

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Debt Advisory Committee  
Urgent  Routine   
CEO Concurs with Recommendation YES  NO   
(Information Attached)

BOARD AGENDA # \*B-6  
AGENDA DATE: August 7, 2001  
4/5 Vote Required YES  NO

SUBJECT: APPROVAL OF ASSIGNMENT OF FINANCIAL ADVISOR AGREEMENTS

STAFF RECOMMENDATION:

1. APPROVE THE CONSENT TO ASSIGNMENT AND TRANSFER OF AGREEMENT FOR MUNICIPAL FINANCE CONSULTING SERVICES AND AUTHORIZE THE CHAIRMAN OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER TO EXECUTE SAID AGREEMENTS.

FISCAL IMPACT: NONE.

BOARD ACTION AS FOLLOWS:

No. 2001-589

On motion of Supervisor Blom, Seconded by Supervisor Caruso

and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

MOTION:

Christine Ferraro  
By: Deputy

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

SUBJECT:  
PAGE 2

APPROVAL OF ASSIGNMENT OF FINANCIAL ADVISOR AGREEMENTS

**DISCUSSION:**

The County of Stanislaus currently has contractual agreements with Leifer Capital for Financing Advisor services. The first of these agreements is for the provision of municipal finance consultant services for the period from January 1, 1999, through and including December 31, 2002. The second agreement is for the provision of financial advisor services in conjunction with Stanislaus County tobacco securitization financing. This agreement was effective May 1, 2000, and continues in effect upon the latter of either the consultants successful completion or December 31, 2001, unless otherwise extended by mutual agreement between the County and Leifer Capital.

At its meeting of Tuesday, July 31, 2001, Mr. David Leifer of Leifer Capital informed the Debt Advisory Committee that their firm had successfully merged with the financial services business of Kelling, Northcross and Nobriga of Oakland, California. Mr. David Leifer and Mr. Steve Gortler of Leifer Capital, as well as other members of their staff, will become employees of Kelling, Northcross and Nobriga effective July 3, 2001. It is, therefore, necessary and proper that the County enter into the consent to assignment and transfer of agreement currently existing between the County and Leifer Capital in favor of Kelling, Northcross and Nobriga.

Pursuant to the attached assignment agreement services under the existing agreements to be assigned will be performed on behalf of Kelling, Northcross and Nobriga by or at the direction of David Leifer and Steve Gortler because of their extensive knowledge of the matters subject to these agreements.

Your Board's approval of the Assignment Agreement is recommended to you by the Debt Advisory Committee upon its unanimous recommendation.

**POLICY  
ISSUES:**

It is necessary for the County to enter into the assignment agreement in order to maintain continuity of financial advisor services.

**STAFFING  
IMPACT:**

None.

**ATTACHMENTS:**

Consent to Assignment and Transfer of Agreement for Financial Consulting Services.

CONSENT TO ASSIGNMENT AND TRANSFER  
OF AGREEMENT FOR MUNICIPAL FINANCE CONSULTING SERVICES

(County - Kelling, Northcross & Nobriga)

THIS AGREEMENT is entered into the 7th day of August, 2001, by and between the COUNTY OF STANISLAUS, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and Kelling, Northcross & Nobriga, with its principal place of business at 1333 Broadway, Suite 1000, Oakland, California 94612, a municipal finance consultant, hereinafter referred to as "CONSULTANT",

WHEREAS, COUNTY entered into an agreement with Leifer Capital ("Leifer") on January 1, 1999, (Agreement for Municipal Finance Consultant's Services), hereinafter "Advisory Agreement", whereby Leifer provides advice from time to time to COUNTY with respect to a variety of municipal financing issues; and

WHEREAS, COUNTY entered into an agreement with Leifer Capital ("Leifer") on May 1, 2000, (Agreement for Tobacco Securitization Financing), hereinafter "Tobacco Securitization Agreement", whereby Leifer is to provide advice to COUNTY with respect to the structuring and pricing of tobacco settlement revenue asset-backed bonds; and

WHEREAS, on July 3, 2001 Leifer Capital entered into a sale agreement with Kelling, Northcross & Nobriga wherein CONSULTANT agreed to perform all of Leifer Capital's rights and responsibilities under the above-referenced Agreements with COUNTY; and

WHEREAS, David Leifer and Steve Gortler will be employees of Consultant and shall continue providing services to County; and

WHEREAS, Leifer Capital and Kelling, Northcross & Nobriga have requested that the Agreements with COUNTY be assigned to Kelling, Northcross & Nobriga; and

WHEREAS, the Agreements require consent of the COUNTY prior to transfer; and

WHEREAS, Kelling, Northcross & Nobriga has demonstrated the ability and is willing to abide by all terms of the Agreements.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. The recitals set forth hereinabove are hereby incorporated as part of the terms of this assignment agreement of the parties.
2. COUNTY hereby consents to the assignment of the Agreements to Kelling, Northcross & Nobriga.
3. All future payments due from COUNTY under the terms of the Agreements will be made to CONSULTANT.
4. CONSULTANT agrees that the agreements subject to this assignment shall be performed on behalf of CONSULTANT by or at the direction of David Leifer and Steve Gortler because of their extensive knowledge of the matters subject to said agreements and that this assignment is expressly conditioned upon the continuing performance of any and all agreements subject to this assignment by or at the direction of David Leifer and Steve Gortler on behalf of CONSULTANT. COUNTY agrees that David Leifer and Steve Gortler may be assisted by other members of CONSULTANT's staff.

