

**AGREEMENT NO. 13-002FA
FOR GENERAL FINANCIAL ADVISORY SERVICES**

This Agreement for financial advisory services (this "Agreement") is made and entered into as of this _____ day of _____, 2013 by and between the County of Orange, California, a political subdivision organized and existing pursuant to the Constitution and laws of the State of California (the "County"), and KNN Public Finance ("KNN").

RECITALS

WHEREAS, from time-to-time the County requires financial advisory services with respect to matters of County finance including, but not limited to short term notes, bonds, certificates of participation, debt management, financing strategy and financial planning; and

WHEREAS, KNN is experienced in matters of County finance and willing and able to provide general financial advisory services to the County not covered by any other specific contract, as more fully specified herein;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

AGREEMENT

Section 1. ***Engagement of KNN.*** The County engages the services of KNN as an independent contractor to provide general financial advisory services in all ongoing financial matters related to the County, as more fully described below. KNN is willing and able to perform such services for and on behalf of the County. It is understood that David Brodsky, David Leifer, Bobby Cheung and Marian Breitbart and shall be the financial advisors of KNN principally responsible for performing the services described herein. Through the aforementioned financial advisors, and such other staff of KNN as are needed to carry out the responsibilities of KNN under this Agreement, KNN shall provide the following financial advisory services:

As requested by the Contract Administrator, KNN will provide general financial advisory and strategic financial planning services to the County for financings related to public buildings and infrastructure, cash flow financing and other financing programs. In addition, KNN shall:

A. Work with County staff on the review of major issues related to the County budget, the County capital plans and the preparation of updates to the Strategic Financial Plan.

B. Assist County staff in the preparation for, and the presentation of, workshops for the Board of Supervisors to address major County financing issues.

C. Coordinate and assist County staff in the preparation of presentation materials for bond rating agencies, insurance companies and institutional investors.

D. Advise the County on the development and implementation of an institutional investor relations program and ongoing disclosure issues.

E. Advise the County on financial issues throughout the planning process related to new and ongoing activities and other major capital projects.

F. Assist County staff in the analysis and evaluation of major capital improvements and the alternatives that can be employed to finance the major capital improvements, including any public/private financings.

G. Analyze alternatives for the defeasance and refunding of County obligations and advise the County on strategies to implement refunding and defeasance of County obligations.

H. Review and assist County staff in the development of County policies for debt management and investment of bond proceeds.

I. Assist and advise County staff regarding standardized permitted investment language, investment compliance, performance and the implementation of specific bond proceeds investments.

J. Advise the County on the ongoing issues related to the Teeter Program.

K. Advise the County on the creation of a note and/or tax exempt commercial paper (TECP) program which may be necessary for cash flow deficit financing.

L. Advise the County on the financing issues and the completion of financing for Tax and Revenue Anticipation Notes. Assist the County in evaluating cost-effectiveness, including analysis under alternative market and structural scenarios. Advise the County on terms and conditions including par amount, maturity schedule, pledge dates, administration and flow of funds for payment of such Notes.

M. Analyze and assist County staff in the review of proposals (other than responses to RFPs or RFQs) from underwriters and commercial bankers.

N. Advise the County on the development and implementation of a master lease financing program.

O. Assist, as requested, in the development and implementation of County training programs, which involve County financings.

P. Provide financial advice and analysis pertaining to pending or enacted California or federal legislation, regulations, rulings and determinations relating to public finance.

Q. Provide advice and analysis on current financial standards and practices of the public finance market.

R. Perform other services normally provided by financial advisors related to County financings, including assisting in the preparation and review of legal and disclosure

documentation, advising the County on the pricing and fee negotiations with underwriters and other participants in the financing process and making presentations as necessary to the Public Financing Advisory Committee and the Board of Supervisors regarding issues related to County financings. It is mutually understood that all potential financings will be subject to future approvals by PFAC and the Board of Supervisors.

Additionally, as requested by the Contract Administrator, KNN will provide financial advisory services related to Tax and Revenue Anticipation Notes (TRANS) and Tax Allocation Bonds (TABs). KNN shall:

A. Complete assessment of optimal use of existing resources and other local, state and federal resources that may be available in connection with proposed financings.

B. Work with County staff, County counsel, Bond Counsel, underwriter, and other consultants to assist in the development of legal bond issues.

C. Assist in the review of all legal documents for authorization, issuance and sale/placement of bonds including closing documents and transcripts.

D. Assist in the preparation and review of Official Statements, Offering Memoranda or other disclosure documents in connection the bond offerings.

E. Prepare schedules, attend meetings as required for the issuance of bonds. The TAB refunding may require additional meetings and/or conference calls with state department of finance staff and agencies with whom the County Auditor-Controller currently pays property tax pass-through revenue on behalf of the successor agency, per existing agreements.

