



**PROFESSIONAL SERVICES
AGREEMENT**

By and Between

KEYANALYTICS

and

BEVERLY HILLS UNIFIED SCHOOL DISTRICT

for

Developer Fee Justification Services

THIS AGREEMENT, commencing on August __, 2018, by and between **Beverly Hills Unified School District**, located in the County of Los Angeles, California, a school district duly organized under the laws of the State of California (the "DISTRICT"), and C Financial Investment, Inc., a California corporation d.b.a. **KEYANALYTICS** (the "CONSULTANT").

WITNESSETH

WHEREAS, the DISTRICT has determined it has an immediate and ongoing need for the CONSULTANT to provide the professional consulting services set forth in Section I of this AGREEMENT including the referenced Exhibits attached hereto;

WHEREAS, the DISTRICT and the CONSULTANT have reasonably concluded that the described services herein do not currently constitute municipal advisory services as the term is applied by the SEC and the MSRB to firms acting as an advisor in connection with the analyzing, structuring or advising on matters related to the structuring and/or issuing of municipal securities;

WHEREAS, the CONSULTANT has disclosed that it is specifically not qualified to provide legal or investment advice related to legal matters that impact the use or restrictions of certain funds or the investment of any DISTRICT funds as part of its services hereunder; and

WHEREAS, the services required and described in this AGREEMENT are highly specialized and are not otherwise required by the DISTRICT except during periods when capital facilities are being funded and expended for its School Funding Program ("SFP"), for the ongoing maintenance and compliance related to any resulting municipal issuances, and/or State SFP applications.

NOW, THEREFORE, it is mutually agreed as follows:

The DISTRICT hereby retains the CONSULTANT to perform the services, upon the terms, subject to the conditions, and in consideration of payments as hereinafter set forth.

I. SERVICES TO BE PROVIDED BY CONSULTANT

The CONSULTANT shall perform the services ("Consulting Services") set forth in the statement of work (the "Statement of Work") that is attached as Exhibit A to this AGREEMENT in a diligent manner consistent with the usual and customary professional standards. This AGREEMENT and the Statement of Work shall be referred to herein as the "AGREEMENT".

The CONSULTANT may be directed by the DISTRICT in writing to perform supplemental tasks, analyses, expert testimony or assignments related to the provision of the services ("Special Related Consulting Services") in this AGREEMENT. Such related services are intended to supplement the services as described herein as circumstances may, from time-to-time, require assistance with matters related to but not contemplated by this AGREEMENT.

II. COMPENSATION FOR SERVICES RENDERED

A. FEES

DISTRICT shall pay CONSULTANT a fee computed in accordance with the fee schedule incorporated into in each of the attached Statements of Work ("Fee Schedules") for the Consulting Services rendered.

The DISTRICT agrees to pay and the CONSULTANT agrees to receive as full compensation for the rendering of any Special Related Consulting Services, based on the time and materials expended, at a rate of \$250 per hour plus expenses as described herein.

B. REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES

Unless otherwise stated within the Fee Schedule, CONSULTANT shall be reimbursed for out-of-pocket expenses, which include extraordinary travel expenses, charges for outside services specifically requested by the DISTRICT, filing fees, other printing charges and other like expenditures -- provided that if any individual expense exceeds \$500.00, the CONSULTANT shall obtain the PRIOR WRITTEN APPROVAL of the DISTRICT's superintendent, chief business officer or facility planning representative -- each of whom shall be a DISTRICT employee. The CONSULTANT shall be reimbursed for such expenses upon submitting an itemized statement therefore. These expenses shall be billed no more frequently than quarterly, if incurred, and payable within thirty (30) days of receipt of the CONSULTANT's invoice.

C. INVOICES

Unless otherwise stated within the Fee Schedules, on or about the 15th day following each month during which Consulting Services are rendered hereunder, CONSULTANT shall deliver to DISTRICT an invoice for the Consulting Services performed and the reimbursable expenses incurred in the prior month. All fees and reimbursable expenses shall be payable within thirty (30) days of receipt of the CONSULTANT's invoice.

