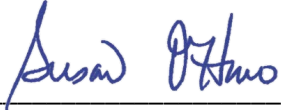
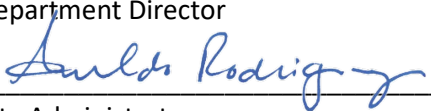


## REPORT TO CITY COUNCIL AND REPORT TO THE MADERA PUBLIC FINANCING AUTHORITY

**Approved by:**



Department Director



City Administrator

**Council Meeting of:** October 2, 2019

**Agenda Number:** C-3

**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 Water Revenue Refunding Bonds, Series 2019 and Authorizing the Mayor to Execute the Agreement.

**RECOMMENDATION:**

Staff recommends that the City Council adopt a joint resolution approving an agreement with Del Rio Advisors, LLC (“Municipal Advisor”) for professional services on behalf of the City as Municipal Advisor related to the potential refunding (refinancing) of the Water Revenue Bonds issued in 2010 and authorizing the Mayor to execute the agreement.

**DISCUSSION:**

Water Revenue Refunding Bonds, Series 2010 (“2010 Bonds”) were issued in 2010 for the purpose of financing various capital improvements to the City’s water system. Under current market conditions, there are significant savings to be realized by refunding the 2010 Bonds. Based on current market interest rates as of August 2019, the estimated annual savings to the water fund would be approximately \$170,000 per year. Rule changes passed as part of the Tax Cuts and Jobs Act of 2017 dictate when these types of bonds can be refunded. The 2010 Bonds cannot be called until within 90 days of March 1, 2020 meaning any bonds issued to refund the 2010 Bonds cannot close before December 1, 2019. The first important step in pursuing potential financing is the selection of a Municipal Advisor. The Municipal Advisor provides professional services assisting staff in evaluating financing alternatives taking into consideration current bond market conditions and assists staff in soliciting services from other necessary team members

including placement agent and bond counsel. Mr. Ken Dieker of Del Rio Advisors, LLC has served as Municipal Advisor for the City on several recent financial transactions. Based on the City's prior positive experiences with Mr. Dieker, staff is recommending engaging Mr. Dieker to pursue financing options for the refinancing of the 2010 Bonds. Per the proposed agreement, Mr. Dieker would provide professional services as follows:

- Seek fee proposals from qualified firms to act as Bond Counsel, Disclosure Counsel or both
- Seek an Underwriting and Placement Agent proposal from Hilltop Securities as the preferred Underwriter/Placement Agent
- Review the various fee proposals and make recommendations
- 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 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.
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, disclosure counsel, underwriter/placement agent, trustee, etc. with respect to the preparation and approval of the financing documents
- Review and comment on all documents <sup>(1)</sup>
- Attend all meetings and present materials as needed
- Coordinate and review comprehensive presentations to the rating agencies and bond issuers
- Prepare detailed costs of issuance and, if public sale, recommend a gross spread level
- If public sale, undertake pre-pricing analysis prior to sale; advise the issuer and help in the negotiation with respect to pricing on the day of sale
- Coordinate the approval, delivery and printing of all legal documents, closing certificates and, if required, the final official statement <sup>(1)</sup>
- Perform any other tasks or projects, as required

The Municipal Advisor's fees are done on a "per deal" basis and are contingent upon the successful completion of a bond transaction. So, if no financing takes place, the Municipal Advisor does not charge the City for his services. The Municipal Advisor's fee ranges from \$27,500 for a Direct Placement or \$42,500 for a Public Offering as well as reimbursable expenses not to exceed \$750.00. The type of transaction will be decided as data is analyzed, and it is determined which placement type is in the best interest of the City/Authority.

#### **FINANCIAL IMPACT:**

Based on market interest rates of August 28, 2019, the estimated annual savings to the water fund are approximately \$170,000 per year. In addition, the net present value savings percentage is estimated at over 28% far exceeding the normal guideline for savings needing to exceed 3-5% to make a refinancing worthwhile. In addition, the fees and expenses of the Municipal Advisor are fully contingent upon successful closing of the transaction.

**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. It is also in line with funding core services as articulated by the Vision Madera 2025 Plan.

**ALTERNATIVES:**

- 1) Council could direct staff to seek a difference provider for the role of Municipal Advisor;
- 2) Council could decide not to proceed with refinancing the 2010 Bonds.