5. COUNTY waives none of its rights under the Agreements by consenting to this assignment and CONSULTANT agrees to comply with all of the terms and conditions of the Agreements.
6. Except as provided in this agreement, all the provisions of the original Agreements shall remain in full force and effect.

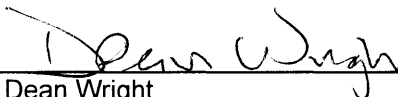
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IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

APPROVED AS TO FORM:  
Office of County Counsel

COUNTY OF STANISLAUS

By   
Dean Wright  
Deputy County Counsel

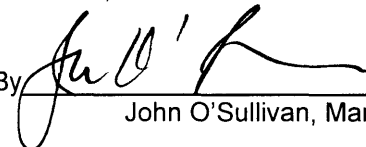
By   
Chairman, Board of Supervisors

"COUNTY"

RECOMMENDED FOR APPROVAL:

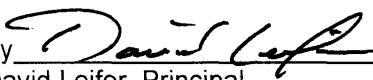
KELLING, NORTHCROSS & NOBRIGA

By   
Reagan Wilson  
Chief Executive Officer

By   
John O'Sullivan, Manager

"CONSULTANT"

RECOMMENDED FOR APPROVAL:  
Leifer Capital

By   
David Leifer, Principal  
Leifer Capital



**AGREEMENT BETWEEN STANISLAUS COUNTY AND LEIFER CAPITAL  
FOR MUNICIPAL FINANCE CONSULTANT SERVICES**

**STANISLAUS COUNTY TOBACCO SECURITIZATION FINANCING**

**THIS AGREEMENT** is made effective as of the 1st day of May, 2000, by and between the County of Stanislaus, a political subdivision of the State of California (hereinafter referred to as "County") and Leifer Capital, a California corporation (hereinafter referred to as "Consultant").

**WITNESSETH:**

**WHEREAS**, County is entitled to receive tobacco settlement revenues pursuant to the Master Settlement Agreement between various tobacco manufacturers and State Attorney Generals and pursuant to the Memorandum of Understanding between the State of California and California counties.

**WHEREAS**, County contemplates securitizing certain of its tobacco settlement revenues by way of a 'true sale' of these revenues to a special purpose corporation and the issuance of bonds by the special purpose corporation which bonds will be secured solely by tobacco settlement revenues (the "Financing");

**WHEREAS**, the Financing is innovative and complex and County requires independent municipal financing consultant services to assist County with all aspects of the Financing;

**WHEREAS**, said services cannot be performed by the regular employees of County;

**WHEREAS**, Consultant has represented that it is qualified by training and experience to perform the services contemplated by this Agreement; and

**WHEREAS**, pursuant to Section 31000 of the California Government Code, County is authorized to enter into contracts for professional services;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, terms and conditions herein contained, County and Consultant hereto agree as follows:

**ARTICLE 1. SERVICES TO BE PERFORMED BY CONSULTANT**

Consultant shall perform the services specifically set forth in Exhibit A hereto and shall provide other services as it deems necessary or advisable, or are reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standard and practice of professional municipal finance consultants.

## ARTICLE 2. SERVICES TO BE PROVIDED BY THE COUNTY

County shall provide Consultant with all records, data, information and plans in the possession of County necessary for the performance of the obligations required by this Agreement.

## ARTICLE 3. TERM OF AGREEMENT

This Agreement is effective as of May 1, 2000, and shall be for a term concluding upon the later of: 1) Consultant's successful completion of the scope of services set forth in Exhibit A or 2) December 31, 2001, unless otherwise extended by mutual written agreement between Consultant and County.

## ARTICLE 4. COMPENSATION

### A. Consultant's Compensation.

1. Consultant shall receive the following as compensation for its services outlined in Parts I and II of Exhibit A:

(i) a monthly fee in the amount of \$7,500 (the "Monthly Fee") for so long as services are being provided, payable in advance as of the first day of each month beginning May 1, 2000 subject to and upon receipt by County of an invoice from Consultant. Payment of Monthly Fees are not contingent upon the closing of the Financing; and

(ii) a combined structuring and transaction fee in an amount which, when combined with the Monthly Fees actually paid, shall be as follows: \$525,000 for a financing with a par amount of between \$50 million and \$74 million; \$625,000 for a financing with a par amount between \$75 million and \$99 million; \$750,000 for a financing with a par amount of \$100 million or larger. Payment of the structuring and transaction fee shall be contingent upon the closing of the Financing.

3. For the services outlined in Part III of Exhibit A, Consultant and County shall establish such fee at the time such services are provided consistent with applicable tax code requirements.