III. OTHER MATTERS

- A. Severability:** Should any portion of the AGREEMENT be invalidated through legal proceedings; the remaining portions of the AGREEMENT shall remain valid and binding upon both parties;
- B. Sub-consultants:** The CONSULTANT may utilize inputs and data provided by the DISTRICT, DISTRICT consultants, or other third parties retained by the CONSULTANT without or at the direction of the DISTRICT. The CONSULTANT agrees that all payments to such sub-consultants retained by the CONSULTANT shall be the sole responsibility of the CONSULTANT.
- C. Independent Contractor Status:** The CONSULTANT and any and all agents and employees of CONSULTANT shall perform the services required pursuant to this AGREEMENT as an independent contractor, not as officers, employees or agents of the DISTRICT. In providing

the services contemplated by this AGREEMENT, the CONSULTANT shall maintain a professional working relationship with the DISTRICT.

- D. Indemnity:** The CONSULTANT shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents, and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in court action with or in any manner arising out of the CONSULTANT'S performance of, or failure to perform, any of the duties contemplated by this AGREEMENT, unless such failure was caused in whole or in part by a negligent act or omission of the DISTRICT.

The DISTRICT shall indemnify and hold the CONSULTANT, its officers, agents and employees harmless from any and all actions or omissions to act which are the responsibility, in whole, or in part, of the DISTRICT. The obligation to indemnify and hold a party harmless as set forth herein shall include payment of any and all attorney's fees and other expenses which are the subject of such AGREEMENT to indemnify and hold harmless, in addition to any damages actually incurred.

- E. Special Provision for Ongoing Investigations, Litigation and Law Enforcement Related Activities:** The DISTRICT shall compensate the CONSULTANT separately, at its hourly consulting rate, for any ADDITIONAL services made necessary by any external investigation by State, County or Federal authorities of the DISTRICT's utilization of funds and expenditures or CONSULTANT prepared data provided that the investigation does not arise primarily from the activities of the CONSULTANT. The CONSULTANT shall be entitled to recover reasonable legal costs made necessary by its involvement in any such investigations including legal advice related to the preparation of materials to be used in testimony or as evidence in such investigations and legal expenses incurred as a result of proposed or actual legal actions involving the CONSULTANT that are not primarily the result of acts of gross negligence or misconduct of the CONSULTANT.
- F. Taxes:** The CONSULTANT shall be liable and solely responsible for paying all required taxes, including, but not limited to, federal and state income taxes and social security taxes, on all amounts payable to the CONSULTANT. All payments to the CONSULTANT shall be reported to the appropriate State and Federal tax authorities as required.
- G. Amendment:** This AGREEMENT cannot be changed or supplemented orally and may be modified or suspended only by written instrument executed by all parties.
- H. Compliance with Law:** While performing the services contemplated by this AGREEMENT, the CONSULTANT and the DISTRICT agree to comply with all applicable laws and regulations.
- I. Work Records:** All written work products generated by the CONSULTANT, shall be deemed to be the mutual property of the DISTRICT and the CONSULTANT. The DISTRICT's right to documents produced by the CONSULTANT pursuant to this AGREEMENT shall be limited to read-only copies of the work performed and shall not include any ownership

interest, license or possession of any spreadsheets, databases, computer models or data files utilized in preparing the read-only materials.

- J. Entire AGREEMENT:** This AGREEMENT constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral relating to the services to be provided in the AGREEMENT. Prior agreements not directly related to the services to be provided in this AGREEMENT shall remain in full force and effect.
- K. Successors Permitted, Assignment:** This AGREEMENT shall remain valid and binding upon a successor DISTRICT or CONSULTANT in the event that either entity is merged, unified, divided or formed as a successor to either of the two parties to this AGREEMENT.
- L. Execution of the AGREEMENT in Counterparts:** This AGREEMENT may be executed in several counterparts each of which shall be an original. Electronic signatures may be provided to this AGREEMENT or any amendment thereto consistent with the provisions of the California Uniform Electronic Transactions Act.
- M. Initial Term of the AGREEMENT:** The initial term of this AGREEMENT shall be five (5) years beginning on the date of this AGREEMENT.
- N. Renewal of the AGREEMENT:** At the expiration of the initial term, this AGREEMENT shall automatically renew on a month-to-month basis unless otherwise terminated or extended for a longer term by the mutual consent of the parties. Any renewal shall be considered an extension of the original AGREEMENT for the purposes of calculating fees.

