RESOLUTION - ACTION REQUESTED 2014-360

MEETING: July 22, 2014

TO: The Board of Supervisors

FROM: Rick Benson, County Administrative Officer

RE: Financial Advisor Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Joshua Cooperman for Financial Advisor Service in Connection with the Refinancing of the County Service Area #3 (CSA#3) Fire Apparatus Lease Agreements, and Authorize the Board of Supervisors Chair to Sign the Agreement.

This agreement is for services provided in the refinancing of the CSA#3 fire truck leases. Interest rates have dropped since the initial lease agreements were approved by the Board and the refinance will save approximately $400,000 over the next nine years.

The fees under the agreement are only paid if or when the Board approves a refinancing agreement with one of the selected Investors. An item will be brought to the Board in early August for approval.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has previously approved agreements with a Financial Advisor in connection with loan refinancing.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the agreement and negotiate with various investors.

FINANCIAL IMPACT:
Funding for the Financial Advisor Agreement will come from the CSA #3 Fund.

ATTACHMENTS:
mariposaFArefiFireLse2014 Board Item (DOC)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Lee Stetson, District I Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
FINANCIAL CONSULTING AGREEMENT

This Agreement is made and entered into as of the 22nd day of July, 2014, between the County of Mariposa (the “Borrower”), a California county and subdivision of the State of California, and Cooperman Associates (“Financial Advisor”).

RECITALS

WHEREAS, the Borrower desires to hire a financial advisor to assist them in a program to refinance approximately $3,000,000 of tax-exempt lease-purchase debt respecting fire suppression vehicles, and such other debt that the parties may agree to, and

WHEREAS, the Financial Advisor has agreed to provide the required financial advisory services for the refinancing program, and such other refinancing, new money or similar transactions as the parties may agree to; and

WHEREAS, the Financial Advisor shall be a contractor independent of the Borrower;

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties agree as follows:

DUTIES OF THE FINANCIAL ADVISOR

1. Develop in conjunction with Borrower staff and prepare a comprehensive financing plan for the refunding of the Borrower’s COP issue, including review and testing of revenues, evaluation of cash flows and sizing of the lease issues, recommended maturity schedule, redemption terms, credit enhancement (if available and feasible) and other terms as required.
2. Prepare with Borrower staff, bond and other counsel and other consultants a timetable and schedule of work for the financing plan, including dates of major financing activities, and prepare a bid package for solicitation of interest rates from eligible private placement/limited offering investors.
3. Assist the Borrower in responding to inquiries regarding the financing, and assist support groups of the Borrower respecting inquiries involving the financing plan.
4. Assist the Borrower in controlling costs of issuance from all advisors and parties.
5. N.A. [Prepare, if needed and as applicable, requests for proposals for trustee services, financial printing services and other professionals and assist the Borrower in selecting these contractors and coordinating communications with these contractors.]
6. Assist in preparation of a term sheet, in conjunction with counsel, that fully discloses to buyers of the financing information about the obligations, the source of repayment of the bonds, the nature of any credit supports (if any), the sources and uses of funds, and any other matter material to the buyers of the indebtedness.
7. Perform financial analyses and other marketing advice regarding the financing. Assist the Borrower in developing the factual underpinnings for the issue.
8. Recommend timing of the issue.
9. Assist counsel in organizing the closing, the delivery of the indebtedness in return for payment, and, if applicable, recommend appropriate investments for the proceeds.
10. Work cohesively with Borrower staff and other consultants to ensure completion of a successful financing.
11. Assist the Borrower in arranging investment of the proceeds of the issue.
12. Throughout the contract period make oral and/or written presentations, as needed.

DUTIES OF THE BORROWER

1. The Borrower shall make payment to the Financial Advisor as provided for in this Agreement.
2. The Borrower shall assist the Financial Advisor in providing documents, studies, reports and other information necessary for provision of the financial advisory services.
3. The Borrower will place on the agenda for consideration by the Board of Supervisors those authorizations needed to complete the financing.
4. The Borrower will implement measures to ensure proper security and liquidity for the investor and any credit enhancement party.

