORY SERVICES FOR THE EXECUTIVE OFFICE****PAGE 2****BACKGROUND**

The County requires financial advisor services or short-term, long-term lease financings, general financial advisement on complex financial matters, provide assistance with annual cash flow financings (TRANS and Teeter), assistance with the Pension Advisory Review Committee, and other specialized financial services that may occur. The financial advisors will assist the County in assembling financing teams, to include preparing and evaluating Requests for Proposal for bond counsel, bring bond issues to market, provide underwriter services, trustee, disclosure counsel, credit enhancement firm, verification agent, and other professionals as required, making recommendations based on the proposals, and negotiate fees on behalf of the County.

The financial advisor services will include advising on the size and timing of bond sales; structuring of sales on a competitive versus negotiated basis; bond maturity schedules; call premiums; provisions for the handling and investment of bond funds; use of credit enhancements; cash funded reserve versus surety; closing instructions; and other matters which may assist in obtaining the lowest practical interest cost and the widest competition for purchase of bonds. Where practical, the financial advisors will assist county staff to increase their involvement in the bond issuance process, ultimately decreasing the role and cost of the financial advisors.

**PRICE REASONABLENESS**

Purchasing released a Request for Proposal #EOARC018A, mailing solicitations to 77 companies and advertising on the County's Internet. Seven responses were received.

The proposals were reviewed by an evaluation team consisting of personnel from Purchasing, Executive Office, Flood Control, and a member from the CORAL Board. The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the requirements of the scope of service, the bidder's unique abilities, staff capacity, technical capability and project methodology, financial status, credentials, resumes, licenses, certifications, and references.

Purchasing required the sealed bid prices be submitted to the Clerk of the Board's (COB), and had the COB hold the sealed bid prices until the technical evaluations were completed. Once the technical evaluations process was accomplished, the evaluation team assembled at the COB for the bid prices to be revealed. The fees for the financial advisors that would have direct involvement, hourly rates were similar in fees, \$200 up to \$300, and based on the technical scores, the team selected the top four finalists for oral interviews.

Based on the technical evaluations and pricing, four finalists were chosen; KNN Public Finance, C.M.de Crinis & Company, Fieldman|Rolapp & Associates, and PRAG for oral interviews, which were held on July 29, 2010 at the Executive Office.

**BOARD OF SUPERVISORS**

**FORM 11: APPROVAL OF THE MULTIPLE SERVICE AGREEMENTS TO PROVIDE  
FINANCIAL ADVISORY SERVICES FOR THE EXECUTIVE OFFICE**

**PAGE 3**

**PRICE REASONABLENESS (Continued)**

Because the County desires to optimize the vendors expertise in various general tasks, for example Teeter and TRAns financing, the evaluation team is making the recommendation to split the award to three of the finalists, KNN Public Finance, C.M.de Crinis & Company, Inc., and Fieldman|Rolapp & Associates as the most responsive/responsible bidders. Overall, each vendor submitted a range of hourly rates of \$200 to \$300, and a range of fees that are based on debt amount. For instance, debt transaction amounts of \$25,000,000, the proposed fees will vary depending on the bond's complexity. The fees for the advisors are contingent upon successful bond issuance and payable from the bond proceeds.

**REVIEW/APPROVAL:** County Counsel concurs with this request.

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**FINANCIAL ADVISOR SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**C.M.de CRINIS & COMPANY, Inc.**



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This Agreement, made and entered into this 31st day of August, 2010, by and between C.M.de CRINIS & COMPANY, Inc., (herein referred to as "CONTRACTOR"), and the County of Riverside, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of three (3) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page, and such services referenced in Exhibit C, Debt Management Policy B-24, consisting of five (5) pages.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through August 31, 2011, with the option to renew for up to four additional years with an expiration date of August 31, 2015, each year is renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed eighty-five thousand dollars (\$85,000), annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless

otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement. Payment of fees earned by CONTRACTOR shall be contingent on the closing of the debt, except for specific non-debt related services, for which the compensation shall be based on the hourly rates specified in Exhibit B.

**3.2** No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas Financial Advisor services, and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

**3.3** CONTRACTOR shall be paid for hourly work only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County Executive Office  
4080 Lemon St, 4<sup>th</sup> Floor  
Riverside, Ca 92501  
Attn: Accounts Payable

1. Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (EOARC-91849-001-09/11); description, unit prices, extensions, sales/use tax if applicable, and an invoice total.
2. Invoices shall be rendered monthly in arrears.
3. In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.

4. CONTRACTOR shall be paid for debt-related services in accordance with Schedule B, upon closing of the debt, by the Trustee. CONTRACTOR shall submit an invoice to the COUNTY first for review and approval at the above address.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

#### **4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

#### **5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

**5.2** COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:



- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## **6. Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

## **7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from

individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

**9. Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that

an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all California State or other legal requirements, including but not limited to the provisions of Rule 15c2-12(b)(5) of the Securities Exchange Act of 1934. All legal requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Executive Office  
4080 Lemon St., 4<sup>th</sup> Fl.  
Riverside, CA 92401  
Attn: Christopher Hans

Purchasing and Fleet Services  
2980 Washington  
Riverside, CA 92504  
Attn: Lisa Boerner

**CONTRACTOR**

C.M. de Crinis & Co. Inc.  
15300 Ventura Blvd., Ste 404  
Sherman Oaks, CA 91403  
Attn: Paul McDonnell

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

## **20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

## **21. Hold Harmless/Indemnification**

**21.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY;

provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**21.2** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**21.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**21.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

**21.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

## **22. Insurance**

**22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**22.2** Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**22.3** Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations

liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**22.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**22.5 Professional Liability:** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**22.6 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.



3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**23.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**23.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Signature: \_\_\_\_\_

Print Name: Marion Ashley

Title: Chairperson, Board of Supervisors

**CONTRACTOR:**

Signature: \_\_\_\_\_

Print Name: PAUL McDONNELL

Title: MANAGING DIRECTOR

Attest:

Kecia Harper-Ihem

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

Deputy

FORM APPROVED COUNTY COUNSEL

BY: NEAL R. KIPNIS

DATE

9/12/10

**EXHIBIT A**  
**SCOPE OF SERVICE**

<b>1.0 PURPOSE/BACKGROUND</b>
-------------------------------

**1.1** Riverside County (COUNTY) was organized in 1893 from territory in San Bernardino and San Diego Counties and encompasses 7,295 square miles. The COUNTY is bordered on the north by San Bernardino County, on the east by the State of Arizona, on the south by San Diego and Imperial Counties and on the west by Orange County. The COUNTY is the fourth largest by area in the State and stretches from the Arizona border on the east to within 15 miles of the Pacific Ocean on the west. There are 26 incorporated cities in the COUNTY. According to the State Department of Finance, Demographic Research Unit, the COUNTY's population was estimated at 459,188 as of January 1, 2009, which is a 17.0% decrease from January 1, 2008. That decrease is the result of two new city incorporations.

**1.2** The COUNTY is a general law county divided into five supervisorial districts on the basis of registered voters and population. The COUNTY is governed by the five-member Board of Supervisors, elected within each district. Members serve staggered four-year terms, and the chairperson is elected by the Board members annually. COUNTY administration includes appointed and elected officials, boards, commissions and committees which assist the Board of Supervisors.

**1.3** The COUNTY provides a wide range of services to residents, including police and fire protection, medical and health services, education, library services, and public assistance programs. Some municipal services are provided by the COUNTY on a contract basis to incorporated cities within its boundaries. These services are designed to allow cities to contract for municipal services such as police and fire protection without incurring the cost of creating city departments and facilities. Services are provided to the cities by the COUNTY at cost, or at the discretion of the County Board of Supervisors, which in certain cases is below cost.

**1.4** Three distinct geographical areas characterize the COUNTY: the western valley area, the higher elevations of the mountains, and the deserts. The western valley, which includes the San Jacinto Mountains and the Cleveland National Forest, experiences the mild climate typical of Southern California. The eastern desert areas experience warmer and dryer weather conditions.