Failure to renew the AGREEMENT shall not result in a reduction, cancellation or termination of any fees which have been earned by, but not yet paid to the CONSULTANT during the term of the AGREEMENT, and all such fees shall remain payable pursuant to the AGREEMENT's provisions regarding CONSULTANT's fees for services provided hereunder.

- O. Termination of the AGREEMENT:** This AGREEMENT, after an initial period of three years, may be terminated by either party, with or without cause, upon thirty (30) days written notice of either the DISTRICT or the CONSULTANT. All fees (other than hourly fees that shall be paid on an hourly basis notwithstanding termination) shall be prorated according to the percentage of work completed by the CONSULTANT on the date of DISTRICT termination of other services to be provided under this AGREEMENT, and are due and payable no later than the effective date of termination.
- P. Fee Disputes:** The parties agree to work cooperatively to resolve any, if any fee, disputes that arise during the term of this AGREEMENT. Should such efforts fail to resolve any dispute(s), the parties agree that any legal costs incurred to enforce the terms of this agreement shall be recoverable by the prevailing party.
- Q. Notices:** Except for invoices submitted by the CONSULTANT, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed or sent by electronic transmission to such party at their respective addresses as follows:

If to DISTRICT:

LaTanya KirkCarter Latham
Assistant Superintendent of Business Services
Beverly Hills Unified School District
255 South Lasky Drive
Beverly Hills, CA 90212
Phone: (310) 551-5100 Ext. 2222
lkirk@bhusd.org

If to CONSULTANT:

Mark Epstein
Managing Director,
California Financial Services
412 Humboldt Street
Santa Rosa, CA 95404
Phone: (707) 544-7800
mepstein@calschools.com

All notices shall be effective immediately upon personal delivery or electronic transmission; or on the first business day after delivery to an overnight delivery service, or on the third business day if mailed, postage prepaid

IV. DISPUTE RESOLUTION

THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

- A. All parties to this AGREEMENT are giving up the right to sue each other in court, including the right to a trial by jury, except as provided in the rules of the arbitration forum in which a claim is filed.
- B. Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- C. The ability of the parties to obtain documents, witness statements, and other discovery is generally more limited in arbitration than in court proceedings.
- D. The arbitrators do not have to explain the reasons(s) for their award.
- E. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- F. The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- G. The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this AGREEMENT.

Notwithstanding the foregoing, the arbitration forum rules chosen herein provide for only one arbitrator and for mutual participation by the DISTRICT and CONSULTANT in selecting the arbitrator. Arbitration is generally faster and less expensive than a court proceeding. It also offers the parties the opportunity to select a decision-maker who is knowledgeable with respect to the subject matter of the dispute.

DISTRICT and CONSULTANT shall use good faith efforts to resolve all disputes informally through direct discussions between the DISTRICT REPRESENTATIVE and a representative of the CONSULTANT to be appointed by the CONSULTANT for this purpose.

If the parties cannot resolve their dispute by direct consultation, the dispute shall be referred to mediation through the offices of Judicial Arbitration and Mediation Services (JAMS) at the JAMS office which is geographically most closely located to the chief administrative office of the DISTRICT. The parties shall jointly attempt to agree on a mediator from a list of mediators provided by JAMS but if they cannot so agree, they shall request that JAMS provide the parties with a list of potential mediators containing an odd number of not less than five, and the DISTRICT and the CONSULTANT shall alternatively strike one name from the list with the last remaining name deemed to be the mediator selected by the parties.

If the dispute is not resolved in mediation, the matter shall then be submitted to binding arbitration through JAMS and such arbitration shall be conducted pursuant to the JAMS Streamlined Arbitration Rules & Procedures.

Nothing contained herein shall limit either party from seeking injunctive or equitable relief from a court of competent jurisdiction, provided that such injunctive or equitable relief shall be solely in addition to, and not in substitution for the dispute resolution process otherwise provided herein.

The prevailing party in any arbitration or litigation procedure shall be entitled, in addition to any other relief to an award of reasonable attorney's fees incurred.

IN WITNESS WHEREOF, the DISTRICT has caused these presents to be properly executed and the CONSULTANT has caused these presents to be properly executed, as of the date hereinabove set forth.