TERM AND TERMINATION

This Agreement will commence upon its execution by the parties, and will continue until the Financial Advisor has fully rendered the services with respect to the initial financing and subsequent financings through the end of the Borrower’s contemplated improvements program, and the Borrower has made payment unless sooner terminated. The Borrower may terminate or suspend this Agreement for cause at any time by giving written notice to the Financial Advisor of such termination or suspension and specifying the effective date thereof; at least sixty (60) days before the effective date of such termination or suspension. Notices of termination shall be delivered by certified mail return receipt requested. The Financial Advisor shall be given an opportunity for consultation with the Borrower prior to the effective date of such termination. In the event of termination, all finished or unfinished documents and other materials prepared pursuant to this Agreement shall, at the option of the Borrower, become its property. Upon such termination, Financial Advisor shall meet with the Borrower’s staff and provide it all information developed by Financial Advisor pursuant to this Agreement. The Financial Advisor shall be entitled to receive its hourly rate of $350.00 and actual costs and expenses for work previously performed, set forth in “Duties of Financial Advisor”, for such financing up to the agreed upon amount for such financing.

CONFIDENTIAL INFORMATION

Any report, information or other data prepared or assembled by the Financial Advisor under this Agreement is confidential and shall not be made available to any individual or organization by the Financial Advisor without the prior written approval of the Borrower.

PAYMENT

The Borrower shall pay the Financial Advisor $28,500, all for the performance of the services identified herein entitled “Duties of the Financial Advisor”. The fee shall be earned as services are performed, the fee includes ordinary and necessary expenditures by the Financial Advisor for services it requires in performing its obligations under this Agreement, including computer modeling, travel, and similar expenses. Any extraordinary expenses will be extra and will be chargeable only with the prior consent of the Borrower, not to be unreasonably withheld. To the extent the financing is delayed or negotiations with the financing parties (including any applicable governmental conduits) are prolonged or require more extensive discussions, or to the extent the anticipated scope of work changes or is increased, the Financial Advisor will notify the Borrower of any increase in fees due to such circumstances (based upon time already spent and the estimated time required through settlement), and the parties shall mutually in good faith determine the new fee to be paid. Similarly, the Financial Advisor may request payments in the interim against total amounts owed should the completion of the financing be delayed for a substantially long period due to issues beyond the control of the Financial Advisor.

Any fees for services in evaluating pricing and documentation for other products, such as an interest rate swap (if and to the extent requested or required) will be negotiated separately at the time the determination is made to enter into such products. Fees for additional projects that parties agree to be covered under this Agreement shall also be negotiated at the time the projects are included hereunder.

TIME OF COMPLETION

Time is of the essence in carrying out the terms of this Agreement.
HOLD HARMLESS

The Borrower shall indemnify and hold the Financial Advisor harmless against any and all liability, causes of action, claims, costs, expenses (including reasonable attorney’s fees) or damages resulting from or arising out of or in any way connected with the negligence or willful misconduct of the Borrower or its officers, employees, directors, agents, or independent contractors in performing its obligations hereunder or in providing the information relied upon by the Financial Advisor in structuring the financing.

The Financial Advisor shall indemnify and hold the Borrower harmless against any and all liability, causes of action, claims, costs, expenses (including reasonable attorney’s fees) or damages resulting from or arising out of or in any way connected with the negligence or willful misconduct of the Financial Advisor or its officers, employees, directors, agents, or independent contractors in performing its obligations hereunder or in providing the information relied upon by the Borrower in structuring the financing.

In the event either party brings action against the other to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees and costs whether such action is prosecuted or not. The remedies given to the parties in this paragraph shall be in addition and supplemental to all rights or remedies either may have under law.

PROJECT MANAGEMENT

The Financial Advisor designates Joshua Cooperman as its project manager. The Borrower designates Keith Williams (or his designee) as its project manager.

NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, if to the Financial Advisor: Cooperman Associates, 111 Anza Boulevard, Ste. 107, Burlingame, CA 94010, (650) 619-0007 or (650) 342-2266; (fax) 650-348-7684; email: jgcooperma@aol.com; and if to Borrower: 5100 Bullion Street, Mariposa, CA 95338, (209) 966-3222 or 966-2830, (fax) 209-966-5147, email: rbenson@mariposacounty.org.

IN WITNESS WHEREOF, the Borrower and Financial Advisor have each caused this Agreement to be executed on their respective behalf by their respective duly authorized officers as of the date first written above.

COUNTY OF MARIPosa

By: [Signature]  
Its: Board Chairman

COOPERMAN ASSOCIATES

By: [Signature]  
President

APPROVED AS TO FORM:

[Signature]  
STEVEN W. DAHLEM  
COUNTY COUNSEL