**1.5** As of June 30, 2009, the COUNTY had \$518,250,000 in direct general obligation bonded indebtedness and \$387,995,000 in pension obligation bonded indebtedness. The COUNTY has no authorized but unissued general obligation debt.

**1.6** The CONTRACTOR shall provide financial advisement on long-term lease financings and general financial advisement.

<b>2.0 SCOPE OF SERVICE</b>
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**2.1** CONTRACTOR shall comply with all conditions identified within this document:

- a) Must operate as a business within the State of California.

- b) Must be a financial advisement firm only and does not provide investment bank services.
- c) Must have significant experience in providing similar services to other California Public issuers.
- d) Must have and maintain the resources and commitment to complete all components of every project in a timely manner, including but not limited to, attending financing meetings, advising staff on matters specific to the financing, preparing and reviewing financing documents, and assisting with due diligence and disclosure processes.

**2.2** CONTRACTOR shall provide qualified personnel for services, which can include, but may not be limited to, the following:

- a) Budget Management; provide input on budget strategy, review, and comment of budget reports.
- b) Debt Management, provide analysis and input in regards to management of existing debt, outstanding variable rate debt, the Teeter program, TRANs, and the refinancing of long-term debt. CONTRACTOR shall include financial analysis, review of documents, consultation with rating agencies, coordination with staff and other consultants, and prepare reports.
- c) Pension Liability Management Services, include support of the Pension Advisory Review Committee, and provide input of reports, and analysis of retirement benefit costs to the COUNTY.
- d) General Financial Matters; include analysis and input on any financial matters regarding COUNTY finances.
- e) Assist the COUNTY in assembling financing teams, to include preparing and evaluating Requests for Proposal (RFP) for bond counsel, underwriter, trustee, disclosure counsel, credit enhancement firm, verification agent, and other professionals as required, making recommendations based on the RFP, and negotiating fees.
- f) Assist the COUNTY in bringing bond issues to market. This will include advising on the size and timing of bond sales; structuring of sales on a competitive versus negotiated basis; bond maturity schedules; call premiums; provisions for the handling and investment of bond funds; use of credit enhancements; cash funded reserve versus surety; closing instructions; and other matters which may assist in obtaining the lowest practical interest cost and the widest competition for purchase of bonds.
- g) Analyze the cost benefits of different structuring and pricing options. This includes, but is not limited to, fixed rate versus variable rate bonds, insured versus uninsured bonds, callable versus non-callable bonds, par versus discounted bonds, and use of alternative financing structures such as Interest Rate Swaps.
- h) Assist the COUNTY in preparing a credit profile and making presentations to rating agencies and/or bond insurance companies.
- i) Manage competitive sale process.
- j) Advise the COUNTY of ongoing developments in the bond industry that may affect the COUNTY.

- k) Monitor county bond issues and advise on refunding opportunities.
- l) Prepare and make presentations designed to facilitate an understanding of public sector financing and its implications to governing boards as may be necessary.
- m) Provide advisory services to the COUNTY's Debt Advisory Committee.

**EXHIBIT B  
PAYMENT PROVISIONS**

Par Value/Each Series of Debt		Range	Base Fees
\$ 0 -		\$2,499,999	\$ 47,500
\$2,500,000	to	\$4,999,999	\$ 47,500
\$5,000,000	to	\$7,499,999	\$ 47,500
\$7,500,000	to	\$9,999,999	\$ 47,500
\$10,000,000	to	\$12,499,999	\$ 47,500
\$12,500,000	to	\$14,999,999	\$ 47,500
\$15,000,000	to	\$17,999,999	\$ 47,500
\$18,000,000	to	\$19,999,999	\$ 47,500
\$20,000,000	to	\$24,999,999	\$ 47,500
\$25,000,000	to	and above	\$ 47,500
above \$100 million			
Personnel (Describe title)		Per Hour Rate	
Curt de Crinis, Managing Director		\$ 297	
Michael Williams, Managing Director		\$ 297	
Paul McDonnell, Managing Director		\$ 297	

**Services may include:**

1. Teeter Plan Cash Flow Modeling,
2. Debt and Investment Policy Development,
3. Debt Capacity Analysis and Financial Review,
4. Investor Outreach and Relations Programs,
5. Preparation of Independent, Objective Analysis and Reports,
6. Preliminary Financing Feasibility Study,
7. Monitoring of Bond Refunding Opportunities,
8. Evaluation of Securitizations (VLF, Tobacco, Proposition 42, AB, 811, etc.),
9. Cash Flow Analysis and Planning (TRANS, Revenue Bonds),
10. Evaluation and Monitoring Swaps,
11. Evaluation of/and Written Response to Underwriter Proposals,
12. Pension and OPEB Analysis,
13. Presentation and Agenda Items for Board and DAC meetings,
14. "Bonds 101" Educational Workshops for staff and Board,
15. Debt Affordability Models,
16. Formation of Redevelopment Agencies, Community Facility Districts and Assessment Districts,
17. Variable Rate Remarketing Oversight.

CONTRACTOR shall be paid a fee of \$39, 500 for the 2010 Teeter Series B Notes, and a fee of \$42, 500 for the 2010 Teeter Series C Notes.

**All rates are inclusive of any overhead expense, including but not limited to: travel, lodging, meals, copying costs, meetings, courier services, reports, any materials or related matter, official statements, postage, and out of pocket expenses. No other additional fees or expenses will be considered or reimbursed by the COUNTY. Payment of fees earned by CONTRACTOR shall be contingent on the closing of the debt.**





**EXHIBIT C**  
**Debt Management Policy B-24**

**DEBT MANAGEMENT POLICY****B-24****Policy:**

The County of Riverside ("County") has created this debt management policy ("Policy") to ensure the financial stability of the County, reduce the County's cost of borrowing, and protect the County's credit quality through proper debt management. This Policy applies to all direct County Debt, Conduit Financing, and Land Secured Financing.

**I. Definitions**

- A. The term "Bond(s)" shall mean all legally available financing methods to the County, including General Obligation Bonds, long-term lease obligations entered into by the County (i.e. Certificates of Participation, Revenue Bonds, County's lease line of credit etc.), and short-term notes sold in the capital markets (i.e., TRANs, Teeter, etc).
- B. The term "Debt" shall mean (i) General Obligation Bonds issued by the County, (ii) long-term lease obligations entered into by the County, (iii) short-term notes sold in the capital markets, and/or (iv) capital leases above \$5,000,000.
- C. The term "Debt Service" shall mean (i) the repayment of General Obligation Bonds, (ii) lease payments on long-term lease obligations and/or (iii) short-term notes sold in the capital markets.
- D. The term "Discretionary Revenue" shall mean revenue received by the County during a fiscal year where the Board of Supervisors has sole discretion on the budgeting and expending of those revenues. Discretionary Revenues include, but are not limited to, property tax, sales tax receipts, motor vehicle in-lieu tax, interest earnings, franchise fees, and certain fines and penalties.
- E. The term "Conduit Financing" shall mean debt issued by the County to finance a project to be used by a third party, usually a corporation engaged in private enterprise. The security of such debt is the credit of the private user.

**II. County Debt Policy**

- A. Long-term debt shall not be used to finance ongoing operational costs.
- B. When possible, the County shall pursue alternative sources of funding, such as pay as-you-go or grant funding, in order to minimize the level of direct debt.
- C. Whenever possible, the County shall use special assessment, revenue, or other self-supporting debt instead of General Fund obligated debt.
- D. Long-term, general fund obligated debt will be incurred, when necessary, to acquire land or fixed assets, based upon the priority of the project, and the ability of the County to pay. This debt shall be limited to those capital improvements that cannot be financed from current revenues. The project should be integrated with the County's long-term financial plan and Capital Improvement Program.

E. Any debt issued shall not have a maturity date beyond the useful life of the asset being acquired or constructed by the debt proceeds.