BEVERLY HILLS UNIFIED SCHOOL DISTRICT

By: _____

LaTanya KrikCarter Latham
Assistant Superintendent of Business Services

KEYANALYTICS

By: _____

Mark Epstein
Managing Director

EXHIBIT A
STATEMENT OF WORK

DEVELOPMENT IMPACT FEE
JUSTIFICATION SERVICES

STATEMENT OF WORK

DEVELOPMENT IMPACT FEE JUSTIFICATION SERVICES

SERVICES TO BE PROVIDED BY CONSULTANT

CONSULTANT will provide specialized consulting services to prepare a Developer Fee Justification Study covering both Residential and Commercial/Industrial Development ("Study") for the District. The Study will justify statutory school fees for the DISTRICT and identify the full school facilities impacts to be mitigated by these types of development within the DISTRICT. The specific activities to be performed by CONSULTANT include the following:

1. DEVELOPER FEE JUSTIFICATION STUDY PREPARATION SERVICES:

- a. Calculate student generation factors ("SGF") by housing category (i.e., single family detached and multi-family attached) and school level. SGFs will be calculated by comparing student enrollment of the DISTRICT to residential data provided from the County Office of the Assessor ("Assessor").
- b. Review the school facilities capacity of the DISTRICT as reported on SAB Form 50-02 to determine the number of students that can be adequately housed at each school level.
- c. Review development plans and tract maps of jurisdictions (e.g., city or county) served by the DISTRICT, to estimate the number of future residential units by housing category that can be constructed within the School District.
- d. Compare existing enrollment to facilities capacity, by school level, to determine whether any surplus seats exist to house students generated from future residential units.
- e. Project the number of students to be generated by housing category and school level from future residential units within the School District.
- f. Estimate the number and type of school facilities by school level that will need to be constructed or expanded by the School District based on the projected enrollment and the capacity of existing school facilities.
- g. Reviewing and analyzing documents of the DISTRICT to estimate the cost of constructing or expanding the school facilities identified. If the DISTRICT cannot provide sufficient cost information regarding the construction or expansion of school facilities, costs will be estimated using the square footage and cost allowances established by the OPSC.
- h. Estimate the "actual" school facilities impact per unit and square foot of residential floor space by each housing category. Confirm that the "actual" school facilities impacts per square foot of residential floor space exceeds the new Residential School Fee for a housing category.

- i. Estimate the employment generation rates per building square foot and per gross acre by commercial/industrial building and the employee migration factor for the DISTRICT utilizing prior studies prepared for the DISTRICT and/or data provided by the San Diego Association of Governments ("SANDAG") and the Bureau of the Census. Estimate the current number of workers per household within the DISTRICT (if possible, by commercial/industrial building) based on current housing and employment estimates by state and county agencies, supplemented by the Census and other available data. Project the number of new "local households" that will locate within the DISTRICT as a direct result of commercial/industrial development within the DISTRICT adjusting for new housing units.
- j. Estimate student enrollment increases for each commercial/industrial building, based on SGFs and the local household impacts per commercial/industrial building unit.
- k. Estimate additional student enrollment increases for each commercial/industrial building based on: (i) employment-related inter-district transfer rates and (ii) estimated student enrollment increases per commercial/industrial building.
- l. Estimate the "actual" school facilities impact per square foot of commercial/industrial floor space for commercial/industrial building. Confirm that the "actual" school facilities impacts per square foot of commercial/industrial floor space for commercial/industrial building are less than the difference between the average "actual" school facilities as a result of the development of a residential unit and the estimated Residential School Fees for such unit.
- m. Prepare draft and finals version of a report presenting the findings of the Study. Final versions of the report can be provided in PDF format, in addition to bound copies.

FEE SCHEDULE

The DISTRICT agrees to pay and the CONSULTANT agrees to receive as full compensation for the rendering of the Development Impact Fee Justification Services, as described above, the following amounts:

1. **DEVELOPER FEE JUSTIFICATION STUDY PREPARATION SERVICES:** The DISTRICT agrees to pay and the CONSULTANT agrees to receive as full compensation for the rendering of Developer Fee Study Preparation Services, as described above, a fixed fee of \$8,500 inclusive of all ordinary expenses. Ordinary expenses shall include expenses associated with (i) the acquisition of data required to prepare the Study and (ii) CONSULTANT'S attendance at the board meeting where the Study is approved.

