



REPORT TO CITY COUNCIL, MADERA PUBLIC FINANCING AUTHORITY AND MADERA SUCCESSOR AGENCY

Approved by:



Roger Sanchez, Director of Financial Services



Arnaldo Rodriguez, City Manager

Council Meeting of: August 4, 2021

Agenda Number: B-11

SUBJECT:

Consulting Services Agreement with Hawkins Delafield & Wood LLP

RECOMMENDATION:

Adopt a resolution approving an Agreement between the City, Madera Public Financing Authority, Successor Agency, and Hawkins Delafield & Wood LLP to Prepare the Arbitrage Analysis Rebate Reports for the Fiscal Years (FY) 2021/22 through 2021/24

SUMMARY:

The City of Madera (City), Madera Public Financing Authority (Authority), and Madera Successor Agency (Agency) have five outstanding tax-exempt bonds that require that the earnings on the bond funds held by the trustee be analyzed periodically to determine whether the earnings have exceeded the Internal Revenue Service (IRS) rules' threshold. If the City bond earnings exceed the IRS earnings rules, the City may be required to pay back a portion of those earnings to the IRS. The arbitrage analysis reports measure the earnings and identify any potential liability the City, Authority, and/or Agency may have.

DISCUSSION:

The City, through a Joint Powers Agreement (JPA) with the Authority, has issued three (3) bonds, the City has issued one (1) special tax bond, and the Agency has one (1) tax allocation bond, all of which require arbitrage calculations be completed on a periodic basis. The following is a table of the relevant outstanding bonds and arbitrage reporting requirements.

Table 1: Outstanding Bonds Requiring Arbitrage Analysis Reports

<i>Bond Issue</i>	<i>Amount of Original Issue</i>	<i>Report Frequency</i>
2019 Lease Revenue Bond – Fire Station (City/Authority)	\$4,005,000	Annual
2019 Water Refunding Bond (City/Authority)	\$9,016,903	5 years
2015 Water/Wastewater Refunding Bonds (City/Authority)	\$30,140,000	Annual
2018A Successor Agency Tax Allocation Bonds (Agency)	\$31,140,000	Annual
2018 Community Facilities District 2006-1 (City)	\$2,452,228	5 years

Arbitrage is earned when the proceeds of a tax-exempt bond issue are used to acquire investments that earn a yield in excess of the bond yield (or arbitrage yield), the average yield issuers pay to their bondholders. Liabilities are measured by computing the excess amount earned on investments over the amount that would have been earned if the proceeds were invested at the bond yield. Unless the issuer can apply an exception or exemption to the arbitrage rebate and yield restriction requirements, excess earnings must be rebated to the IRS.

BNY Mellon, the trustee for the City's bonds, currently prepares the City's arbitrage rebate analysis reports. However, BNY is eliminating their arbitrage department and will no longer provide these services. The City paid BNY \$1,500 per report for the last several years.

A Request for Quote (RFQ) was sent out on June 10, 2021 to five (5) consultants and posted on the City's website. The City received 6 responses, with estimated fees quoted as follows:

Table 2: Responding Consultants and Estimated Fee Quote for Services

<i>Consultant</i>	<i>Quote – 5 year total</i>	<i>Ranking</i>
Hawkins, Delafield & Wood	\$20,950	1
BLX Group, LLC	\$26,400	2
Hilltop Securities	\$27,750	3
Kutak Rock, Attorneys at Law	\$28,250	4
PFM Asset Management	\$29,500	5
Arbitrage Compliance Specialist	\$11,350	6

Staff recommends Hawkins Delafield & Wood LLP (Hawkins) as the consultant to prepare the City's arbitrage reports for the City's bond issuances. Hawkins provided a comprehensive proposal, detailing the firm's process for analyzing and preparing the reports. They are a nationwide law firm with extensive experience in municipal bond debt and a leading bond counsel firm. As a national law firm, Hawkins has access to attorneys and CPAs with relevant tax and municipal bond expertise.

The City received several proposals that were competitive with similar resources and expertise. However, Hawkins provided a comprehensive proposal with a competitive cost. Additionally,

they have programs to train clients on post-issuance compliance, which is designed to assist municipalities maintain compliance with the IRS regulations.

FINANCIAL IMPACT:

The estimated fees, which include some additional funding for potential analysis and legal work, are funded by the Fund/Org in which the subject bond is accounted and paid for, as follows:

Table 3: Budget/Fund Appropriation: 07/01/21-22 through 07/01/25-26 (5 years)		
<i>Bond Issue</i>	<i>Fund</i>	<i>Amount</i>
2019 Lease Revenue Bond – Fire Station (City/Authority)	Measure K	\$8,000
2019 Water Refunding Bond (City/Authority)	Water	\$3,000
2015 Water/Wastewater Refunding Bonds (City/Authority)	Water and Sewer	\$4,000 \$4,000
2018A Successor Agency Tax Allocation Bonds (Agency)	Successor Agency	\$8,000
2018 Community Facilities District 2006-1 (City)	CFD 2006-1	\$3,000
Total Contract Amount for 5 Years		\$30,000

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval 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 may direct staff to award an agreement to a different firm or to provide additional information and continue the item to a future meeting.