F. The County shall establish an affordable debt level in order to preserve credit quality and ensure sufficient revenue is available to pay annual debt service. As such, aggregate debt service, excluding self-supporting debt, should not exceed seven percent (7%) of General Fund discretionary revenue, and will not exceed ten percent (10%) without the Board of Supervisors' approval. The debt level will be recalculated at the time of a new bond issue. The Board of Supervisors will be notified if any bonds to be issued cause the debt level to exceed the seven percent (7%) threshold. The debt level will be calculated by comparing seven percent (7%) of discretionary revenue to the aggregate debt service, excluding self-supporting debt.

G. The County will use its best efforts to maintain a variable rate debt ratio in an amount not to exceed 20% of the total outstanding debt, excluding variable rate debt that is hedged with cash, cash equivalent, or a fixed-rate swap.

H. The County shall review outstanding debt and initiate fixed-rate refundings, or alternative financing products, when there is either an economic benefit or noneconomic benefit to the County's financial or operating position. Net present value savings (calculated according to industry standards) from a fixed-rate refunding should be at least three percent (3%) of the refunded Bonds. Net present value savings from use of an alternative financing product should be at least five percent (5%) of the refunded bonds. Refunding Debt shall not extend the maturity beyond the original debt being refunded without compelling justification.

I. The County Executive Office, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a General County Financing Operation Manual, providing for the implementation of Section II of this Policy B-24.

### **III. Conduit Financing**

A. The County encourages the development of residential housing that is intended to provide quality, affordable single family housing for the first time home buyer within both the incorporated and unincorporated areas of the County.

B. The County encourages the development of residential housing which will comply with both federal and state requirements for low and moderate- income multi-family housing within the incorporated and unincorporated areas of the County.

C. The County encourages commercial, retail, industrial and other development projects which will increase the employment base within the County in order to create a synergistic jobs/housing balance throughout the County and enhance the overall tax base of the County.

D. The Economic Development Agency, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a Conduit Financing Operation Manual, providing for the implementation of Section III of this Policy B-24.

### **IV. Land Secured Financing**

A. The County encourages the development of commercial or industrial property that results in reciprocal value to the County (i.e., increased jobs, property or sales tax revenues, major public improvements). The

County will consider the use of community facilities districts (CFDs) or special benefits assessment districts (ADs), as well as other financing methods to assist these types of development. When, in the County's opinion, the public facilities of a residential development represent a significant public benefit, public financing may be considered. Significant public benefit may be defined as a public facility having regional impact and/or benefit to that beyond the proposed development.

B. Projects will comply with the requirements of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or the Community Facilities Act of 1982, and provisions of Board Policy B-12.

C. The County will maintain a separate Land Secured Financing policy. In the event of a conflict between this Policy B-24 and the Land Secured Financing policy, this Policy B-24 shall supersede and govern the Land Secured Financing policy.

## **V. Debt Advisory Committee**

A. The Debt Advisory Committee (DAC) will review proposed county-related financings at least once prior to final approval by the Board of Supervisors. The DAC will act on items brought before it with either a "Review or File" or "Review and Recommend" action.

1. Those items requiring Review and File action:

- a. Conduit financings that meet established guidelines.
- b. Land secured financings that meet established guidelines.
- c. Letter of Credit substitutions with at least equal quality credit.

2. Those items requiring Review and Recommendation action:

- a. Refinancing of existing debt.
- b. Alternative financing products or structures.
- c. New General Fund financings.
- d. Restructuring of existing debt.
- e. Any financing with policy issues.
- f. Any financing requiring a waiver of this policy or a deviation from any Operation Manual established by this Policy B-24.
- g. Any issue the DAC considers important to bring to the attention of the Board of Supervisors.

B. The County Executive Office will be responsible for preparing and distributing the agenda.

C. The DAC shall have seven (7) members and be chaired by the County Executive Office.

D. The members of the DAC ("member") shall be comprised of the following:

1. County Treasurer
2. County Auditor-Controller
3. County Executive Office (chair)
4. County Counsel
5. Economic Development Agency Executive Director
6. Community Facilities District/Assessment District Administrator
7. General Manager Chief Engineer, Flood Control, and Water Conservation District.

E. Members of the DAC may designate staff to represent them. Members shall notify the committee chair, in writing, of the name and title of staff that are authorized to represent them. Upon written notification, the designee will be authorized to represent and vote on behalf of the member.

F. DAC meetings shall be convened monthly or on the call of the chairperson.

G. Each proposed financing brought before the DAC will provide the committee with (1) a detailed description of the type and structure of the financing, (2) full disclosure of the specific use of the proceeds, (3) a description of the public benefit to be provided by the proposal, (4) the principal parties involved in the financing, (5) anticipated sources of repayment, (6) an estimated Sources and Uses Statement, (7) any credit enhancements proposed, (8) the anticipated debt rating, if any, and (9) an estimated debt service schedule.

H. Whenever any vote by the members is not unanimous, a report outlining the dissenting opinion will be prepared by the chairperson, in consultation with the dissenter(s), and will accompany the Form 11 to the Board of Supervisors.

I. The DAC may retain a qualified financial advisor at their discretion, provided no County funds are used without the Board of Supervisors' prior approval.

## **VI. Continuing Disclosure**

A. Each county department, agency, district or authority issuing or managing debt will ensure that applicable state and federal regulations and laws regarding disclosure are observed in all financings.

B. Each responsible county department, agency, district, or authority will ensure that annual reports and material event notices are filed with the appropriate state and/or federal agencies in a timely manner.

C. Each responsible county department, agency, district, or authority will provide an annual certificate to the DAC of its compliance or non-compliance with state and/or federal disclosure laws.

D. Each responsible county department, agency, district, or authority will notify the DAC as soon as possible of any material event (but not limited to) listed in Rule 15c2-12 under the Securities Exchange Act of 1934.

## **VII. Alternative Financing Products**

A. Alternative financing products shall be used only for appropriate financial objectives, such as (1) to achieve greater debt savings by taking advantage of market conditions, (2) to better management of county assets and liabilities, (3) to reduce interest rate risk, and (4) to increase cash flow savings.

B. The County shall not use an alternative financing product for speculative purposes.

C. Board of Supervisors approval shall be required prior to the initiation of any alternative financing product transactions. Such approval may provide for the delegation of authority to actively manage the transaction.

D. Interest Rate Swaps

1. Each swap agreement shall include payment, term, security, collateral, default remedy, termination and other terms, conditions and provisions as the County Finance Director, in consultation with County Counsel and the County Treasurer, shall deem necessary or desirable.
2. Counterparty Requirements: to minimize counterparty risk (1) the County may enter into swap agreements only with counterparties rated AAA by at least one rating agency, and (2) each counterparty shall have a minimum capitalization of \$150 million. Diversification of counterparties is the expressed goal of the County. Selection of counterparties to transactions will take this into account.
3. Collateral Requirements: (1) the County will not provide collateral to secure its obligations under swap agreements, (2) if the credit rating of the counterparty falls below AAA by any rating agency, collateral shall be posted by the counterparty on a timely basis. Collateral, equaling at least 102 % of the SWAP amount shall consist of cash or U.S. Government securities deposited with a third party trustee.
4. Termination Requirements: All swap agreements shall contain a provision granting the County the right to optionally terminate the agreement at any time over the term of the agreement. A termination payment to or from the County may be required at the time of termination. It is the intent of the County not to make a termination payment to a counterparty that does not meet its contractual obligations under the swap agreement. To the extent possible, the form of the interest rate swap agreement should incorporate the prevailing industry standards (the PSA Master Swap Agreement).
5. Any up-front payments or termination payments shall be used for one-time capital costs only, unless so directed by the Board of Supervisors.

**Reference:**

Minute Order 3.6 of 10/21/03

Minute Order 3.3 of 04/10/07

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**FINANCIAL ADVISOR SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**FIELDMAN | ROLAPP & ASSOCIATES**



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This Agreement, made and entered into this 31st day of August, 2010, by and between Fieldman Rolapp & Associates, (herein referred to as "CONTRACTOR"), and the County of Riverside, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of three (3) pages at the prices stated in Exhibit B, Payment Provisions, consisting of two (2) pages, and Exhibit C, Debt Management Policy B-24, consisting of five (5) pages.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through August 31, 2011, with the option to renew for up to four additional years with an expiration date of August 31, 2015, each year is renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed eighty-five thousand dollars (\$85,000), annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement. Payment of fees earned by CONTRACTOR shall be



contingent on the closing of the debt, except for non-debt related services, then the compensation shall be based on the hourly rates specified in Exhibit B.