**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 FOR MUNICIPAL ADVISOR SERVICES RELATED TO THE WATER REVENUE REFUNDING BONDS, SERIES 2019 AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT**

**WHEREAS**, staff is always seeking opportunities to generate savings by refunding outstanding bonds; and

**WHEREAS**, the City has identified an outstanding bond issue that could potentially be refunded for significant savings; 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**, the City of Madera and the Madera Public Financing Authority would like to retain Municipal Advisor services to refund the Madera Public Financing Authority, Water Revenue Bond, Series 2010; and

**WHEREAS**, Del Rio Advisors, LLC has agreed to provide Municipal Advisor services for a capped fee of \$42,500, if the preferred sale type is a public offering, and \$27,500, if the preferred sale type is a direct placement as well as standard expenses not the exceed \$750.00. All the fees and expenses are contingent upon successful closing of the transaction; and

**WHEREAS**, City staff and the Municipal Advisor will bring agreements for the services of other financing professionals and the financing alternatives back to the City Council for review and possible approval;

**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. The 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. CLIENT requires the services of CONSULTANT to act as Municipal Advisor related to the following:

**City of Madera / Madera Public Financing Authority**  
**Water Revenue Refunding Bonds, Series 2019**

- 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, CLIENT and CONSULTANT agree as follows:

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

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.

CONSULTANT shall maintain records and documents related to the performance of AGREEMENT, and shall allow CLIENT 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 CLIENT.

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

1. Scope of Services:

CONSULTANT shall:

- Seek fee proposals from qualified firms to act as Bond Counsel, Disclosure Counsel or both
- Seek an Underwriting and Placement Agent proposal from Hilltop Securities as the preferred Underwriter/Placement Agent
- Review the various fee proposals and make recommendations

- 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 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.
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, disclosure counsel, underwriter/placement agent, trustee, etc. with respect to the preparation and approval of the financing documents
- Review and comment on all documents <sup>(1)</sup>
- Attend all meetings and present materials as needed
- Coordinate and review comprehensive presentations to the rating agencies and bond issuers
- Prepare detailed costs of issuance and, if public sale, recommend a gross spread level
- If public sale, undertake pre-pricing analysis prior to sale; advise the issuer and help in the negotiation with respect to pricing on the day of sale
- Coordinate the approval, delivery and printing of all legal documents, closing certificates and, if required, the final official statement <sup>(1)</sup>
- 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:

- (1) Del Rio Advisors 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 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 CLIENT.

3. Term:

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, 2021.

## 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 one of two issuance options: Public Offering or Direct Placement. As listed in each section below, both sale type options are contingent upon successful closing of the transaction and are 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

**Option One-Public Offering****Public Offering**

<b>Low</b>	<b>High</b>	<b>Fee (*)</b>
\$0	\$5,000,000	\$32,500
\$5,000,001	\$10,000,000	\$42,500
\$10,000,001	\$20,000,000	\$52,500
\$20,000,001	\$50,000,000	\$62,500
>50,000,000		\$72,500

**Option Two – Direct Placement****Direct Placement**

<b>Low</b>	<b>High</b>	<b>Fee (*)</b>
\$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	\$50,000,000	\$47,500
>\$50,000,000		\$57,500

(\*) 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 CLIENT upon the successful closing of the financing. CLIENT shall pay CONSULTANT, from costs of issuance, in an expedient manner in accordance with normal payment procedures.

7. CONSULTANT'S Responsibility:

It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed and that CLIENT 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.

8. Insurance Requirements:

Without limiting CONSULTANT's indemnification of CLIENT, 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.

*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 CLIENT 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 CLIENT 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 CLIENT, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the CLIENT, 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. The cost of such insurance shall be included in Consultant's bid.

#### *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 CLIENT 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 CLIENT prior to commencement of performance. Current evidence of insurance shall be kept on file with the CLIENT 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 CLIENT, 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 CLIENT 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 CLIENT, 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 CLIENT 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 CLIENT. The CLIENT 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 CLIENT's Risk Manager.

#### *Timely Notice of Claims*

Consultant shall give the CLIENT 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:

Contractor shall indemnify, defend, and hold harmless the City, 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 Contractor's performance of its obligations under this agreement or out of the operations conducted by Contractor, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Contractor's performance of this agreement, the Contractor shall provide a defense to the City indemnitees, or at the City'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 CLIENT or upon CONSULTANT, respectively, or by mailing the notice via U.S. Mail to:

To CLIENT 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 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: \_\_\_\_\_  
Alicia Gonzales, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Hilda Montoy, City Attorney