

## **AGREEMENT FOR FINANCIAL AND ACCOUNTING CONSULTATION SERVICES**

THIS AGREEMENT is made as of December 1, 2003, by and between the San Francisquito Creek Joint Powers Authority, a body corporate and politic ("Authority"), and Kevin W. Harper, CPA, a sole proprietor ("Consultant").

### **R E C I T A L S**

A. This Agreement acknowledges that Authority has secured the offer of Consultant to perform the accounting and financial services as described herein.

B. Authority desires to utilize the services of Consultant as an independent contractor for financial and accounting consultation for the Authority for the year ended June 30, 2004.

C. Consultant represents that it is fully qualified to perform such services by virtue of its experience, training, education and expertise.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### **1. Consultant's Services.**

A. Scope and Level of Services. The nature, scope, and level of the specific services to be performed by Consultant are as set forth in Exhibit A attached hereto.

B. Time of Performance. The services shall be performed on a timely, regular basis in accordance with the Compensation and Schedule attached hereto as Exhibit B.

#### **2. Term of Agreement.**

A. This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect until the services required hereunder have been completed satisfactorily by Consultant unless earlier terminated pursuant to Section 12.

**3. Compensation.** Authority agrees to compensate Consultant for its services according to the fee schedule set forth in Exhibit B. Authority also agrees to compensate Consultant for its reasonable out-of-pocket expenses to the extent authorized in Exhibit B. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$11,000.00 unless specifically approved in advance, in writing, by Authority. Amendments to the fee schedule set forth in Exhibit B may be made on an annual basis upon written consent of both parties.

#### **4. Representatives.**

A. **Project Manager.** Kevin W. Harper is hereby designated as the representative of Consultant authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Authority to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The Project Manager may not be changed by Consultant without the express written approval of Authority.

B. **Contract Administrator.** The Contract Administrator and Authority's representative shall be Andrew Kloak, or in his absence, an individual designated in writing by the Executive Director of Authority. If no Contract Administrator is so designated, the Executive Director shall be the Contract Administrator. It shall be Consultant's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions, which must be made by Authority to the Contract Administrator. Unless otherwise specified herein, any approval of Authority required hereunder shall mean the approval of the Contract Administrator.

**5. Standard of Performance.** Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Authority. Consultant hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.

**6. Status as Independent Contractor.** Consultant is, and shall at all times remain as to Authority, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Authority or otherwise act on behalf of Authority as an agent. Neither Authority nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of Authority. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold Authority harmless from any and all taxes, assessments, penalties, and interest asserted against Authority by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold Authority harmless from any failure of Consultant to comply with applicable worker's compensation laws. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this Section.

**7. Confidentiality.** Consultant, in the course of its duties, may have access to financial, accounting, statistical, and personal data of private individuals and employees of Authority. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by Authority. Authority shall grant such authorization if disclosure is required by law. Upon request, all Authority data shall be returned to Authority upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

**8. Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by Authority on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with Authority.

**9. Indemnification.**

A. Consultant shall defend, hold harmless and indemnify the Authority, its Board members, officers, employees, and agents, its constituent local public entities, and its constituent members' respective officers, employees, and agents (collectively, "Indemnitees"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors or omissions of Consultant or any of its officers, employees, or agents. Liability of the Consultant under this hold harmless and indemnification provision shall be limited to the coverage limits of insurance required by Section 10

B. Authority does not, and shall not, waive any rights that they may possess against Consultant because of the acceptance by Authority, or the deposit with Authority, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Consultant agrees that Consultant's covenant under this section shall survive the termination of this Agreement.

**10. Insurance.**

A. **Liability Insurance.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Consultant, its employees, agents, representatives, or subcontractors.

B. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Any general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$300,000 per accident for bodily injury and property damage.
- (3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Authority. At the option of Authority's Executive Director, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Authority, its officers, officials, employees and agents; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (4) Indemnitees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Authority, its officers, employees and agents.
- (5) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects Authority. Any insurance or self-insurance maintained by Authority shall be excess of Consultant's insurance and shall not contribute with it.
- (6) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to Authority, their officers, employees, and agents.
- (7) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (8) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or cancelled by either

party, or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to Authority.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless waived by Authority's Risk Manager.

G. Verification of Coverage. Consultant shall furnish Authority with original endorsements effecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by Authority before work commences. As an alternative to Authority forms, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

H. Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**11. Cooperation.** In the event any claim or action is brought against Authority relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation, which the Authority might require.

**12. Termination.** Authority shall have the right to terminate the services of Consultant at any time or for any reason upon 5 calendar days written notice to Consultant. In the event this Agreement is terminated by Authority, Consultant shall be paid for any services properly performed to the last working day the Agreement is in effect, and Consultant shall have no other claim against Authority by reason of such termination, including, but not limited to, any claim for compensation.

**13. Suspension.** Authority may, in writing, order Consultant to suspend all or any part of the Consultant's services under this Agreement for the convenience of Authority or for work stoppages beyond the control of Authority or Consultant. Subject to the provisions of this Agreement relating to termination, a suspension of the work does not void this Agreement. In the event that work is suspended for a period exceeding 120 days, the schedule and cost for completion of the work will be adjusted by mutual consent of the parties.

**14. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Authority:

San Francisquito Creek Joint Powers Authority  
701 Laurel Street  
Menlo Park, CA 94025

Attention: Andrew Kloak  
Contract Administrator  
Fax: 650-328-7935

Consultant:

Kevin W. Harper, CPA  
3002 Seriana Court  
Union City, CA 94587  
Attention: Kevin W. Harper  
Owner  
Fax: (510) 324-1022

**15. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, disability or sexual orientation. Consultant will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, disability or sexual orientation.

**16. Assignability; Subcontracting.** Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder, without the prior written consent of Authority, and any attempt by Consultant to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

**17. Compliance with Laws.** Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

**18. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Authority of any payment to Consultant constitute or be construed as a waiver by Authority of any breach of this Agreement, or any default which may then exist on the part of Consultant, and the making of any such payment by Authority shall in no way impair or prejudice any right or remedy available to Authority with regard to such breach or default.

**19. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be San Mateo County or Santa Clara County.

**20. Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement.

**21. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Authority

and Consultant. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Authority”

ATTEST:

San Francisquito Creek Joint Powers  
Authority

By: \_\_\_\_\_  
Clerk of the Board

By: \_\_\_\_\_  
Cynthia D’Agosta, Executive Director

“Consultant”

Kevin W. Harper, CPA  
A sole proprietor

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

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

## **Exhibit A Scope of Services**

**Consultant shall act in an advisory role to the Executive Director for purposes of financial policy and procedures. The Consultant will provide services as requested by the Executive Director including, but not limited to, the following:**

**Consultant shall develop for the Authority a recommended structure for the Grant Administrative Budget (Long Term Project Management). Consultant shall provide oversight on accounting records and the investigation of the State of California Local Agency Investment Fund (LAIF) higher yield cash management.**

**Consultant shall provide recommendations on how the Authority can best comply with new Governmental Accounting Standards Board (GASB) requirements.**

**Exhibit B**  
**Compensation and Schedule**

**Fees will be paid at the rate of \$175 per hour. Reasonable out-of-pocket and travel expenses will be reimbursed. Bills shall be submitted monthly. Maximum compensation and reimbursed costs under this Agreement shall not exceed \$11,000.00.**

**The term of this agreement is December 1, 2003 through June 30, 2004.**