**3.2** No price increases will be permitted during the first year of this Agreement. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas Financial Advisor services, and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

**3.3** CONTRACTOR shall be paid for hourly work only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County Executive Office  
4080 Lemon St, 4<sup>th</sup> Floor  
Riverside, Ca 92501  
Attn: Accounts Payable

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (EOARC-91849-002-09/11); description, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.
- c) In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.
- d) CONTRACTOR shall be paid for debt-related services in accordance with Schedule B, upon closing of the debt, by the Trustee. CONTRACTOR shall submit an invoice to the COUNTY first for review and approval at the above address.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year

unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

**4. Alteration or Changes to the Agreement**

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

5.1 COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

**5.5** CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

**5.6** The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

**7. Conduct of Contractor**

**7.1** The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

**7.2** The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

**7.3** The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

**8.1** All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

**9. Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all California State or other legal requirements, including but not limited to the provisions of Rule 15c2-12(b)(5) of the Securities Exchange Act of 1934. All legal requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex

in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**14. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**15. Confidentiality**

**15.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

**15.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**16. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**17. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Executive Office  
4080 Lemon St., 4<sup>th</sup> Fl.  
Riverside, CA 92401  
Attn: Christopher Hans

Purchasing and Fleet Services  
2980 Washington  
Riverside, CA 92504  
Attn: Lisa Boerner

**CONTRACTOR**

Fieldman | Rolapp & Associates  
19900 MacArthur Blvd., Ste 1100  
Irvine, CA 92612  
Attn: Daniel Wiles

**18. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**19. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any

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questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**20. Hold Harmless/Indemnification**

**20.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

**20.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**20.2** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**20.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**20.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.



**20.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

**21. Insurance**

**21.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**21.2 Workers' Compensation:** If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**21.3 Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**21.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**21.5 Professional Liability:** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**21.6 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies

of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

## **22. General**

**22.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**22.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**22.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**22.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**22.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**22.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**22.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**22.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**22.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**22.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**22.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**22.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Signature: \_\_\_\_\_

Print Name: Marion Ashley

Title: Chairperson, Board of Supervisors

**CONTRACTOR:**

Signature: \_\_\_\_\_

Print Name: Adam Bauer

Title: Principal

Attest:

Kecia Harper-Ihem

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

Deputy

FORM APPROVED COUNTY COUNSEL

BY: \_\_\_\_\_

NEAL R. KIPNIS

DATE

**EXHIBIT A**  
**SCOPE OF SERVICE**

<b>1.0 PURPOSE/BACKGROUND</b>
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**1.1** Riverside County (COUNTY) was organized in 1893 from territory in San Bernardino and San Diego Counties and encompasses 7,295 square miles. The COUNTY is bordered on the north by San Bernardino County, on the east by the State of Arizona, on the south by San Diego and Imperial Counties and on the west by Orange County. The COUNTY is the fourth largest by area in the State and stretches from the Arizona border on the east to within 15 miles of the Pacific Ocean on the west. There are 26 incorporated cities in the COUNTY. According to the State Department of Finance, Demographic Research Unit, the COUNTY's population was estimated at 459,188 as of January 1, 2009, which is a 17.0% decrease from January 1, 2008. That decrease is the result of two new city incorporations.

**1.2** The COUNTY is a general law county divided into five supervisorial districts on the basis of registered voters and population. The COUNTY is governed by the five-member Board of Supervisors, elected within each district. Members serve staggered four-year terms, and the chairperson is elected by the Board members annually. COUNTY administration includes appointed and elected officials, boards, commissions and committees which assist the Board of Supervisors.

**1.3** The COUNTY provides a wide range of services to residents, including police and fire protection, medical and health services, education, library services, and public assistance programs. Some municipal services are provided by the COUNTY on a contract basis to incorporated cities within its boundaries. These services are designed to allow cities to contract for municipal services such as police and fire protection without incurring the cost of creating city departments and facilities. Services are provided to the cities by the COUNTY at cost, or at the discretion of the County Board of Supervisors, which in certain cases is below cost.

**1.4** Three distinct geographical areas characterize the COUNTY: the western valley area, the higher elevations of the mountains, and the deserts. The western valley, which includes the San Jacinto Mountains and the Cleveland National Forest, experiences the mild climate typical of Southern California. The eastern desert areas experience warmer and dryer weather conditions.

**1.5** As of June 30, 2009, the COUNTY had \$518,250,000 in direct general obligation bonded indebtedness and \$387,995,000 in pension obligation bonded indebtedness. The COUNTY has no authorized but unissued general obligation debt.

**1.6** The CONTRACTOR shall provide financial advisement on long-term lease financings and general financial advisement.

<b>2.0 SCOPE OF SERVICE</b>
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**2.1** CONTRACTOR shall comply with all conditions identified within this document:

- a) Must operate as a business within the State of California.

- b) Must be a financial advisement firm only and does not provide investment bank services.
- c) Must have significant experience in providing similar services to other California Public issuers.
- d) Must have and maintain the resources and commitment to complete all components of every project in a timely manner, including but not limited to, attending financing meetings, advising staff on matters specific to the financing, preparing and reviewing financing documents, and assisting with due diligence and disclosure processes.

**2.2** CONTRACTOR shall provide qualified personnel for services, which can include, but may not be limited to, the following:

- a) Budget Management; provide input on budget strategy, review, and comment of budget reports.
- b) Debt Management, provide analysis and input in regards to management of existing debt, outstanding variable rate debt, the Teeter program, TRANS, and the refinancing of long-term debt. CONTRACTOR shall include financial analysis, review of documents, consultation with rating agencies, coordination with staff and other consultants, and prepare reports.
- c) Pension Liability Management Services, include support of the Pension Advisory Review Committee, and provide input of reports, and analysis of retirement benefit costs to the COUNTY.
- d) General Financial Matters; include analysis and input on any financial matters regarding COUNTY finances.
- e) Assist the COUNTY in assembling financing teams, to include preparing and evaluating Requests for Proposal (RFP) for bond counsel, underwriter, trustee, disclosure counsel, credit enhancement firm, verification agent, and other professionals as required, making recommendations based on the RFP, and negotiating fees.
- f) Assist the COUNTY in bringing bond issues to market. This will include advising on the size and timing of bond sales; structuring of sales on a competitive versus negotiated basis; bond maturity schedules; call premiums; provisions for the handling and investment of bond funds; use of credit enhancements; cash funded reserve versus surety; closing instructions; and other matters which may assist in obtaining the lowest practical interest cost and the widest competition for purchase of bonds.
- g) Analyze the cost benefits of different structuring and pricing options. This includes, but is not limited to, fixed rate versus variable rate bonds, insured versus uninsured bonds, callable versus non-callable bonds, par versus discounted bonds, and use of alternative financing structures such as Interest Rate Swaps.
- h) Assist the COUNTY in preparing a credit profile and making presentations to rating agencies and/or bond insurance companies.
- i) Manage competitive sale process.
- j) Advise the COUNTY of ongoing developments in the bond industry that may affect the COUNTY.

- k) Monitor county bond issues and advise on refunding opportunities.
- l) Prepare and make presentations designed to facilitate an understanding of public sector financing and its implications to governing boards as may be necessary.
- m) Provide advisory services to the COUNTY's Debt Advisory Committee.