### B. Expenses.

Consultant's compensation provided above does not include, and Consultant shall be reimbursed by County for, expenses related to Consultant's services under this Agreement. Such expenses are to be reimbursed upon presentation of an invoice, in arrears, upon proof of incurrence satisfactory to County. Reimbursable expenses shall not exceed \$15,000 and shall include, but not be limited to the following:

1. Travel costs, including meals, the use of personal automobiles at 32 cents per mile, rental vehicles, hotel costs and regularly scheduled commercial airline ticket costs.

2. Courier and delivery services; postage; laser, color, photographic or offset printing and reproduction costs; use of company materials and supplies; document

production copying and binding; facsimile transmission; telephone; statistical data; and computer/graphics usage.

3. Other reasonable expenses directly related to the satisfactory performance of requested work as determined by the Debt Advisory Committee.

Expenses for meetings outside of California shall be approved by the County in advance and shall be paid in addition to the above-referenced cap. County also agrees to pay directly all costs incurred by County in connection with the Financing, including but not limited to fees for bond counsel, corporation counsel, consultants, trustee, printer and rating services as well as the fees and expenses of the underwriter(s).

#### ARTICLE 5. CONSULTANT'S TEAM AND AUTHORITY

It is understood that neither Consultant nor any individual representing Consultant possesses any authority with respect to any decision of County or any County officials beyond the rendition of information and advice. It is understood and agreed that Consultant, in the performance of the duties set forth in this Agreement, shall act as and be an independent contractor and not an agent or employee of the County.

Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of County will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. County and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The County and Consultant also agree that no actions and opinions necessary for the performance of duties under the Agreement will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

#### ARTICLE 6. INDEMNIFICATION

Consultant has received, or will receive, information describing County and the Project ("Information"). County represents and warrants that it has read and approved, or will read and approve this Information and warrants that, on the basis of its information and belief, the Information does not contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Consultant shall not verify and in no event be held liable for the accuracy of Information and assumptions provided by County officials, or for changes in such Information.



County shall defend, indemnify, and hold harmless Consultant, and any of its officers, employees, consultants and agents (each, individually, an "Indemnified Person") against any losses, claims, damages, obligations, liabilities, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") to which such Indemnified Person may become subject as a result of: (i) errors contained in the Information furnished by County or County's designee to Consultant hereunder; (ii) a breach, or an alleged breach, by County of the warranty set forth in the above paragraph; (iii) arising out of or in connection with the County's disclosure documents; or (iv) arising out of or in connection with the rendering of services by Consultant hereunder, except to the extent that such Claims are determined in final judicial rulings to have resulted from Consultant's bad faith, negligence or willful misconduct. County shall reimburse Consultant and any Indemnified Person for all expenses and costs (including legal fees and costs) incurred by them in connection with investigating, preparing to defend, or defending any Claim subject to indemnification hereunder and any appeals therefrom, except to the extent that such Claims are determined in final judicial rulings to have resulted from Consultant's bad faith, negligence or willful misconduct. Consultant and any such Indemnified Person may select and retain their own counsel in any action or Claim subject to this indemnification.

In case any such Claim shall be brought against any such Indemnified Person in respect of which indemnity may be sought, the party seeking indemnification shall promptly give written notice thereof to the other party, although the failure to do so shall not relieve such party from any liability hereunder or other than pursuant to this Agreement. No party shall be liable for contribution with respect to any action or claim settled without its consent, which consent shall not be unreasonably withheld.

Consultant represents and warrants that it will not make any statement or supply any information to any third party that is inconsistent with the information approved by County.

If for any reason the indemnification under this Article 6 is unavailable to Consultant or insufficient to hold it harmless, then County shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by County on the one hand and Consultant on the other hand but also the relative fault of County and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

The provisions of this Article 6 shall survive any termination of this Agreement.

#### ARTICLE 7. ASSIGNMENTS AND MODIFICATION

Neither County nor Consultant shall assign any rights or duties under this Agreement to a third party without the prior written consent of the other party. This Agreement may only be modified by written agreement executed by the County and the Consultant.

## ARTICLE 8. COMPLETE AGREEMENT

This Agreement, including all exhibits, attachments and other documents incorporated herein or cited by reference, constitutes the complete and exclusive statement of the terms and conditions of the agreement between County and Consultant and it supersedes all prior representations, understandings and communications with respect to the subject matter hereof; provided, however, that nothing contained herein shall be deemed to limit the effect of any prior or future agreements between County and Consultant with respect to matters other than the subject matter hereof. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions. County's failure to insist in any one or more instances upon Consultant's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of County's right to such performance by Consultant or to future performances of such term(s) or condition(s) and Consultant's obligation in respect thereto shall continue in full force and effect. Changes hereto shall not be binding upon either party except when specifically confirmed in writing by an authorized representative of County and Consultant.

## ARTICLE 9. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, postage prepaid and addressed as follows:

To the County:

Stanislaus County  
County Executive Office  
1010 Tenth Street, 6th Floor  
Modesto, CA 95354

To Consultant:

Leifer Capital  
166 Geary Street, Suite 1300  
San Francisco, CA 94108

## ARTICLE 10. INDEPENDENT CONTRACTOR

Consultant's relationship to County in the performance of this Agreement is that of an independent contractor. Consultant's personnel performing services under this Agreement shall at all times be under Consultant's exclusive direction and control and shall be employees of Consultant and not employees of County. Consultant shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

## ARTICLE 11. TERMINATION

Either party may terminate this Agreement for its convenience at any time in whole or part by giving the other party thirty (30) days written notice thereof. In the event of such termination, the County shall pay Consultant all unpaid Monthly Fees and expenses owed to it for services completed as of the date of termination and billed within thirty (30) business days thereof.

