

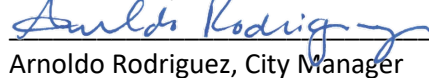


REPORT TO CITY COUNCIL AND MADERA PUBLIC FINANCING AUTHORITY

Approved by:



Susan O'Haro, Interim Director of Financial Services



Arnaldo Rodriguez, City Manager

Council Meeting of: August 21, 2019

Agenda Number: C-1

SUBJECT:

Consideration of a Joint Resolution of the City Council of the City of Madera and the Madera Public Financing Authority Approving an Agreement with Del Rio Advisors, LLC, for Municipal Advisor Services Related to the Financing of Energy Projects

RECOMMENDATION:

Staff recommends the City Council (Council) adopt the joint resolution approving an agreement with Del Rio Advisors, LLC for professional services on behalf of the City as Municipal Advisor related to the potential financing of renewable energy and energy conservation improvements throughout the City and authorizing the Mayor to execute the Agreement.

SUMMARY:

The City has been considering the installation of various renewable energy and energy conservation improvements throughout the City and has been working with the Engie Group to identify the scope of energy projects to be implemented. To move forward with the energy projects, the City will need to secure financing. The first step in the financing portion of this project is to secure a Municipal Advisor to assist the City in evaluating financing alternatives and solicitation of other necessary financing team members. Staff is recommending the City engage the services of Mr. Kenneth L. Dieker of Del Rio Advisors, LLC, based on his expertise as well as the City's prior experience with Mr. Dieker.

DISCUSSION:

Mr. Kenneth L. Dieker of Del Rio Advisors, LLC served as the Municipal Advisor when the City of Madera refinanced its Wastewater/Water Bonds in 2015, assisted the City on the refinancing of certain leases for the golf course and police station, and assisted the City on the refinancing of the bonds for CFD 2006-1. Mr. Dieker also worked to refinance all the bonds of the Successor Agency and most recently assisted the City on the financing of a new fire station through the issuance of lease revenue bonds. Based on the City's prior positive experiences with Mr. Dieker,

staff is recommending engaging Mr. Dieker to pursue financing options for the energy improvements project. Per the proposed agreement, Mr. Dieker would provide professional services as follows:

- Seek fee proposals from placement agent and bond counsel firms
- Review all proposals and make recommendations to the City for team selection
- Either create or actively participate in the development of a sound financial plan
- Determine the most cost-effective way to carry out the plan that is being considered including recommending innovative alternatives
- If requested, take primary responsibility for all quantitative analysis related to the project including: sources and uses of funds, debt service schedules, yield calculations, savings calculations, etc.
- Assist with development of a term sheet for distribution to potential lenders
- Review the term sheet results and make recommendations to the City/Authority regarding lender selection
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, placement agent, trustee, etc. with respect to the preparation and approval of the financing documents
- Review and comment on all documents
- Attend all meetings and present materials as needed
- Prepare detailed costs of issuance
- Review and coordinate the approval of all legal documents
- Perform any other tasks or projects, as required

Mr. Dieker is recommending a Direct Placement for the financing of this project. The proposed agreement includes a capped fee range depending on the total amount financed through this method. In addition to the flat fee, the City will also be responsible for reimbursable expenses such as mileage, hotels, photocopying, etc., up to a not-to-exceed cap of \$750.

Table 1. Direct Placement Fee Schedule

Amount Financed		Fee*
Low	High	
\$0	\$5,000,000	\$17,500
\$5,000,001	\$10,000,000	\$27,500
\$10,000,001	\$20,000,000	\$37,500
\$20,000,001	>\$20,000,001	\$47,500
*Plus up to \$750 for normal reimbursable expenses		

A direct placement is the sale of securities to commercial banks or other financing institutions that work in the municipal market. A direct placement is recommended since the City will need to lease the equipment and improvements from the energy projects and not other essential assets of the City. A public offering would require the City to lease essential assets much like the structures used to finance the new fire station where the leased assets were Fire Station 57 and the Police Administration Building.

As the energy improvements project and financing thereof moves forward, staff and/or the Municipal Advisor will bring any additional items requiring Council's direction or approval for consideration at a scheduled meeting of the Council.

FINANCIAL IMPACT:

The cost of the improvements is estimated to range from \$18 million to \$20 million based on the current project scope. Based on this issue size, the fee of the Municipal Advisor would be \$37,500 with capped expenses not-to exceed \$750. Of note, the fee of the Municipal Advisor is contingent on the successful sale and closing of the transaction. If the transaction does not close, there would be nothing due to the Municipal Advisor including expenses.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The presentation of this item is consistent with Strategy 115 of the Vision Plan - Economic Resource Provision: Ensure sufficient economic resources to provide adequate City services and prepare for future growth.

ALTERNATIVES:

Council could direct staff to seek a different provider for role of Municipal Advisor.