## EXHIBIT B PAYMENT PROVISIONS

Par Value/Each Series of Debt	Range		Fees
\$ 0 -		\$2,499,999	\$ 15,000
\$2,500,000	to	\$4,999,999	\$ 19,500
\$5,000,000	to	\$7,499,999	\$ 23,500
\$7,500,000	to	\$9,999,999	\$ 27,000
\$10,000,000	to	\$12,499,999	\$ 30,000
\$12,500,000	to	\$14,999,999	\$ 32,500
\$15,000,000	to	\$17,999,999	\$ 34,000
\$18,000,000	to	\$19,999,999	\$ 37,500
\$20,000,000	to	\$24,999,999	\$ 39,500
\$25,000,000	to	and above	To be negotiated

  

Personnel (Describe title)	Per Hour Rate
Principal/Senior Vice President	\$ 266
Vice President	\$ 218
Assistant Vice President	\$ 189
Senior Associate	\$ 146
Associate	\$ 121
Analyst	\$ 83
Administrative Asst.	\$ 63
Clerical	\$ 34

### Services may include:

1. Teeter Plan Cash Flow Modeling,
2. Debt and Investment Policy Development,
3. Debt Capacity Analysis and Financial Review,
4. Investor Outreach and Relations Programs,
5. Preparation of Independent, Objective Analysis and Reports,
6. Preliminary Financing Feasibility Study,
7. Monitoring of Bond Refunding Opportunities,
8. Evaluation of Securitizations (VLF, Tobacco, Proposition 42, AB, 811, etc.),
9. Cash Flow Analysis and Planning (TRANS, Revenue Bonds),
10. Evaluation and Monitoring Swaps,
11. Evaluation of/and Written Response to Underwriter Proposals,
12. Pension and OPEB Analysis,
13. Presentation and Agenda Items for Board and DAC meetings,
14. "Bonds 101" Educational Workshops for staff and Board,
15. Debt Affordability Models,
16. Formation of Redevelopment Agencies, Community Facility Districts and Assessment Districts,
17. Variable Rate Remarketing Oversight.
18. Training and Education

**EXHIBIT B  
PAYMENT PROVISIONS**

The following services shall be reimbursed on a Per Hour Basis:

1. Continuing Disclosure
2. Investment Advisory Service
3. GASB 53 Swap Valuation
4. Arbitrage and Rebate Calculations

**All rates are inclusive of any overhead expense, including but not limited to: travel, lodging, meals, copying costs, meetings, courier services, reports, any materials or related matter, official statements, postage, and out of pocket expenses. No other additional fees or expenses will be considered or reimbursed by the COUNTY. Payment of fees earned by CONTRACTOR shall be contingent on the closing of the debt.**

**EXHIBIT C**  
**Debt Management Policy B-24**

**DEBT MANAGEMENT POLICY**

**B-24**

**Policy:**

The County of Riverside ("County") has created this debt management policy ("Policy") to ensure the financial stability of the County, reduce the County's cost of borrowing, and protect the County's credit quality through proper debt management. This Policy applies to all direct County Debt, Conduit Financing, and Land Secured Financing.

**I. Definitions**

A. The term "Bond(s)" shall mean all legally available financing methods to the County, including General Obligation Bonds, long-term lease obligations entered into by the County (i.e. Certificates of Participation, Revenue Bonds, County's lease line of credit etc.), and short-term notes sold in the capital markets (i.e., TRANs, Teeter, etc).

B. The term "Debt" shall mean (i) General Obligation Bonds issued by the County, (ii) long-term lease obligations entered into by the County, (iii) short-term notes sold in the capital markets, and/or (iv) capital leases above \$5,000,000.

C. The term "Debt Service" shall mean (i) the repayment of General Obligation Bonds, (ii) lease payments on long-term lease obligations and/or (iii) short-term notes sold in the capital markets.

D. The term "Discretionary Revenue" shall mean revenue received by the County during a fiscal year where the Board of Supervisors has sole discretion on the budgeting and expending of those revenues.

Discretionary Revenues include, but are not limited to, property tax, sales tax receipts, motor vehicle in-lieu tax, interest earnings, franchise fees, and certain fines and penalties.

E. The term "Conduit Financing" shall mean debt issued by the County to finance a project to be used by a third party, usually a corporation engaged in private enterprise. The security of such debt is the credit of the private user.

**II. County Debt Policy**

A. Long-term debt shall not be used to finance ongoing operational costs.

B. When possible, the County shall pursue alternative sources of funding, such as pay as-you-go or grant funding, in order to minimize the level of direct debt.

C. Whenever possible, the County shall use special assessment, revenue, or other self-supporting debt instead of General Fund obligated debt.

D. Long-term, general fund obligated debt will be incurred, when necessary, to acquire land or fixed assets, based upon the priority of the project, and the ability of the County to pay. This debt shall be limited to those capital improvements that cannot be financed from current revenues. The project should be integrated with the County's long-term financial plan and Capital Improvement Program.

E. Any debt issued shall not have a maturity date beyond the useful life of the asset being acquired or constructed by the debt proceeds.

F. The County shall establish an affordable debt level in order to preserve credit quality and ensure sufficient revenue is available to pay annual debt service. As such, aggregate debt service, excluding self-supporting debt, should not exceed seven percent (7%) of General Fund discretionary revenue, and will not exceed ten percent (10%) without the Board of Supervisors' approval. The debt level will be recalculated at the time of a new bond issue. The Board of Supervisors will be notified if any bonds to be issued cause the debt level to exceed the seven percent (7%) threshold. The debt level will be calculated by comparing seven percent (7%) of discretionary revenue to the aggregate debt service, excluding self-supporting debt.

G. The County will use its best efforts to maintain a variable rate debt ratio in an amount not to exceed 20% of the total outstanding debt, excluding variable rate debt that is hedged with cash, cash equivalent, or a fixed-rate swap.

H. The County shall review outstanding debt and initiate fixed-rate refundings, or alternative financing products, when there is either an economic benefit or noneconomic benefit to the County's financial or operating position. Net present value savings (calculated according to industry standards) from a fixed-rate refunding should be at least three percent (3%) of the refunded Bonds. Net present value savings from use of an alternative financing product should be at least five percent (5%) of the refunded bonds. Refunding Debt shall not extend the maturity beyond the original debt being refunded without compelling justification.

I. The County Executive Office, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a General County Financing Operation Manual, providing for the implementation of Section II of this Policy B-24.

### **III. Conduit Financing**

A. The County encourages the development of residential housing that is intended to provide quality, affordable single family housing for the first time home buyer within both the incorporated and unincorporated areas of the County.

B. The County encourages the development of residential housing which will comply with both federal and state requirements for low and moderate- income multi-family housing within the incorporated and unincorporated areas of the County.

C. The County encourages commercial, retail, industrial and other development projects which will increase the employment base within the County in order to create a synergistic jobs/housing balance throughout the County and enhance the overall tax base of the County.

D. The Economic Development Agency, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a Conduit Financing Operation Manual, providing for the implementation of Section III of this Policy B-24.

### **IV. Land Secured Financing**

A. The County encourages the development of commercial or industrial property that results in reciprocal value to the County (i.e., increased jobs, property or sales tax revenues, major public improvements). The

County will consider the use of community facilities districts (CFDs) or special benefits assessment districts (ADs), as well as other financing methods to assist these types of development. When, in the County's opinion, the public facilities of a residential development represent a significant public benefit, public financing may be considered. Significant public benefit may be defined as a public facility having regional impact and/or benefit to that beyond the proposed development.

B. Projects will comply with the requirements of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or the Community Facilities Act of 1982, and provisions of Board Policy B-12.

C. The County will maintain a separate Land Secured Financing policy. In the event of a conflict between this Policy B-24 and the Land Secured Financing policy, this Policy B-24 shall supersede and govern the Land Secured Financing policy.

## **V. Debt Advisory Committee**

A. The Debt Advisory Committee (DAC) will review proposed county-related financings at least once prior to final approval by the Board of Supervisors. The DAC will act on items brought before it with either a "Review or File" or "Review and Recommend" action.

1. Those items requiring Review and File action:

- a. Conduit financings that meet established guidelines.
- b. Land secured financings that meet established guidelines.
- c. Letter of Credit substitutions with at least equal quality credit.

2. Those items requiring Review and Recommendation action:

- a. Refinancing of existing debt.
- b. Alternative financing products or structures.
- c. New General Fund financings.
- d. Restructuring of existing debt.
- e. Any financing with policy issues.
- f. Any financing requiring a waiver of this policy or a deviation from any Operation Manual established by this Policy B-24.
- g. Any issue the DAC considers important to bring to the attention of the Board of Supervisors.