#### ARTICLE 12. AFFIRMATIVE ACTION.

The Consultant shall not discriminate in its employment practice against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, or physical handicap. Any subcontract entered into by the Consultant pursuant to, or in furtherance of, this Agreement shall contain a similar provision requiring the Consultant's subcontractor to not discriminate in its employment and hiring practices.

#### ARTICLE 13. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice thereof. Consultant shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

#### ARTICLE 14. BINDING ON SUCCESSORS

All the terms, provisions and conditions of this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

#### ARTICLE 15. COUNTY REPRESENTATIVES.

Except when approval or other action is required to be given or taken by the Board of Supervisors of County, the Chief Executive Officer, the Auditor-Controller or the Treasurer-Tax Collector of County, or such person or persons as he or she shall designate, shall represent and act for County in connection with this Agreement.

#### ARTICLE 16. APPLICABLE LAW

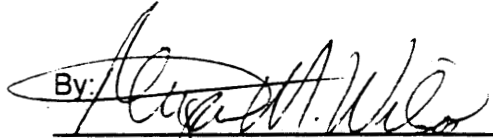
This Agreement, its interpretation and all services performed hereunder shall be governed by the laws of the State of California.

ARTICLE 17. OTHER PARTIES

It is the mutual understanding of Consultant and County that County will retain nationally recognized law firms with expertise in public finance to serve as the County's bond counsel and disclosure counsel. It is understood and expected that disclosure counsel shall prepare the County's disclosure documents and deliver at closing a "10b-5 opinion" which is addressed to the County, Consultant and to the underwriter selected by County to market and sell the Certificates (the "Underwriter") which Consultant will rely on and be entitled to rely on. It is the further understanding of Consultant and County that Consultant shall not be responsible for the preparation of the County's disclosure documents or for the accuracy and completeness of such disclosure documents.

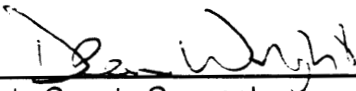
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

COUNTY OF STANISLAUS, a  
political subdivision of the State of  
California

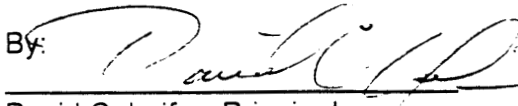
By:   
\_\_\_\_\_  
Chief Executive Officer  
Stanislaus County

APPROVED AS TO FORM:

STANISLAUS COUNTY COUNSEL

By:   
\_\_\_\_\_  
Deputy County Counsel

LEIFER CAPITAL

By:   
\_\_\_\_\_  
David C. Leifer, Principal

**MUNICIPAL FINANCE CONSULTANT'S SCOPE OF SERVICES FOR  
COUNTY OF STANISLAUS  
TOBACCO SECURITIZATION FINANCING**

Part I – PRE-TRANSACTION

1. Develop tobacco settlement revenue model for Stanislaus County.
2. Evaluate the County's projected settlement revenues under alternative tobacco consumption scenarios.
3. Assist County in identifying payment and other risks under the Master Settlement Agreement.
4. Assist the County in evaluating the cost-effectiveness of alternative financing structures including:
  - Private placement vs. public offering
  - Taxable vs. tax-exempt
  - Fixed vs. variable rate
  - Flexible amortization vs. fixed amortization
  - Full-apply vs. annual residuals
  - Convertible CABs and/or capitalized interest
  - Taxable and tax-exempt trusts
5. Meet with rating analysts and investors regarding feasibility of, and investor appetite for, alternative financing structures.
6. Assist County in evaluating options for depositing bond proceeds into a trust fund.
7. Analyze the potential for obtaining credit enhancement for the financing.
8. Assist County officials in presenting the financing options and financing plan to the County Debt Advisory Committee and the Board of Supervisors, as requested.

## Part II - TRANSACTION SERVICES

1. Assist County in solicitation and selection of financing team members, as needed;
2. Prepare a financing schedule and update this schedule as necessary.
3. Assist County in coordination of activities between representatives of County offices;
4. Evaluate investor appetite for alternative financing structures;
5. Assist County in structuring the financing;
6. Assist County to secure ratings, letters of credit and/or bond insurance for the Financing in accordance with the financing plan;
7. Assist County and the financing team in procuring special services, as needed;
8. Monitor taxable and tax-exempt market conditions; make recommendations regarding timing of the pricing;
9. Assist County with design and implementation of investor outreach program for the Financing, as necessary.
10. Oversee pricing of the Financing under the method of sale selected by County, including oversight of the Underwriter(s) in the case of a negotiated sale;
11. Assist County and the financing team in arranging for the closing of the Financing.

## PART III - COMPETITIVELY BIDDING INVESTMENT OF BOND PROCEEDS

At the County's direction, confirmed in writing, Consultant will provide the following services regarding the management of a competitive bid process for the investment of bond proceeds for the Debt Service Reserve Fund, Construction Fund, Capitalized Interest Account or any other fund or account which the County may deem appropriate.