MSRB G-42

CLIENT DISCLOSURE

Potential Conflicts of Interest

This AGREEMENT includes OPTIONAL Consulting Services to be provided at an hourly rate of \$250 for each of the CONSULTANT'S professional staff members. In order for the CONSULTANT to provide any consulting services that might be deemed "*municipal advisory*" services, the Municipal Securities Rulemaking Board requires us, before acting as your municipal advisor, to provide written disclosure to you about the actual or potential conflicts of interest presented by various forms of compensation. We believe we are obligated to provide this disclosure unless you have required that a particular form of compensation be used. After considering these potential conflicts, the DISTRICT should select a form of compensation that best meets its needs and the agreed upon scope of Optional Consulting Services.

Forms of compensation; potential conflicts. The forms of compensation for municipal advisors vary according to the nature of the engagement and requirements of the client, among other factors. Various forms of compensation present actual or potential conflicts because they may create an incentive for an advisor to recommend one course of action over another if it is more beneficial to the advisor to do so. This document discusses various forms of compensation and the timing of payments to the advisor.

Fixed fee. Under a fixed fee form of compensation, the municipal advisor is paid a fixed amount at the outset of the transaction. The amount is usually based upon an analysis by the client and the advisor of, among other things, the expected duration and complexity of the transaction and the agreed-upon scope of work that the advisor will perform. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the advisor may suffer a loss. Thus, the advisor may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. There may be additional conflicts of interest if the municipal advisor's fee is contingent upon the successful completion of a financing, as described below.

Hourly fee. Under an hourly fee form of compensation, the municipal advisor is paid an amount equal to the number of hours worked by the advisor times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if the client and the advisor do not agree on a reasonable maximum amount at the outset of the engagement, because the advisor does not have a financial incentive to recommend alternatives that would result in fewer hours worked. In some cases, an hourly fee may be applied against a retainer (e.g. a retainer payable monthly), in which case it is payable whether or not a financing closes. Alternatively, it may be contingent upon the successful completion of a financing, in which case there may be additional conflicts of interest, as described below.

Fee contingent upon the completion of a financing or other transaction. Under a contingent fee form of compensation, payment of an advisor's fee is dependent upon the successful completion of a financing or other transaction. Although this form of compensation may be customary for the client, it presents a conflict because the advisor may have an incentive to recommend the unnecessary financings or financings that are disadvantageous to the client. For example, when facts or circumstances arise that could cause the financing or other transaction to be delayed or fail to close, an advisor may have an incentive to discourage a full consideration of such facts and circumstances, or to discourage consideration of alternatives that may result in the cancellation of the financing or other transaction.

Fee paid under a retainer agreement. Under a retainer agreement, fees are paid to a municipal advisor periodically (e.g. monthly) and are not contingent upon the completion of a financing or other transaction. Fees paid under a retainer agreement may be calculated on a fixed fee basis (e.g., a fixed fee per month regardless of the number of hours worked) or an hourly basis (e.g. a minimum monthly payment with additional amounts payable if a certain number of hours worked is exceeded). A retainer agreement does not present the conflicts associated with a contingent fee arrangement (described above).

Fee based upon a principal or notional amount and term of transaction. Under this form of compensation, the municipal advisor's fee is based upon a percentage of the principal amount of an issue of securities (e.g. bonds) or, in the case of a derivative, the present value of or notional amount and term of the derivative. For other services, the fee may be based on project size or funds being tracked with accounting and compliance services and software. This form of compensation presents a conflict of interest because the advisor may have an incentive to advise the client to increase the size of the securities issue or scope of funds being monitored or modify the derivative for the purpose of increasing the advisors' compensation.

Acknowledgement

The undersigned hereby acknowledges that he/she has received this disclosure and that he/she has been given the opportunity to request an additional copy of the contract for review, if needed, as well as raise questions and discuss the foregoing matters with the District's counsel or other advisors.

Beverly Hills Unified School District

LaTanya KirkCarter Latham
Assistant Superintendent of Business Services

Date