B. The County Executive Office will be responsible for preparing and distributing the agenda.

C. The DAC shall have seven (7) members and be chaired by the County Executive Office.

D. The members of the DAC ("member") shall be comprised of the following:

1. County Treasurer
2. County Auditor-Controller
3. County Executive Office (chair)
4. County Counsel
5. Economic Development Agency Executive Director
6. Community Facilities District/Assessment District Administrator
7. General Manager Chief Engineer, Flood Control, and Water Conservation District.

E. Members of the DAC may designate staff to represent them. Members shall notify the committee chair, in writing, of the name and title of staff that are authorized to represent them. Upon written notification, the designee will be authorized to represent and vote on behalf of the member.

F. DAC meetings shall be convened monthly or on the call of the chairperson.

G. Each proposed financing brought before the DAC will provide the committee with (1) a detailed description of the type and structure of the financing, (2) full disclosure of the specific use of the proceeds, (3) a description of the public benefit to be provided by the proposal, (4) the principal parties involved in the financing, (5) anticipated sources of repayment, (6) an estimated Sources and Uses Statement, (7) any credit enhancements proposed, (8) the anticipated debt rating, if any, and (9) an estimated debt service schedule.

H. Whenever any vote by the members is not unanimous, a report outlining the dissenting opinion will be prepared by the chairperson, in consultation with the dissenter(s), and will accompany the Form 11 to the Board of Supervisors.

I. The DAC may retain a qualified financial advisor at their discretion, provided no County funds are used without the Board of Supervisors' prior approval.

## **VI. Continuing Disclosure**

A. Each county department, agency, district or authority issuing or managing debt will ensure that applicable state and federal regulations and laws regarding disclosure are observed in all financings.

B. Each responsible county department, agency, district, or authority will ensure that annual reports and material event notices are filed with the appropriate state and/or federal agencies in a timely manner.

C. Each responsible county department, agency, district, or authority will provide an annual certificate to the DAC of its compliance or non-compliance with state and/or federal disclosure laws.

D. Each responsible county department, agency, district, or authority will notify the DAC as soon as possible of any material event (but not limited to) listed in Rule 15c2-12 under the Securities Exchange Act of 1934.

## **VII. Alternative Financing Products**

A. Alternative financing products shall be used only for appropriate financial objectives, such as (1) to achieve greater debt savings by taking advantage of market conditions, (2) to better management of county assets and liabilities, (3) to reduce interest rate risk, and (4) to increase cash flow savings.

B. The County shall not use an alternative financing product for speculative purposes.

C. Board of Supervisors approval shall be required prior to the initiation of any alternative financing product transactions. Such approval may provide for the delegation of authority to actively manage the transaction.

D. Interest Rate Swaps

1. Each swap agreement shall include payment, term, security, collateral, default remedy, termination and other terms, conditions and provisions as the County Finance Director, in consultation with County Counsel and the County Treasurer, shall deem necessary or desirable.
2. Counterparty Requirements: to minimize counterparty risk (1) the County may enter into swap agreements only with counterparties rated AAA by at least one rating agency, and (2) each counterparty shall have a minimum capitalization of \$150 million. Diversification of counterparties is the expressed goal of the County. Selection of counterparties to transactions will take this into account.
3. Collateral Requirements: (1) the County will not provide collateral to secure its obligations under swap agreements, (2) if the credit rating of the counterparty falls below AAA by any rating agency, collateral shall be posted by the counterparty on a timely basis. Collateral, equaling at least 102 % of the SWAP amount shall consist of cash or U.S. Government securities deposited with a third party trustee.
4. Termination Requirements: All swap agreements shall contain a provision granting the County the right to optionally terminate the agreement at any time over the term of the agreement. A termination payment to or from the County may be required at the time of termination. It is the intent of the County not to make a termination payment to a counterparty that does not meet its contractual obligations under the swap agreement. To the extent possible, the form of the interest rate swap agreement should incorporate the prevailing industry standards (the PSA Master Swap Agreement).
5. Any up-front payments or termination payments shall be used for one-time capital costs only, unless so directed by the Board of Supervisors.

**Reference:**

Minute Order 3.6 of 10/21/03

Minute Order 3.3 of 04/10/07

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**FINANCIAL ADVISOR SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**KNN PUBLIC FINANCE  
A Division of Zions First National Bank**





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This Agreement, made and entered into this 31st day of August, 2010, by and between KNN Public Finance, a Division of Zions First National Bank, (herein referred to as "CONTRACTOR"), and the County of Riverside, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of three (3) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page, and Exhibit C, Debt Management Policy B-24, consisting of five (5) pages.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through August 31, 2011, with the option to renew for up to four additional years with an expiration date of August 31, 2015, each year is renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed eighty-five thousand dollars (\$85,000), annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of

CONTRACTOR's expenses related to this Agreement. Payment of fees earned by CONTRACTOR shall be contingent on the closing of the debt, except for non-debt related services, at which time the compensation shall be based on the hourly rates specified in Exhibit B.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas Financial Advisor services, and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid for hourly work only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

County Executive Office  
4080 Lemon St, 4<sup>th</sup> Floor  
Riverside, Ca 92501  
Attn: Accounts Payable

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (EOARC-91849-003-09/11); description, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.
- c) In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.
- d) CONTRACTOR shall be paid for debt-related services in accordance with Schedule B, upon closing of the debt, by the Trustee. CONTRACTOR shall submit an invoice to the COUNTY first for review and approval at the above address.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. **Alteration or Changes to the Agreement**

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. **Termination**

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination;
- and

- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

**7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

**9. Independent Contractor**

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or

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direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all California State or other legal requirements, including but not limited to the provisions of Rule 15c2-12(b)(5) of the Securities Exchange Act of 1934. All legal requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.



**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Executive Office  
4080 Lemon St., 4<sup>th</sup> Fl.  
Riverside, CA 92401  
Attn: Christopher Hans

Purchasing and Fleet Services  
2980 Washington  
Riverside, CA 92504  
Attn: Lisa Boerner

**CONTRACTOR**

KNN Public Finance  
1333 Broadway, Ste 1000  
Oakland, CA 94612  
Attn: David Leifer

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY;

provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

**21.2** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**21.3** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**21.4** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

**21.5** CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

## **22. Insurance**

**22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**22.2 Workers' Compensation:** If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**22.3 Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations

liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**22.4 Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

**22.5 Professional Liability:** Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**22.6 General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the COUNTY Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**23.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**23.8** CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:****CONTRACTOR:**

Signature: \_\_\_\_\_

Signature: David Leifer

Print Name: Marion Ashley

Print Name: David Leifer

Title: Chairperson, Board of Supervisors

Title: Managing Director

Date: August 5, 2010

Attest:

Kecia Harper-Ihem

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

Deputy

FORM APPROVED COUNTY COUNSEL

BY: Neal R. Kipnis

NEAL R. KIPNIS

DATE 8/12/10

## **EXHIBIT A SCOPE OF SERVICE**

### **1.0 PURPOSE/BACKGROUND**

1.1 Riverside County (COUNTY) was organized in 1893 from territory in San Bernardino and San Diego Counties and encompasses 7,295 square miles. The COUNTY is bordered on the north by San Bernardino County, on the east by the State of Arizona, on the south by San Diego and Imperial Counties and on the west by Orange County. The COUNTY is the fourth largest by area in the State and stretches from the Arizona border on the east to within 15 miles of the Pacific Ocean on the west. There are 26 incorporated cities in the COUNTY. According to the State Department of Finance, Demographic Research Unit, the COUNTY's population was estimated at 459,188 as of January 1, 2009, which is a 17.0% decrease from January 1, 2008. That decrease is the result of two new city incorporations.

1.2 The COUNTY is a general law county divided into five supervisorial districts on the basis of registered voters and population. The COUNTY is governed by the five-member Board of Supervisors, elected within each district. Members serve staggered four-year terms, and the chairperson is elected by the Board members annually. COUNTY administration includes appointed and elected officials, boards, commissions and committees which assist the Board of Supervisors.