ATTACHMENTS:

1. Resolution
 - a. Consulting Services Agreement with Hawkins Delafield & Wood LLP

RESOLUTION NO. _____
MPFA RES. NO. _____
SA RES. NO. _____

JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, MADERA PUBLIC FINANCING AUTHORITY AND SUCCESSOR AGENCY APPROVING AN AGREEMENT WITH HAWKINS DELAFIELD & WOOD LLP TO PREPARE THE ARBITRAGE ANALYSIS REBATE REPORTS FOR CITY, THE PUBLIC FINANCING AUTHORITY AND THE SUCCESSOR AGENCY FOR THE FISCAL YEARS (FY) 2021/22 THROUGH FY 2023/24

WHEREAS, the City of Madera, the Public Financing Authority and the Successor Agency have a responsibility to monitor the earnings on the proceeds of certain tax-exempt bonds and calculate arbitrage rebate liability; and

WHEREAS, the firm of Hawkins Delafield & Wood LLP engaged in a competitive Request for Quotes from firms who conduct such services; and

WHEREAS, the firm of Hawkins Delafield & Wood LLP submitted a quote and was ranked number 1 in the review process; and

WHEREAS, Hawkins Delafield & Wood LLP has considerable experience in preparing arbitrage analysis rebate reports; and

WHEREAS, the prices proposed for services as indicated in the agreement from Hawkins Delafield & Wood LLP are found to be fair and reasonable.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA AND THE BOARD OF DIRECTORS OF THE PUBLIC FINANCING AUTHORITY AND SUCCESSOR AGENCY does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. The Agreement between the City of Madera, Madera Public Financing Authority and Successor Agency and Hawkins Delafield & Wood LLP in an amount not to exceed a total of \$30,000 for five (5) years, a copy of which is attached to this resolution and incorporated by reference, is hereby approved.
3. The Mayor is hereby authorized to execute the Agreement with Hawkins Delafield & Wood LLP.
4. The resolution is effective immediately upon adoption.

AGREEMENT
FOR CONSULTING SERVICES BETWEEN THE CITY OF MADERA, MADERA PUBLIC FINANCING
AUTHORITY, CITY OF MADERA SUCCESSOR AGENCY AND HAWKINS DELAFIELD & WOOD LLP TO
PREPARE THE ARBITRAGE REBATE ANALYSIS REPORTS FOR CITY OF MADERA, FINANCING AUTHORITY
AND SUCCESSOR AGENCY FOR FISCAL YEARS 2021 THROUGH 2026

This Consulting Services Agreement (“Agreement”) is made and entered into on this 4th day of August between the City of Madera, a city under the laws of the State of California, the Madera Public Financing Authority, and the City of Madera Successor Agency hereinafter collectively referred to as “City” and Hawkins Delafield & Wood LLP (“Consultant”).

RECITALS

WHEREAS, the City, the Madera Public Financing Authority, and the City of Madera Successor Agency require ongoing Arbitrage Rebate Analysis Services (hereinafter referred to “Services”); and,

WHEREAS, Consultant is qualified to provide the service of preparing said Arbitrage Rebate Analysis Services.

AGREEMENT

NOW, THEREFORE, and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereby agree as follows:

I. SCOPE OF SERVICES

1.1 General Scope of Services

Consultant shall provide Services related to the City. Services shall be completed in accordance with the arbitrage reporting requirements as outlined in the outstanding bond issues and Federal Internal Revenue Code and will include, but not limited to, all other duties and responsibilities as set forth in the Scope of Work attached hereto as Exhibit “A” and incorporated herein by this reference.

Each report will include all data required under Federal Internal Revenue Code and the terms for measuring arbitrage rebate outlined in the bond documents. The consultant will provide the City with the reports pursuant to the terms of the arbitrage reporting requirements.

1.2 Term

The term of Agreement shall begin on August 4, 2021 and continue for a five-year term through August 4, 2026, or until terminated by City or Consultant pursuant to the provisions of this Agreement.

II. COMPENSATION

Services shall be compensated on a per report basis in accordance with the estimated fee schedule as follows:

Fee per Annual Report	\$ 950
Fee per Five Year Report	\$ 2,550

Incremental Fees for Other Services (if applicable):

- Commingled Fund Analysis Fee \$ 150
- Extended Computation Periods \$ 400
- Transferred Proceeds Analysis Fee \$ 150
- Universal Cap Analysis Fee \$ 150
- Debt Service Fund Test Fee \$ 150
- Yield Restriction Analysis Fee \$ 150

Legal advice for extraordinary circumstances, such as in the event of an IRS audit or examination, will be billed on an hourly basis as follows:

Descriptions	Hourly Rates
Tax Partner	\$650
Tax Associate	\$425
FAS Director	\$400
FAS Associate Director	\$350
FAS Consultant	\$200
FAS Financial Analyst	\$150
FAS Administrative Assistant	\$100

III. METHOD OF PAYMENT

Consultant shall submit an invoice within thirty days of performing services stating the amount owed. Invoices are a per report basis.