1. Assist County in identifying options that meet the County's investment criteria and parameters;
2. Assist County in selecting list of qualified bidders for investment of bond proceeds regarding the three accounts;
3. Assist County and financing team in preparing and distributing Request for Proposals to list of qualified bidders;
4. Receive and evaluate competitive bids; and
5. Assist County in arranging for the closing of the investment of bond proceeds.



OFFICE OF COUNTY COUNSEL  
**STANISLAUS COUNTY**

COUNTY ADMINISTRATION BUILDING  
POST OFFICE BOX 74  
MODESTO, CA 95353  
PHONE (209) 525-6376  
FAX (209) 525-4473

MICHAEL H. KRAUSNICK  
COUNTY COUNSEL  
E. VERNON SEELEY  
ASSISTANT COUNTY COUNSEL  
DEPUTIES  
Wm. Dean Wright  
Linda S. Macy  
John P. Doering  
Victoria A. Halliday  
Vicki F. de Castro

July 21, 1999

Mr. David C. Leifer  
Leifer Capital  
166 Geary Street, Suite 1300  
San Francisco, CA 94108

**IN RE: AGREEMENT FOR MUNICIPAL FINANCE CONSULTANT'S SERVICES  
FOR THE PERIOD FROM JANUARY 1, 1999, THROUGH AND INCLUDING  
DECEMBER 31, 2002.**

Dear Mr. Leifer:

Please find enclosed an executed duplicate original of the Agreement between your firm and the County of Stanislaus. Please note that this Agreement expires on December 31, 2002, and no work performed after the expiration will be paid for by the County unless the parties have entered into a written agreement authorizing such work.

Please be cognizant of the fact that Subdivision "C" of Part I of the Agreement provides as follows: "For purposes of requesting services to be performed by Consultant, County staff shall mean representatives of the County Chief Executive Officer, Auditor-Controller, or Treasurer-Tax Collector, subject to approval of the Debt Advisory Committee, in that no new major project work is to be performed by the Consultant prior to receiving authorization from the Debt Advisory Committee." As the attorney member of the Debt Advisory Committee it is my view that no project work should be undertaken by your firm pursuant to this Contract without the approval of the Committee. That will avoid questions regarding what constitutes "major project work".

If you have any questions concerning the content of this letter, please do not hesitate to contact me. Thank you for your continued cooperation and assistance.

Very truly yours,

MICHAEL H. KRAUSNICK  
County Counsel

By *Dean Wright*  
Dean Wright  
Deputy County Counsel

DW/cgk  
Enclosure

cc: Reagan Wilson, Chief Executive Officer, w/enclosure  
Byron Bystrom, Auditor-Controller, w/enclosure  
Tom Watson, Treasurer-Tax Collector, w/enclosure  
Ron Freitas, Director of Planning & Community Development, w/enclosure  
George Stillman, Director of Public Works, w/enclosure

**AGREEMENT FOR MUNICIPAL FINANCING CONSULTANT'S SERVICES  
BETWEEN THE COUNTY OF STANISLAUS AND LEIFER CAPITAL**

THIS AGREEMENT is made effective as of January 1, 1999, by and between the County of Stanislaus, a public entity (hereinafter called the "County") and Leifer Capital, a California corporation located at 166 Geary Street, Suite 1300, San Francisco, California 94108 (hereinafter call the "Consultant").

WHEREAS, the County desires independent municipal financing consulting services in connection with the County's financing program; and

WHEREAS, the Consultant is well-qualified to provide municipal financing consulting services to public entities and the County; and

WHEREAS, the County desires to retain the professional services of the Consultant to act as the County's municipal financing consultant;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

**I. SERVICES TO BE PERFORMED BY THE CONSULTANT**

A. Transaction Services.

At the request of the County, the Consultant shall perform the duties and services specifically set forth in Exhibit "A" hereto for County financings including, but not limited to, TRAns and other short-term financings; certificates of participation and other lease financings; general obligation bonds; pension obligation bonds; sales tax, solid waste, tobacco settlement and other revenue bonds; redevelopment bonds; industrial development, assessment district, mello-roos and other infrastructure and conduit financings.

B. General Services/Services Preliminary to a Debt Issuance.

At the request of the County, Consultant shall provide evaluation and coordination services preliminary to a debt issuance or other special services including, but not limited to, analyzing preliminary financing feasibility, evaluating debt capacity, examining alternative financing proposals or structures, evaluating conduit financing applications, developing debt financing policies, conducting educational/training workshops, and developing and implementing an on-going investor relations program including arranging and participating in meetings and conference calls with County officials and market participants year-round.

C. Other

The County may, in its sole discretion, expand this Agreement to include any additional financial services not specifically identified within this Agreement. Any additional services shall be subject to mutual agreement of both parties.



This contract will be administered by the Chief Executive Officer, or his designee. The Chief Executive Officer, or his designee, shall provide overall coordination and guidance of the services to be performed hereunder and will address policy issues as necessary and appropriate. For purposes of requesting services to be performed by Consultant, County staff shall mean representatives of the County Chief Executive Officer, Auditor-Controller, or Treasurer-Tax Collector, subject to approval of the Debt Advisory Committee, in that no new major project work is to be performed by the Consultant prior to receiving authorization from the Debt Advisory Committee.