ATTACHMENTS:

1. Resolution
2. Exhibit 1 to Resolution: Proposed agreement for services

RESOLUTION NO. _____

MPFA RESOLUTION NO. _____

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA AND
THE MADERA PUBLIC FINANCING AUTHORITY APPROVING AN
AGREEMENT WITH DEL RIO ADVISORS, LLC, AND
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Madera (City) is considering various renewable and energy conservation projects throughout the City; and

WHEREAS, the City will consider the need to finance the energy improvements; and

WHEREAS, the City would like to obtain Municipal Advisor services to evaluate the financing alternatives; and

WHEREAS, Del Rio Advisors, LLC has completed several successful transactions with the City, the Madera Public Financing Authority, and the Successor Agency as Municipal Advisor; and

WHEREAS, an agreement has been prepared for Del Rio Advisors, LLC, to serve as Municipal Advisor for the financing of the energy improvements project; and

WHEREAS, the agreement is in the best interests of the City, the Madera Public Financing Authority, and Del Rio Advisors, LLC.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA AND THE MADERA PUBLIC FINANCING AUTHORITY do hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The agreement with Del Rio Advisors, LLC, attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

AGREEMENT FOR MUNICIPAL ADVISORY SERVICES

This contract ("AGREEMENT") is between the City of Madera and any joint powers agency used to assist the city in the issuance of obligations ("CITY/AUTHORITY") and Del Rio Advisors, LLC ("CONSULTANT").

RECITALS

- A. City requires the services of CONSULTANT to act as Municipal Advisor related to the City of Madera / Madera Public Financing Authority (Energy Project Financing)
- B. CONSULTANT possesses distinct professional skills necessary to perform the services described in AGREEMENT
- C. CONSULTANT will work with other members of the Finance Team to facilitate and complete the assignment contemplated herein.

NOW, THEREFORE, CITY/AUTHORITY and CONSULTANT agree as follows:

1. Scope of Services:

CONSULTANT shall make all reasonable efforts to complete the tasks described below, in a timely manner.

□

- Seek fee proposals from placement agent and bond counsel firms
- Review all proposals and make recommendations to the City for team selection
- Either create or actively participate in the development of a sound financial plan
- Determine the most cost-effective way to carry out the plan that is being considered including recommending innovative alternatives
- If requested, take primary responsibility for all quantitative analysis related to the project including: sources and uses of funds, debt service schedules, yield calculations, savings calculations, etc.
- Assist with development of a term sheet for distribution to potential lenders
- Review the term sheet results and make recommendations to the City/Authority regarding lender selection
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, placement agent, trustee, etc. with respect to the preparation and approval of the financing documents
- Review and comment on all documents ⁽¹⁾
- Attend all meetings and present materials as needed
- Prepare detailed costs of issuance
- Review and coordinate the approval of all legal documents ⁽¹⁾
- Perform any other tasks or projects, as required

This list may be amended at any time as agreed to in writing between the Consultant and the City/Authority.

NOTE: CONSULTANT will review and comment on all documents and assist in preparing any documents necessary for the sale of a new issue or reoffering of municipal securities, including the term sheet, official statement, offering memorandum or similar disclosure documents. However, besides tables or charts specifically prepared by Del Rio Advisors, LLC and footnoted as such, Del Rio Advisors, LLC takes no responsibility for the accuracy or completeness of any of the data contained therein as provided by others including the City/Authority. Del Rio Advisors, LLC may rely upon data provided by others in the preparation of tables and charts and takes no responsibility for the accuracy or completeness of the data provided.

2. Assignment:

CONSULTANT shall not assign AGREEMENT or any portion of it without the express written approval of the CITY/AUTHORITY.

3. Term:

CONSULTANT shall be ready and able to begin to perform services required by AGREEMENT immediately upon its execution and shall perform such services diligently until AGREEMENT terminates.

The commencement date of the AGREEMENT is the execution date as indicated on the signature page of this AGREEMENT and the end date is the earlier of termination by either party or December 31, 2020.

4. Termination:

This AGREEMENT may be terminated by either party with 30 days written notice delivered by registered mail to the other party. If terminated, City/Authority will pay any standard reimbursable expenses accrued to date.

5. Confidentiality:

CONSULTANT shall not disclose or make use of confidential or proprietary information or knowledge that may be disclosed to him, directly or indirectly, in the course of any performance under AGREEMENT. This Section survives termination of AGREEMENT.

6. Payment and Expenses:

CONSULTANT proposes a fee schedule for Direct Placement contingent upon successful closing of the transaction and based upon a range of final issue size. If one or more series are offered simultaneously, the sum of all series issue sizes will be used to determine the fee. Normal reimbursable expenses will be capped at \$750.00

Direct Placement Fee Schedule

Low	High	Fee (*)
\$0	\$5,000,000	\$17,500
\$5,000,001	\$10,000,000	\$27,500
\$10,000,001	\$20,000,000	\$37,500
>\$20,000,001		\$47,500

(*) Add to this figure up to a "not-to-exceed" \$750 for normal reimbursable expenses.