F. Participate in activities associated with rating agencies and/or bond insurers.

G. Assist in the preparation and review of bond purchase contracts, if necessary.

H. Advise staff on matters specific to the scope of services; prepare and present reports to County staff, Successor Agency Oversight Board (TAB Refunding), the Public Financing Advisory Committee, and members of the Orange County Board of Supervisors; and assist with due diligence and disclosure processes relevant to the scope of services.

I Provide other customary financial advisory services.

Section 2. ***Request for Services.*** Financial advisory services permitted herein shall be authorized in writing by the Contract Administrator and shall specify the services to be performed by KNN.

Section 3. ***Term.*** This Agreement shall be effective as of the date first written above and shall continue in full force and effect until _____, 20__; provided that, notwithstanding the foregoing, either party may terminate this Agreement at any time either in whole or in part upon written notice to the other party regarding such termination.

Section 4. ***Compensation of KNN.***

- A. For tax and revenue anticipation notes, instead of an hourly rate based fee, KNN's fee will not exceed \$40,000 (plus expenses) per issuance.
- B. For tax allocation bonds, instead of an hourly rate based fee, KNN's fee will not exceed \$55,000 (plus expenses) per issuance.
- C. In addition to the service provided above, KNN will be paid based on its normal hourly rates then in effect plus expenses not to exceed \$75,000 annually (other than general interpretive services such as responding to questions and assistance in interpreting documents drafted by KNN; a reasonable amount of interpretive services shall be provided to the County at no additional charge).
- D. All fees and expenses are non-contingent and, in the event of termination of this Agreement or any of the services described in Sections 1 prior to completion for payment as above, fees for services performed to that point will be based on KNN's normal hourly rates (plus expenses).

Section 5. ***Invoicing and Payment.*** KNN shall submit to the Contract Administrator invoices in acceptable format for services rendered, including any supporting documentation as may be requested by the Contract Administrator or County Auditor-Controller. Invoices must reference this Agreement and must clearly specify the services performed. Each invoice shall be reviewed by County staff prior to payment to ensure that the billing is consistent with the compensation provisions of this Agreement. County will pay KNN within the normal processing schedule of the County Auditor-Controller's Accounts Payable Section or sooner.

Section 6. ***Contract Administration.*** For the purpose of this Agreement, the County Public Finance Manager shall act as the Contract Administrator. The Contract Administrator will provide overall coordination and guidance of the services to be performed herein and will address policy issues as necessary and appropriate.

Section 7. ***Standards of Work.*** KNN agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to highest professional standards as exist in KNN's profession, industry or field of practice.

Section 8. ***Conflict of Interest.*** KNN shall not utilize in the performance of this Agreement any formerly employed person of any of the County agencies or departments if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to this Agreement unless otherwise approved in writing by the Contract Administrator. This prohibition shall apply for a two-year period beginning on the date the person terminated County service.

KNN shall not utilize in the performance of this Agreement any County employee unless such employment is required as a condition of the employee's regular employment with the County. An employee of the County is defined to be any person holding a permanent or temporary position with the County. During the term of this Agreement, KNN shall not employ

or negotiate to employ any County employee(s) who have been or are involved in administration or performance of this Agreement, unless otherwise approved in writing by the Contract Administrator.

Section 9. ***Compliance with Gift and Political Contribution Ban.*** By executing this Agreement, KNN covenants to the County that it has complied and will, during the term of this Agreement, comply in all respects with the “Ban on Political Contributions and Gifts” provisions of Article V of the County of Orange, Board of Supervisors, Policies and Procedures for Consideration and Approval of Proposed Public Financings.

Section 10. ***Confidentiality of Work.*** All work performed by KNN, including but not limited to all drafts, data, correspondence, proposals, reports and estimates compiled or composed by KNN pursuant to this Agreement, but expressly excluding all documents, data, reports or correspondence typically circulated among the working group with respect to any financing, or any matter required to be disclosed pursuant to judicial process or California or federal law (including, but not limited to federal securities laws), is for the sole use of the County and shall be confidential and not released to any third party without prior written consent of the Contract Administrator.

Section 11. ***Independence of KNN.*** KNN and the agents and employees of KNN, in performance of this Agreement, shall act in an independent capacity and not as employees, officers or agents of the County.

Section 12. ***Subcontracts.*** KNN is responsible for all requirements under this Agreement even though the requirements are carried out pursuant to subcontract. All Agreement requirements apply to subcontractors. All proposed subcontracts (excluding entities wholly owned by KNN) must be filed with, and approved by the Contract Administrator prior to execution of any agreement with the subcontractor.

KNN shall submit a listing which identifies the name of the subcontractor, the method by which the subcontractor was selected, and the total funding to be paid to the subcontractor. If other than the lowest bidder or a sole-source provider is selected, all documents used in subcontractor selection must be presented in writing to the Contract Administrator for prior approval before awarding any contract. The Contract Administrator reserves the right to disapprove any subcontractor.