Services under this Agreement shall not include any services provided in connection with any financing or transaction as to which the Consultant and County have a separate agreement. At no cost to County, Consultant shall make a personal presentation regarding any separate agreement proposals and requests for changes of fees or scope of services, unless such requirement is waived by the Debt Advisory Committee.

Consultant is not, and does not represent itself as, an investment advisor and Consultant's services shall not include advice with respect to the County's investments.

## **II. SERVICES TO BY PROVIDED BY THE COUNTY**

The County shall provide or cause to be provided to the Consultant all records, data, and plans in the possession of the County necessary for the performance of the services required by this Agreement.

## **III. EFFECTIVE DATE AND TERM**

This Agreement shall be effective as of January 1, 1999 through December 31, 2002. Thereafter, the term of this Agreement shall automatically extend for additional one year terms unless otherwise terminated by either party. This Agreement may be terminated by either party on thirty (30) days written notice.

## **IV. COMPENSATION**

### **A. Fees.**

1. For all consulting work performed under this contract and not attributable to a separate agreement, fees shall be charged by Consultant at the normal hourly rates as shown in Exhibit "B" or as shall otherwise be agreed between the parties. If Consultant desires to change said hourly rates, it shall present a revised Exhibit "B" to County for review and consideration. The Debt Advisory Committee shall review hourly rate increase requests and shall make a recommendation to the Board of Supervisors prior to consideration by the Board of Supervisors. No work performed by Consultant shall be compensated at any increased rates until after approval by the Debt Advisory Committee and the Board of Supervisors.

2. Consultant and County agree that fees paid to Consultant under this Agreement shall not exceed the annual budgeted amount included in the final County Budget adopted by

the Board of Supervisors unless otherwise authorized by a resolution of the Board of Supervisors.

As soon as the services rendered by Consultant amount to ninety percent of said annual budgeted fee amount, Consultant shall immediately notify County in writing and shall not under any circumstances perform any more services until such notification has been made and responded to in writing by County.

3. The annual budgeted fee amount limitation shall not apply to compensation negotiated between the parties and incorporated into other agreements for transactions or special services not contemplated to be provided pursuant to this Agreement.

4. For fiscal year 1998-1999, the amount budgeted, and the amount of compensation provided for by this Agreement, may not exceed one hundred thousand dollars (\$100,000.00) including all expenses as described below, absent approval by resolution of the Board of Supervisors. For future fiscal years, the amounts to be budgeted shall be determined by the Board of Supervisors.

5. It is understood and agreed that travel time will not be subject to reimbursement.

B. Expenses.

1. Consultant shall be reimbursed for, the following "out-of-pocket" costs:

a. Cost of clerical assistance at \$30.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.

b. Reasonable and necessary travel and lodging expenses will be paid as incurred and at the actual cost incurred. The County shall reimburse Consultant for reimbursable expenses of travel, lodging and meals within thirty (30) days of submission of an actual receipt for travel and lodging expenses, or submission of an itemized invoice for reimbursement of the costs of meals. Reimbursement of travel, lodging and meal expenses shall be made in accordance with the following requirements:

(i) Lodging: Lodging charges shall be limited to reasonable and necessary costs for moderate accommodations. Actual receipt is required for reimbursement.

(ii) Air Travel: Air travel charges will be limited to coach or corporate rates. First Class airfare will not be reimbursed. Reservations must be made as early as possible for cost savings. Actual receipt is required for reimbursement.

(iii) Ground Travel: Ground travel costs, including the use of personal automobiles at County's approved rate per mile, and costs for rental vehicles, excluding "luxury" models, shall be reimbursed.

(iv) Meals: Reimbursement for meals shall not exceed \$50.00 per person per day. The County will reimburse for the actual cost of meals not to exceed \$50.00 per person per day except in connection with market participant meetings outside of the where the County may authorize higher per day meal reimbursements.. No receipt is required, but the invoice requesting reimbursement shall provide information concerning the reimbursement requested, including the name of the person, the date and the location where the meal or meals were purchased.

(v) Miscellaneous: The County will not reimburse for personal expenses, laundering, tips, alcoholic beverages, pay T.V., or fax or phone calls and other costs not related to work being done for the County.

c. Courier and delivery services; postage; laser, color, photographic or offset printing and reproduction costs; use of company materials and supplies; document production copying and binding; facsimile transmission and receipt; telephone; statistical and computer/graphics services.

d. Other reasonable expenses directly related to the satisfactory performance of requested work as determined by the Debt Advisory Committee.

