

Project: 1997 Certificates of Participation Refunding
Administration and Emergency Services Building

Administering Agency: Treasurer-Tax Collector

Contract No.

Contract Description: Financial Advisory and Bond Transaction Services
Related to the 1997 Certificates of Participation
Refunding

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of April 1, 2006, by and between the County of Placer, ("County"), and Capitol Public Finance Group, LLC ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.

2. **Payment.** County shall pay Consultant for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit B. The payment specified in Exhibit B shall be the only payment made to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Consultant uses for billing clients similar to County.

3. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement. County shall furnish Consultant only those facilities, equipment, and other materials, and shall perform those obligations listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. Any inconsistency between said general provision and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

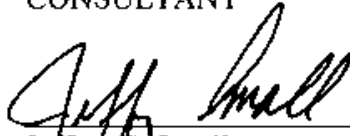
6. **Time for Performance.** Time is of the essence, and, subject to County's compliance with Exhibit C and to the provisions of paragraph 3 of Exhibit D, failure of Consultant to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.

Executed as of the day first above stated:

COUNTY OF PLACER

By: _____
County Executive Officer

CONSULTANT*

By:  _____
Name: Jeffrey S. Small
Title: Managing Director

By: _____
Name:
Title: Secretary

Approved As to Form

County Counsel

*Agreement must be signed by two corporate officers if a corporation; one must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation.

299

EXHIBIT A

SCOPE OF SERVICES

Capitol Public Finance Group, LLC shall provide general financial consulting and bond transaction services to County in connection with the refunding of bonds for the 1997 Certificates of Participation. Such consulting and transaction services shall consist of the following:

A review of refunding costs, and evaluation of the tax base, examination of short-term and long-term cash flow schedules, identification and classification of existing and potential revenue sources, development of financial strategies, public information meetings and hearings, and assistance with a comprehensive financial plan.

Should the County decide to refund the bonds: transactional services, including, along with bond counsel and other consultants, the legal structure of the issuance, determination of an issuance schedule, coordination of efforts of the finance team, reinvestment of issue proceeds, application for credit enhancement, coordination of issue registration with the Depository Trust Company, New York, coordination with the CUSIP service bureau for issue identification, assistance with the preparation and distribution of a preliminary and final official statement to all prospective purchasers, direction of the bond sale including liaison with all prospective purchasers analysis of all bids and recommendation of the lowest true interest bid, coordination for the proper transfer of funds, and other closing related matters associated with the issuance as the County, in its ultimate discretion, deems appropriate.

EXHIBIT B

PAYMENT FOR SERVICES RENDERED

Payment for services will be made in accordance with the following:

Total fees for services and expenses not to exceed \$49,500.00.

Fee for Service:

Project Fee of \$49,500.00 payable at bond closing (includes expenses). In the event there is no closing, time spent to date will be billed at our hourly rate of \$135.00 not to exceed the contract amount.

Expenses:

All expenses incurred by Capitol Public Finance Group, LLC are included in the Fee for Service. In the event there is no bond closing, expenses incurred to date will be billed at cost with supporting receipts not to exceed \$4,500.

Capitol Public Finance Group, LLC shall submit an invoice not more than 30 days after the event specified above and County shall remit payment within 30 days of receipt of invoice. Each invoice shall identify the 1997 Certificates of Participation Refunding as the work project, the payment event and the amount due as specified above.

There shall be no additional charges or expenses of any kind including, but not limited to expenses for telephone, travel, postage or printing.

Invoices shall be submitted to County care of:

Placer County Treasurer
2976 Richardson Drive
Auburn, CA 95603

EXHIBIT C

FACILITIES, EQUIPMENT, AND OTHER
MATERIALS, AND OBLIGATIONS OF COUNTY

(Specify all equipment and facilities to be provided or made available by County,
and any other County obligations.)

The County has no obligation to provide facilities or equipment to Capitol Public Finance
Group, LLC.

The County will make all pertinent information and data available to Capitol Public
Finance Group, LLC, as necessary to complete the work described in Exhibit A.

302

EXHIBIT D

GENERAL PROVISIONS

1. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the County. County shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

2. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

3. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. **Insurance.** Consultant shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A:VII showing the following coverage:

A. **Workers' Compensation and Employers' Liability Insurance**

1) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than five hundred thousand dollars (\$500,000) each accident for bodily injury by accident, five hundred thousand dollars (\$500,000) policy limit for bodily injury by disease, and five hundred thousand dollars (\$500,000) each employee for bodily injury by disease.

2) If there is an exposure of injury to Consultant's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

3) Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County."

4) Consultant shall require all SUBCONSULTANTS to maintain adequate Workers' Compensation Insurance. Certificates of Workers Compensation shall be filed forthwith with the County upon demand.

B. General Liability Insurance

1) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Consultant, covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Consultant in this Agreement.

2) One of the following forms is required:

- a) Comprehensive General Liability;
- b) Commercial General Liability (Occurrence); or
- c) Commercial General Liability (Claims Made).

3) If Consultant carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- a) One million dollars (\$1,000,000) each occurrence;
- b) One million dollars (\$1,000,000) aggregate.

4) If Consultant carries a Commercial General Liability (Occurrence) policy:

- a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.

b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

5) Special Claims Made Policy Form Provisions:

Consultant shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

- a) The limits of liability shall not be less than:

- i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
- b) The insurance coverage provided by Consultant shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

C. Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1) "The County, its officers, agents, employees and volunteers, and the County of Placer, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the named insured in the performance of this Agreement."

2) "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County with respect to any insurance or self-insurance programs maintained by County, and no insurance held or owned by County shall be called upon to contribute to a loss."

3) "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to County."

D. Automobile Liability Insurance

1) Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

2) Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

E. Professional Liability Insurance (Errors and Omissions)

1) Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than two million dollars (\$2,000,000) in aggregate.

2) The insurance coverage provided by Consultant shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

5. Indemnity. Consultant hereby agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and

causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement. Consultant agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Consultant. Consultant also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Consultant or the County or to enlarge, in any way, the Consultant's liability but is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from Consultant's performance pursuant to this contract or agreement.

As used above, the term "County" means Placer County or its officers, agents, employees and volunteers.

6. **Consultant Not Agent.** Except as County may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

7. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.

8. **Personnel.**

A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Consultant shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.

B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Scope of Services, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or sub consultants named in the Project Team by Consultant without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Paragraph 10 Termination only for that work performed by Project Team members.

9. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

10. **Termination.**

A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: all records, handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.

3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

B. Consultant may terminate its services under this Agreement upon thirty (30) working days advance written notice to the County.

11. **Non-Discrimination.** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

12. **Records.** Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

13. **Ownership of Information.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.

14. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

15. **Conflict of Interest.** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.

16. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

17. **Attorney's Fees.** If any party to this Agreement commences legal proceedings to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorney's fees, including those incurred on appeal, if any.

18. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Consultant hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.