Payment of the invoice will be made after acceptance by the City. Such acceptance shall not be unreasonably withheld.

IV. INDEMNIFICATION AND INSURANCE

4.1 Indemnity

Consultant shall indemnify, defend, and hold harmless the City, its officers, employees, agents and volunteers ("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, 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 Consultant's performance of this agreement, the Consultant 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.

4.2 Insurance

Without limiting Consultant's indemnification of City, 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 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 City 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, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, 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 City 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 prior to commencement of performance. Current evidence of insurance shall be kept on file with the City 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 or Fitch Rating Guide.

Waiver of Subrogation

Except for professional Liability Insurance, insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, 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 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, 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 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. The City 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's Risk Manager.

Timely Notice of Claims

Consultant shall give the City 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.

V. TERMINATION

This contract may be terminated by either party on thirty (30) days written notice to the other. The City and Agency shall compensate Consultant for services performed and expenses incurred prior to the date of transmittal or receipt of said written notice.

VI. ATTORNEY'S FEES AND COSTS

In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, each party shall bear its own attorney fees, together with any costs and expenses to resolve the dispute and to enforce the final judgement.

VII. NOTICES

All notices that are required to be given by one to the other under this Agreement shall be in writing to the other part.

City of Madera, Madera Public Financing Authority and Successor Agency
Attn: Finance Services Director
205 West Fourth Street
Madera, CA 93637
(559) 661-5453

Hawkins Delafield & Wood LLP
Attn: Takashi Iwata
One Embarcadero Center
San Francisco, CA 94111
(415) 486-4200

VIII. INDEPENDENT CONTRACTOR

In the furnishing of services provided herein, the Consultant is acting as an independent contractor and not an employee of the City. Consultant acknowledges and agrees that at all times, Consultant or any agent or employee of the Consultant shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Consultant, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Consultant, or any agent or employee of Consultant shall not have employee status with City, not be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees, and its agents. Consultant shall be responsible for all obligations and payments, whether imposed by federal, state, or local laws, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in the Agreement shall be construed as creating an employment or agency relationship between City and Consultant or any agent or employee of Consultant. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the of Consultant's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Consultant performs work under this Agreement.

IX. COMPLIANCE WITH LAWS

In the performance of this Agreement, Consultant shall comply with all applicable local, state, federal laws and regulations and laws referenced in this section.

9.1 Laws Incorporated by Reference. The full text of the laws listed in this Section, including enforcement and penalty provisions, are incorporated by reference into this Agreement.

9.2 Conflict of Interest. By executing this Agreement, Consultant certifies that it does not know of any fact which constitutes a violation of Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.) or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.) and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

- 9.3 Proprietary Information. In the performance of Services, Consultant may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Consultant, such information must be held by Consultant in confidence and used only in performing the Agreement. Consultant shall exercise the standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary or confidential information.
- 9.4 Nondiscrimination Requirements. Consultant shall comply with all state and federal laws in the administration of this Agreement.
- 9.5 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Consultant to remove from, City facilities personnel of any Consultant or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.
- 9.6 Public Records Act. Consultant acknowledges that this Agreement and all records related to its formation, Consultant's performance of services, and City's payment are subject to the California Public Records Act, (California Government Code Section 6250 et seq.). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

X. MISCELLANEOUS

- 10.1 Governing Laws. The laws of the State of California shall govern the rights and obligations of the parties under this Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.
- 10.2 Assignment. Neither the City nor the Consultant will assign its interest in this Agreement without the written consent of the other.
- 10.3 Venue. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be the County of Madera.
- 10.4 Entire Agreement. This Agreement and the attachments and exhibits incorporated herein, represents the entire agreement and understanding between the parties. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

The City and Hawkins Delafield and Wood LLP have executed this Agreement as of the date set

ATTEST:

**CITY OF MADERA/MADERA PUBLIC
FINANCING AUTHORITY/SUCCESSOR
AGENCY**

CITY CLERK of the City of
Madera, California

By: _____
Its: _____
Dated: _____, 2021

Approved as to form:

CONSULTANT

City Attorney

By: _____
Its: _____
Dated: _____, 2021

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT provides services as follows:

1. Review key features of the bond transcripts for the following bond issues:

Table 1. Outstanding Bonds Requiring Arbitrage Analysis Reports		
<i>Bond Issue</i>	<i>Amount of Original Issue</i>	<i>Report Frequency</i>
2019 Lease Revenue Bond – Fire Station (Authority)	\$ 4,005,000	Annual
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2. Conduct core analysis of each debt issuance to determine arbitrage yield and consider rebate exceptions.
3. Provide Arbitrage Compliance Report that summarizes assumptions and result of the arbitrage rebate calculations. Report will also include Hawkins Tax Opinion that the methodology used in the calculations is in conformance with the Code and Federal tax regulations.
4. Prepare and provide detailed instructions on filling IRS forms.