2. Except as provided below in sub-part "a.", Consultant shall submit a written invoice to County by the 30th day of the month following the month within which services were rendered. Said invoice shall itemize the following: date of work performed; identification of whether services are under general agreement or a specific project agreement; description of work performed; name of the employee performing the work; hours charged; hourly rate; and the total charge. Out-of-pocket expenses shall be itemized to indicate date and costs of such "out-of-pocket" expenses and identify the work or project associated with such expenses. Such invoices shall be paid by the County within thirty (30) days of the date of each invoice.

a. It is understood and agreed that it is critical that the final invoice for any and all services performed within the fiscal year, July 1 through June 30, be submitted to the County in early July, and in any event, not later than July 15th.

b. Finally, it is understood and agreed that any invoice or work which has not been invoiced within ninety (90) days from the date of the service may not be paid unless the failure to provide a timely billing was due solely to the County or its staff. Nothing in this provision is intended to modify or derogate the limits set forth in part "a." above.

3. Records of the Consultant's costs relating to (a) the Consulting Services performed under this Agreement and (b) reimbursable expenses shall be kept and shall be available to the County's Chief Executive Officer or Auditor or their authorized representatives, at reasonable intervals during normal business hours. Said records shall be maintained for a period of three years at which time they may be destroyed.

## **V. INDEPENDENT CONTRACTOR**

Consultant's relationship to the County in the performance of this agreement is that of an independent contractor. Consultant's personnel performing services under this Agreement shall at all times be under Consultant's exclusive direction and control and shall be employees of Consultant and not employees of the County. Consultant shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

## **VI. CONFLICT OF INTEREST**

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090, et. seq., and Section 87100, et. seq., of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of the County. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the County may immediately terminate this Agreement by giving written notice thereof. The Consultant agrees to abide with Section 87100, et. seq., of the Government Code during the term of the Agreement.

## **VII. NOT A PUBLIC OFFICIAL**

Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of the County shall cause Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. The County and Consultant further agree that no actions and opinions necessary for the performance of duties under the Agreement will cause Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

## **VIII. INDEMNIFICATION**

1. Consultant has received, or will receive, information describing County and County financing programs, including, but not limited to, financial statements and reports, budgets, project draw schedules and cash flow statements ("Information"). The County represents and warrants that it has read and approved, or will read and approve this Information and warrants that, on the basis of its information and belief, the Information does not contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Consultant shall not verify and in no event be held liable for the accuracy of Information and assumptions provided by or at the direction of County officials, or for changes in such Information.

2. County shall defend, indemnify, and hold harmless Consultant, and any of its officers, employees, consultants and agents (each, individually, an "Indemnified Person") against any losses, claims, damages, obligations, liabilities, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") to which such Indemnified Person may become subject as a result of: (a) errors contained in the Information furnished by County or County's designee to Consultant hereunder; (b) a breach, or an alleged breach, by County of the warranty set forth in the above paragraph; (c) arising out of or in connection with the County's disclosure documents; or (d) arising out of or in connection with the rendering of services by Consultant hereunder, except to the extent that such Claims are determined in final judicial rulings to have resulted from Consultant's bad faith, negligence or willful misconduct. County shall reimburse Consultant and any Indemnified Person for all expenses and costs (including legal fees and costs) incurred by them in connection with investigating, preparing to defend, or defending any Claim subject to indemnification hereunder and any appeals therefrom, except to the extent that such Claims are determined in final judicial rulings to have resulted from Consultant's bad faith, negligence or willful misconduct. Consultant and any such Indemnified Person may select and retain their own counsel in any action or Claim subject to this indemnification.

3. In case any such Claim shall be brought against any such Indemnified Person in respect of which indemnity may be sought, the party seeking indemnification shall promptly give written notice thereof to the other party, although the failure to do so shall not relieve such party from any liability hereunder or other than pursuant to this Agreement. No party shall be liable for contribution with respect to any action or claim settled without its consent, which consent shall not be unreasonably withheld.

4. Consultant represents and warrants that it will not make any statement or supply any information to any third party that is inconsistent with the information approved by County.

5. If for any reason the indemnification under this Article VIII is unavailable to Consultant or insufficient to hold it harmless, then County shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the County on the one hand and Consultant on the other hand but also the relative fault of the County and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement. The terms of this paragraph shall not apply in any case where the Claim resulted solely from Consultant's bad faith, negligence or willful misconduct.

6. In the event that Claims subject to indemnification hereunder are determined to have resulted from the concurrent negligence or wrongful acts, errors, or omissions of Consultant and County, the County's indemnification obligation to any Indemnified Person shall be apportioned under the California "Theory of Comparative Negligence" as presently established or as may be hereafter modified.

7. The provisions of this Article VIII shall survive any termination of this Agreement.

**IX. AFFIRMATIVE ACTION**

The Consultant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, or physical handicap. Any subcontract entered into by the Consultant pursuant to this Agreement shall contain this provision.

**X. ASSIGNMENTS AND MODIFICATION**

Because this Agreement is made and entered into by the County in reliance upon the qualifications, experience, and personnel identified as the Consultants on Exhibit "B", the Consultant shall not assign or transfer any rights or duties under this Agreement to a third party without the prior written consent of the County. Likewise, County shall not assign or transfer any rights or duties under this Agreement to a third party without the prior written consent of Consultant. Furthermore, this Agreement may only be modified by written agreement executed by the parties.