Reimbursable expenses would include normal items such as mileage, hotels, conference calls, photocopying, etc.

Payments prescribed in AGREEMENT shall constitute all compensation to CONSULTANT for all costs of its services. CONSULTANT shall be solely responsible for any payment of its insurance, taxes and all other expenses incurred in connection with the project.

CONSULTANT shall invoice CITY/AUTHORITY upon the successful closing of the financing. CITY/AUTHORITY shall pay CONSULTANT, from costs of issuance, in an expedient manner in accordance with normal payment procedures.

CONSULTANT'S charges will not include reimbursement to other agents, representatives or consultants.

7. CONSULTANT'S Responsibility:

It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed and that CITY/AUTHORITY relies upon the professional skills of the CONSULTANT to do and perform its work in a skillful and professional manner.

It is further understood and agreed that the CONSULTANT has reviewed the scope of work to be performed and that the CONSULTANT agrees in their professional judgment said work can and shall be completed at the rate set forth in AGREEMENT.

CONSULTANT shall maintain records and documents related to the performance of AGREEMENT, and shall allow CITY/AUTHORITY access to such records, upon request, for a period of five (5) years from the date of AGREEMENT's termination. CONSULTANT shall provide copies of these records and documents when requested by CITY/AUTHORITY.

8. Insurance Requirements:

Without limiting CONSULTANT's indemnification of CITY/AUTHORITY, and prior to commencement of Work, CONSULTANT shall obtain, provide, and continuously

maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Subconsultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the CITY/AUTHORITY.

Minimum Scope and Limits of Insurance

Consultant shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the CITY/AUTHORITY and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the CITY/AUTHORITY and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Worker's Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Consultant shall submit to the CITY/AUTHORITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the CITY/AUTHORITY, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim and in the aggregate. CONSULTANT shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

Maintenance of Coverage

Consultant shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, its agents, representatives, employees, subcontractors or subconsultants as specified in this Agreement.

Proof of Insurance

CONSULTANT shall provide to the CITY/AUTHORITY certificates of insurance and

endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the CITY/AUTHORITY prior to commencement of performance. Current evidence of insurance shall be kept on file with the CITY/AUTHORITY at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the CITY/AUTHORITY, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the CITY/AUTHORITY and shall require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

Enforcement of Contract Provisions (non estoppel)

CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY/AUTHORITY, nor does it waive any rights hereunder.

Specifications not Limiting

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If CONSULTANT maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by CONSULTANT.

Notice of Cancellation

Consultant agrees to oblige its insurance agent or broker and insurers to provide to the CITY/AUTHORITY with thirty (30) calendar days notice of cancellation (except for

nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions

Any self-insured retentions must be declared to and approved by the CITY/AUTHORITY. The CITY/AUTHORITY reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the CITY/AUTHORITY/S Risk Manager.

Timely Notice of Claims

CONSULTANT shall give the CITY/AUTHORITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT'S performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance

CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.

9. Indemnity:

CONSULTANT shall indemnify, defend, and hold harmless the City and Authority, and its officers, employees, and agents ("City indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the CONSULTANT'S performance of its obligations under this agreement or out of the operations conducted by CONSULTANT'S, including the CITY/AUTHORITY'S active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the CITY/AUTHORITY. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from consultant's performance of this agreement, the CONSULTANT shall provide a defense to the City indemnitees, or at the CITY/AUTHORITY'S option, reimburse the City indemnitees their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

10. Notices:

Any notice required or permitted under the terms of AGREEMENT shall be effective upon receipt in writing either by personal service upon the authorized agent of CITY/AUTHORITY or upon CONSULTANT, respectively, or by mailing the notice via U.S. Mail to:

To CITY/AUTHORITY at:

CITY OF MADERA
CITY MANAGER
205 W. 4th STREET
MADERA, CA 93637

To CONSULTANT at:

DEL RIO ADVISORS, LLC
KENNETH L. DIEKER
PRINCIPAL
1325 COUNTRY CLUB DRIVE
MODESTO, CA 95356

11. Non Waiver:

The failure of CITY/AUTHORITY or CONSULTANT to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition or prevent a subsequent similar act from again constituting a violation of such term or condition.

12. Severability:

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

13. Attorney Fees/Costs:

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

14. Governing Law:

The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Madera County, California.

15. Entire Agreement/Amendment:

This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior contemporaneous understanding or agreement with respect to the services contemplated and may be amended only by a written amendment executed by both parties to the Agreement.

This Agreement is entered into as of _____, 2019.

DEL RIO ADVISORS, LLC

By: _____
Kenneth L. Dieker, Principal

CITY OF MADERA

By: _____
Andrew J. Medellin, Mayor

Attest:

By: _____
Claudia Mendoza, Interim City Clerk

Approved as to form:

By: _____
Hilda Cantú Montoy, City Attorney