1.3 The COUNTY provides a wide range of services to residents, including police and fire protection, medical and health services, education, library services, and public assistance programs. Some municipal services are provided by the COUNTY on a contract basis to incorporated cities within its boundaries. These services are designed to allow cities to contract for municipal services such as police and fire protection without incurring the cost of creating city departments and facilities. Services are provided to the cities by the COUNTY at cost, or at the discretion of the County Board of Supervisors, which in certain cases is below cost.

1.4 Three distinct geographical areas characterize the COUNTY: the western valley area, the higher elevations of the mountains, and the deserts. The western valley, which includes the San Jacinto Mountains and the Cleveland National Forest, experiences the mild climate typical of Southern California. The eastern desert areas experience warmer and dryer weather conditions.

1.5 As of June 30, 2009, the COUNTY had \$518,250,000 in direct general obligation bonded indebtedness and \$387,995,000 in pension obligation bonded indebtedness. The COUNTY has no authorized but unissued general obligation debt.

1.6 The CONTRACTOR shall provide financial advisement on long-term lease financings and general financial advisement.

### **2.0 SCOPE OF SERVICE**

2.1 CONTRACTOR shall comply with all conditions identified within this document:

a) Must operate as a business within the State of California.

b) Must be a financial advisement firm only and does not provide investment bank services.



- c) Must have significant experience in providing similar services to other California Public issuers.
- d) Must have and maintain the resources and commitment to complete all components of every project in a timely manner, including but not limited to, attending financing meetings, advising staff on matters specific to the financing, preparing and reviewing financing documents, and assisting with due diligence and disclosure processes.

**2.2** CONTRACTOR shall provide qualified personnel for services, which can include, but may not be limited to, the following:

- a) Budget Management; provide input on budget strategy, review, and comment of budget reports.
- b) Debt Management, provide analysis and input in regards to management of existing debt, outstanding variable rate debt, the Teeter program, TRANs, and the refinancing of long-term debt. CONTRACTOR shall include financial analysis, review of documents, consultation with rating agencies, coordination with staff and other consultants, and prepare reports.
- c) Pension Liability Management Services, include support of the Pension Advisory Review Committee, and provide input of reports, and analysis of retirement benefit costs to the COUNTY.
- d) General Financial Matters; include analysis and input on any financial matters regarding COUNTY finances.
- e) Assist the COUNTY in assembling financing teams, to include preparing and evaluating Requests for Proposal (RFP) for bond counsel, underwriter, trustee, disclosure counsel, credit enhancement firm, verification agent, and other professionals as required, making recommendations based on the RFP, and negotiating fees.
- f) Assist the COUNTY in bringing bond issues to market. This will include advising on the size and timing of bond sales; structuring of sales on a competitive versus negotiated basis; bond maturity schedules; call premiums; provisions for the handling and investment of bond funds; use of credit enhancements; cash funded reserve versus surety; closing instructions; and other matters which may assist in obtaining the lowest practical interest cost and the widest competition for purchase of bonds.
- g) Analyze the cost benefits of different structuring and pricing options. This includes, but is not limited to, fixed rate versus variable rate bonds, insured versus uninsured bonds, callable versus non-callable bonds, par versus discounted bonds, and use of alternative financing structures such as Interest Rate Swaps.
- h) Assist the COUNTY in preparing a credit profile and making presentations to rating agencies and/or bond insurance companies.
- i) Manage competitive sale process.
- j) Advise the COUNTY of ongoing developments in the bond industry that may affect the COUNTY.

- k) Monitor county bond issues and advise on refunding opportunities.
- l) Prepare and make presentations designed to facilitate an understanding of public sector financing and its implications to governing boards as may be necessary.
- m) Provide advisory services to the COUNTY's Debt Advisory Committee.

**EXHIBIT B  
PAYMENT PROVISIONS**

TRANSACTION		FEE RANGE	
Tax and Revenue Anticipation Notes	\$ 30,000	TO	\$ 45,000
Long-Term Fixed Rate*			
Par amount up to \$10 million	\$ 20,000	TO	\$50,000
Par amount up to \$25 million	\$ 40,000	TO	\$65,000
Par amount up to \$50 million	\$ 50,000	TO	\$75,000
Par amount up to \$100 million	\$ 60,000	TO	\$90,000
*Assumes new money financings. Supplemental fee may apply for variable rate and refunding			

Personnel (Describe title)	Hourly Rate
Managing Director	\$ 275.00
Vice President	\$ 245.00
Assistant Vice President	\$ 200.00
Associate	\$ 175.00
Analyst	\$ 125.00

**Services may include:**

1. Teeter Plan Cash Flow Modeling,
2. Debt and Investment Policy Development,
3. Debt Capacity Analysis and Financial Review,
4. Investor Outreach and Relations Programs,
5. Preparation of Independent, Objective Analysis and Reports,
6. Preliminary Financing Feasibility Study,
7. Monitoring of Bond Refunding Opportunities,
8. Evaluation of Securitizations (VLF, Tobacco, Proposition 42, AB, 811, etc.),
9. Cash Flow Analysis and Planning (TRANS, Revenue Bonds),
10. Evaluation and Monitoring Swaps,
11. Evaluation of/and Written Response to Underwriter Proposals,
12. Pension and OPEB Analysis,
13. Presentation and Agenda Items for Board and DAC meetings,
14. "Bonds 101" Educational Workshops for staff and Board,
15. Debt Affordability Models,
16. Formation of Redevelopment Agencies, Community Facility Districts and Assessment Districts,
17. Variable Rate Remarketing Oversight.

**All rates are inclusive of any overhead expense, including but not limited to: travel, lodging, meals, copying costs, meetings, courier services, reports, any materials or related matter, official statements, postage, and out of pocket expenses. No other additional fees or expenses will be considered or reimbursed by the COUNTY. Payment of fees earned by CONTRACTOR shall be contingent on the closing of the debt.**

**EXHIBIT C**  
**Debt Management Policy B-24**

**DEBT MANAGEMENT POLICY****B-24****Policy:**

The County of Riverside ("County") has created this debt management policy ("Policy") to ensure the financial stability of the County, reduce the County's cost of borrowing, and protect the County's credit quality through proper debt management. This Policy applies to all direct County Debt, Conduit Financing, and Land Secured Financing.

**I. Definitions**

A. The term "Bond(s)" shall mean all legally available financing methods to the County, including General Obligation Bonds, long-term lease obligations entered into by the County (i.e. Certificates of Participation, Revenue Bonds, County's lease line of credit etc.), and short-term notes sold in the capital markets (i.e., TRAns, Teeter, etc).

B. The term "Debt" shall mean (i) General Obligation Bonds issued by the County, (ii) long-term lease obligations entered into by the County, (iii) short-term notes sold in the capital markets, and/or (iv) capital leases above \$5,000,000.

C. The term "Debt Service" shall mean (i) the repayment of General Obligation Bonds, (ii) lease payments on long-term lease obligations and/or (iii) short-term notes sold in the capital markets.

D. The term "Discretionary Revenue" shall mean revenue received by the County during a fiscal year where the Board of Supervisors has sole discretion on the budgeting and expending of those revenues. Discretionary Revenues include, but are not limited to, property tax, sales tax receipts, motor vehicle in-lieu tax, interest earnings, franchise fees, and certain fines and penalties.

E. The term "Conduit Financing" shall mean debt issued by the County to finance a project to be used by a third party, usually a corporation engaged in private enterprise. The security of such debt is the credit of the private user.

**II. County Debt Policy**

A. Long-term debt shall not be used to finance ongoing operational costs.

B. When possible, the County shall pursue alternative sources of funding, such as pay as-you-go or grant funding, in order to minimize the level of direct debt.

C. Whenever possible, the County shall use special assessment, revenue, or other self-supporting debt instead of General Fund obligated debt.

D. Long-term, general fund obligated debt will be incurred, when necessary, to acquire land or fixed assets, based upon the priority of the project, and the ability of the County to pay. This debt shall be limited to those capital improvements that cannot be financed from current revenues. The project should be integrated with the County's long-term financial plan and Capital Improvement Program.