**XI. COMPLETE AGREEMENT**

This Agreement, including all exhibits, attachments and other documents incorporated herein or cited by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between the County and Consultant and it supersedes all prior representations, understandings and communications with respect to the subject matter hereof; provided, however, that nothing contained herein shall be deemed to limit the effect of any prior or future agreements between the County and Consultant with respect to matters other than the subject matter hereof. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions of this Agreement. The County's failure to insist in any one or more instances upon Consultant's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of the County's right to such performance by Consultant or to future performances of such term(s) or condition(s) and Consultant's obligation in respect thereto shall continue in full force and effect.

**XII. COUNTY REPRESENTATIVES**

Except when approval or other action is required to be given or taken by the Board of Supervisors, the Chief Executive Officer, the Auditor-Controller or the Treasurer-Tax Collector, or such person or persons as he or she shall designate, shall represent and act for the County in connection with this Agreement.

**XIII. BINDING ON SUCCESSORS**

All the terms, provisions and conditions of this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**XIV. GOVERNING LAW**

The laws governing this Agreement shall be the laws of the State of California.

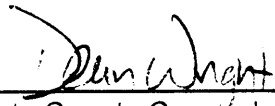
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on June , 1999.

COUNTY OF STANISLAUS, a  
political subdivision of the State of  
California

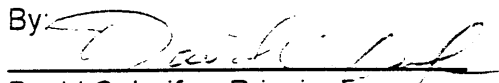
By:   
Chief Executive Officer  
Stanislaus County

APPROVED AS TO FORM:

STANISLAUS COUNTY COUNSEL

By:   
Deputy County Counsel

LEIFER CAPITAL

By:   
David C. Leifer, Principal

## EXHIBIT A

### MUNICIPAL FINANCING CONSULTANT TRANSACTION SERVICES

Consultant shall provide the following services:

1. Assist County in evaluating cost-effectiveness of the proposed financing, including analyses under alternative market and/or structural scenarios.
2. Assist the County and financing team in structuring the financing.
3. Assist County officials in presenting the financing structure to the Board of Supervisors, as requested by County.
4. Assist the County in coordination of financing activities between members of the financing team and representatives of County offices, including the Treasurer-Tax Collector, Auditor-Controller, Chief Executive Officer, County Counsel, etc., as needed.
5. Prepare a financing schedule and update it as necessary.
6. Assist the County and the financing team to secure a rating(s) and/or credit enhancement for the financing.
7. Assist the County and the financing team in procuring special services, as needed.
8. Review tax-exempt market supply and demand variables in connection with the financing.
9. Monitor market conditions; make recommendations regarding the timing of the pricing.
10. Assist the County and the financing team with respect to the administration and pricing of the financing under the method of sale selected by the County.
11. Assist the County and the financing team in arranging for the closing of the financing.

Consultant's services shall not include the preparation of the County's Preliminary and final Official Statements and Consultant shall not be responsible for the accuracy or completeness of the Preliminary and final Official Statements. County shall retain a nationally recognized law firm to serve as County's disclosure counsel in connection with any financing.



## EXHIBIT B

County of Stanislaus

Leifer Capital Scale of Fees for Financial Advisory Services

For Calendar Year 1999

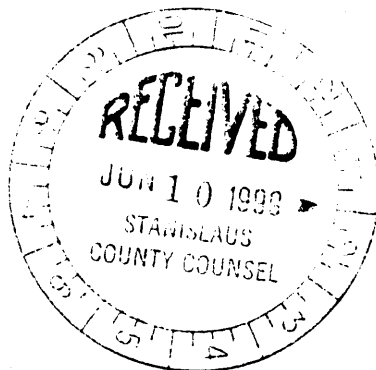
### Hourly Rates\*

Jeffrey R. Leifer, President	\$230.00/hr
David C. Leifer, Principal	\$210.00/hr
Vice President	\$195.00/hr
Senior Associate	\$185.00/hr
Senior Analyst	\$165.00/hr
Analysts	\$125.00/hr
Administration	\$ 90.00/hr

- 
- \* Any additional staff members not mentioned above will have hourly rates consistent with the above scale and commensurate with their individual position and experience.

LEIFER  
CAPITAL

*Municipal Finance Consultants*



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+15.989.2033 FAX  
mfc@leifercap.com

*San Francisco • Los Angeles*

MEMORANDUM

TO: Dean Wright, Esq., Stanislaus County

FROM: David C. Leifer

RE: Agreement for Municipal Finance Consultant Services

DATE: June 10, 1999

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At your request, enclosed are three executed copies of the Agreement for Municipal Finance Consultant Services. As we discussed, the only substantive changes from the prior agreement are in the provision regarding "Term."

Please let me know if the DAC has any questions on Tuesday. One issue you may raise with the DAC is that of compensation for travel time at meetings requested by the County. Based on our existing agreement, we do not charge for travel time. Now that we are based in San Francisco, however, we are compensated for local travel time by our other Northern California clients. In some cases we are paid the full hourly rate for local travel time, while in other cases we are paid half-time for travel. Of course, I do not want to make a big issue out of this and leave it to your discretion.

We are also in the process of arranging a conference call regarding the land acquisition financing for Monday, June 14<sup>th</sup>. Tentatively, the time is set at 10:00 a.m. In the interim, please don't hesitate to call me at (415) 989-2047.

Enclosures