Section 13. ***News Releases.*** KNN agrees to submit to the Contract Administrator, prior to release, copies of news releases related to this Agreement. County reserves the right to modify or deny the release of such news releases.

Section 14. ***Examination of Accounts, Audit and Records.*** KNN’s records relating to services provided under this Agreement shall be subject at all reasonable times to inspection, audit and reproduction by the County or any of its duly authorized representatives.

Section 15. ***Ownership of Records.*** All work-product, records, and materials relating to this Agreement shall be the sole and exclusive property of County, as the work is completed or otherwise upon termination of this Agreement. KNN shall deliver to the Contract Administrator all copies of any and all materials pertaining to this Agreement.

Section 16. **Name Change.** KNN shall provide written notice to the Contract Administrator at least thirty (30) days prior to any changes to KNN's current legal name, if practicable, but in any event, not later than the date of any such change. The Contract Administrator shall be provided with all pertinent information relating thereto which is requested.

Section 17. **Changes in Staff.** The Contract Administrator has the reasonable right to approve or disapprove any proposed changes in KNN's staff from the individuals named in this Agreement. The Contract Administrator shall be provided with a resume of any proposed substitute and shall be given the opportunity to interview that person prior to his or her decision to approve or disapprove.

Section 18. **Child Support Compliance.** Unless provided contemporaneously with its execution of this Agreement, KNN agrees to furnish to the Contract Administrator within thirty (30) days of this Agreement's effective date:

A. The name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in KNN;

B. A certification that KNN has fully complied with all applicable federal and state reporting requirements regarding its employees;

C. A certification that KNN has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

The failure of KNN to timely submit the data or certifications required by Subsections A, B or C, or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement, and failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

The Contract Administrator, with the concurrence of the County Purchasing Agent, may waive the requirements of this provision, or any part thereof.

The Contract Administrator shall forthwith transmit data received from KNN under the provisions of this Section to the Orange County District Attorney, and shall not use or disclose the data for any other purpose.

Section 19. **Insurance.** Prior to the provision of services under this Agreement, KNN agrees to purchase all required insurance at KNN's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the

entire term of this Agreement. In addition, all subcontractors performing work on behalf of KNN pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for KNN.

All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. KNN shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If KNN fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by KNN shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this Agreement shall be

at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Agreement with respect to work done by KNN under the terms of this Agreement (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the KNN's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If KNN's Professional Liability policy is a "claims made" policy, KNN shall agree to maintain professional liability coverage for two years following completion of this Agreement.

The Commercial General Liability policy shall contain a severability of interests clause.

KNN is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. KNN will comply with such provisions and shall furnish the County satisfactory evidence that KNN has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the County Executive Office Public Finance Manager.

County expressly retains the right to require KNN to increase or decrease insurance of

any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify KNN in writing of changes in the insurance requirements. If KNN does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to KNN, and County shall be entitled to all legal remedies.

Section 20. **Employee Eligibility Verification.** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and, to the best of its knowledge, that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law.

Section 21. **Notices.** Any and all notices between the County and KNN provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly given when personally delivered to one of the parties or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party at the following address:

If to the County:

County of Orange, California
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701-4062
Attention: Public Finance Manager

If to KNN:

KNN Public Finance
1333 Broadway, Suite 1000
Oakland, CA 94612
Attention: David Brodsky
Telephone: (510) 839-8200 Fax : (510) 208-8282

Section 22. **Governing Law, Venue and Entire Agreement.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in

Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, withstanding Code of Civil Procedure section 394.

The parties specifically agree that by entering into and performing under this Agreement, KNN shall be deemed to be doing business within Orange County within the meaning of Code of Civil Procedure section 394 from this Agreement's effective date through the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this Agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure section 394.

This Agreement constitutes the entire agreement between the County and KNN with respect to the Options and Replacement Financing and supersedes any previous agreement(s), negotiations, proposals or understanding, whether written or oral concerning such matter, unless expressly included in this Agreement.

Section 23. ***Amendment or Modifications.*** No amendment, modification or other alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

Section 24. ***Severability.*** In the event that any provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and such invalidity shall in no way affect, impair, or invalidate any other provision contained herein if there is no substantive effect to the services to be rendered to the County by such judicial finding of invalidity.

Section 25. ***Counterparts.*** This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

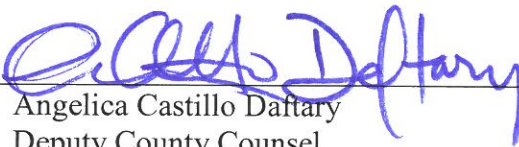
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first written above.

COUNTY OF ORANGE, CALIFORNIA

By: _____
Suzanne Luster
Public Finance Manager

Approved to Form
Office of the County Counsel

KNN Public Finance

By: 
Angelica Castillo Daftary
Deputy County Counsel

By: 
David Brodsly, Managing Director

Date: _____