E. Any debt issued shall not have a maturity date beyond the useful life of the asset being acquired or constructed by the debt proceeds.

F. The County shall establish an affordable debt level in order to preserve credit quality and ensure sufficient revenue is available to pay annual debt service. As such, aggregate debt service, excluding self-supporting debt, should not exceed seven percent (7%) of General Fund discretionary revenue, and will not exceed ten percent (10%) without the Board of Supervisors' approval. The debt level will be recalculated at the time of a new bond issue. The Board of Supervisors will be notified if any bonds to be issued cause the debt level to exceed the seven percent (7%) threshold. The debt level will be calculated by comparing seven percent (7%) of discretionary revenue to the aggregate debt service, excluding self-supporting debt.

G. The County will use its best efforts to maintain a variable rate debt ratio in an amount not to exceed 20% of the total outstanding debt, excluding variable rate debt that is hedged with cash, cash equivalent, or a fixed-rate swap.

H. The County shall review outstanding debt and initiate fixed-rate refundings, or alternative financing products, when there is either an economic benefit or noneconomic benefit to the County's financial or operating position. Net present value savings (calculated according to industry standards) from a fixed-rate refunding should be at least three percent (3%) of the refunded Bonds. Net present value savings from use of an alternative financing product should be at least five percent (5%) of the refunded bonds. Refunding Debt shall not extend the maturity beyond the original debt being refunded without compelling justification.

I. The County Executive Office, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a General County Financing Operation Manual, providing for the implementation of Section II of this Policy B-24.

### **III. Conduit Financing**

A. The County encourages the development of residential housing that is intended to provide quality, affordable single family housing for the first time home buyer within both the incorporated and unincorporated areas of the County.

B. The County encourages the development of residential housing which will comply with both federal and state requirements for low and moderate- income multi-family housing within the incorporated and unincorporated areas of the County.

C. The County encourages commercial, retail, industrial and other development projects which will increase the employment base within the County in order to create a synergistic jobs/housing balance throughout the County and enhance the overall tax base of the County.

D. The Economic Development Agency, with review and concurrence of the Debt Advisory Committee, shall prepare and maintain a Conduit Financing Operation Manual, providing for the implementation of Section III of this Policy B-24.

### **IV. Land Secured Financing**

A. The County encourages the development of commercial or industrial property that results in reciprocal value to the County (i.e., increased jobs, property or sales tax revenues, major public improvements). The

County will consider the use of community facilities districts (CFDs) or special benefits assessment districts (ADs), as well as other financing methods to assist these types of development. When, in the County's opinion, the public facilities of a residential development represent a significant public benefit, public financing may be considered. Significant public benefit may be defined as a public facility having regional impact and/or benefit to that beyond the proposed development.

B. Projects will comply with the requirements of the Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, or the Community Facilities Act of 1982, and provisions of Board Policy B-12.

C. The County will maintain a separate Land Secured Financing policy. In the event of a conflict between this Policy B-24 and the Land Secured Financing policy, this Policy B-24 shall supersede and govern the Land Secured Financing policy.

## **V. Debt Advisory Committee**

A. The Debt Advisory Committee (DAC) will review proposed county-related financings at least once prior to final approval by the Board of Supervisors. The DAC will act on items brought before it with either a "Review or File" or "Review and Recommend" action.

1. Those items requiring Review and File action:

- a. Conduit financings that meet established guidelines.
- b. Land secured financings that meet established guidelines.
- c. Letter of Credit substitutions with at least equal quality credit.

2. Those items requiring Review and Recommendation action:

- a. Refinancing of existing debt.
- b. Alternative financing products or structures.
- c. New General Fund financings.
- d. Restructuring of existing debt.
- e. Any financing with policy issues.
- f. Any financing requiring a waiver of this policy or a deviation from any Operation Manual established by this Policy B-24.
- g. Any issue the DAC considers important to bring to the attention of the Board of Supervisors.

B. The County Executive Office will be responsible for preparing and distributing the agenda.

C. The DAC shall have seven (7) members and be chaired by the County Executive Office.

D. The members of the DAC ("member") shall be comprised of the following:

1. County Treasurer
2. County Auditor-Controller
3. County Executive Office (chair)
4. County Counsel
5. Economic Development Agency Executive Director
6. Community Facilities District/Assessment District Administrator
7. General Manager Chief Engineer, Flood Control, and Water Conservation District.

E. Members of the DAC may designate staff to represent them. Members shall notify the committee chair, in writing, of the name and title of staff that are authorized to represent them. Upon written notification, the designee will be authorized to represent and vote on behalf of the member.

F. DAC meetings shall be convened monthly or on the call of the chairperson.

G. Each proposed financing brought before the DAC will provide the committee with (1) a detailed description of the type and structure of the financing, (2) full disclosure of the specific use of the proceeds, (3) a description of the public benefit to be provided by the proposal, (4) the principal parties involved in the financing, (5) anticipated sources of repayment, (6) an estimated Sources and Uses Statement, (7) any credit enhancements proposed, (8) the anticipated debt rating, if any, and (9) an estimated debt service schedule.

H. Whenever any vote by the members is not unanimous, a report outlining the dissenting opinion will be prepared by the chairperson, in consultation with the dissenter(s), and will accompany the Form 11 to the Board of Supervisors.

I. The DAC may retain a qualified financial advisor at their discretion, provided no County funds are used without the Board of Supervisors' prior approval.

## **VI. Continuing Disclosure**

A. Each county department, agency, district or authority issuing or managing debt will ensure that applicable state and federal regulations and laws regarding disclosure are observed in all financings.

B. Each responsible county department, agency, district, or authority will ensure that annual reports and material event notices are filed with the appropriate state and/or federal agencies in a timely manner.

C. Each responsible county department, agency, district, or authority will provide an annual certificate to the DAC of its compliance or non-compliance with state and/or federal disclosure laws.

D. Each responsible county department, agency, district, or authority will notify the DAC as soon as possible of any material event (but not limited to) listed in Rule 15c2-12 under the Securities Exchange Act of 1934.

## **VII. Alternative Financing Products**

A. Alternative financing products shall be used only for appropriate financial objectives, such as (1) to achieve greater debt savings by taking advantage of market conditions, (2) to better management of county assets and liabilities, (3) to reduce interest rate risk, and (4) to increase cash flow savings.

B. The County shall not use an alternative financing product for speculative purposes.

C. Board of Supervisors approval shall be required prior to the initiation of any alternative financing product transactions. Such approval may provide for the delegation of authority to actively manage the transaction.

D. Interest Rate Swaps

1. Each swap agreement shall include payment, term, security, collateral, default remedy, termination and other terms, conditions and provisions as the County Finance Director, in consultation with County Counsel and the County Treasurer, shall deem necessary or desirable.
2. Counterparty Requirements: to minimize counterparty risk (1) the County may enter into swap agreements only with counterparties rated AAA by at least one rating agency, and (2) each counterparty shall have a minimum capitalization of \$150 million. Diversification of counterparties is the expressed goal of the County. Selection of counterparties to transactions will take this into account.
3. Collateral Requirements: (1) the County will not provide collateral to secure its obligations under swap agreements, (2) if the credit rating of the counterparty falls below AAA by any rating agency, collateral shall be posted by the counterparty on a timely basis. Collateral, equaling at least 102 % of the SWAP amount shall consist of cash or U.S. Government securities deposited with a third party trustee.
4. Termination Requirements: All swap agreements shall contain a provision granting the County the right to optionally terminate the agreement at any time over the term of the agreement. A termination payment to or from the County may be required at the time of termination. It is the intent of the County not to make a termination payment to a counterparty that does not meet its contractual obligations under the swap agreement. To the extent possible, the form of the interest rate swap agreement should incorporate the prevailing industry standards (the PSA Master Swap Agreement).
5. Any up-front payments or termination payments shall be used for one-time capital costs only, unless so directed by the Board of Supervisors.

**Reference:**

Minute Order 3.6 of 10/21/03

Minute Order 3.3 of 04/10/07