

Interoffice Memorandum

To: Mayor Medellin and Councilmembers

CC: Steve Frazier, City Administrator
Sonia Alvarez, City Clerk
Brent Richardson, City Attorney

From: Tim Przybyla, Finance Director

Date: 6/6/2018

Re: Late Distribution of Documents Related to Agenda Item E-2

Honorable Mayor and Councilmembers,

Attached with this memo is one agreement related to item E-2 of today's agenda. The reason that it is being distributed to you within less than 72 hours of the City Council meeting is that we were working with the firm to finalize the wording related to insurance and venue matters. Please contact me if you have any questions or concerns with this late distribution of documents.

Thank you,

Tim L. Przybyla

Director of Financial Services

CITY OF MADERA

AGREEMENT FOR SPECIAL COUNSEL SERVICES

THIS AGREEMENT is between Kronick, Moskovitz, Tiedemann & Girard, a Professional Corporation (hereinafter "KMTG"), and the City of Madera (hereinafter "City"). The subject matter of the representation governed by this Agreement is described in Paragraph 1.

1. **Scope of Services**. City retains KMTG under this Agreement to provide such legal services as necessary to complete a proposed financing (the "financing"). The financing will be accomplished by means of either: (Option 1) a private placement potentially involving the execution of an installment purchase agreement (the "Obligations"), or (Option 2) a public offering involving the issuance of bonds ("Bonds") (Obligations and Bonds are sometimes referred to herein as "Obligations"). In particular, KMTG shall:

If Option 1:

- a. Consult with City, its administrative officers, its financial advisor, and assist in the coordination of City's financing plan.
- b. Confer with City's other consultants and other parties to the financing regarding the legal structure of the financing and review any documents to be prepared by such consultants in the proceedings for compliance with law.
- c. Prepare all legal documents necessary for the financing.
- d. Prepare for and attend meetings of City Council as necessary for the proper conduct of the proceedings.
- e. Prepare a comprehensive closing memorandum and prepare and arrange the execution and delivery of receipts for the financing, receipts for the proceeds of the financing, signature certificates, arbitrage/rebate certificates and associated certificates of underwriter and credit enhancer (if any), Forms 8038-G, CDIAC reports, forms of required opinions, and all other necessary closing certificates/documents.
- f. Prepare and deliver to each participant in the financing a complete transcript of the proceedings for the financing.
- g. Upon due and proper completion of the proceedings to the satisfaction of KMTG, deliver a final approving legal opinion confirming the validity of City's Obligations, and an opinion that interest paid with respect to the Obligations is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes, under existing statutes, regulations, rulings and court decisions.

If Option 2:

- a. Consult with City and its administrative officers, its financial advisor, and assist in the coordination of City's financing plan.
- b. Confer with City's other consultants regarding the structure of the bond issue and review any documents to be prepared by such other parties in the proceedings for compliance with law.
- c. Prepare for and attend such meetings of City Council as deemed necessary for the proper conduct of the proceedings.
- d. Arrange or coordinate the mailing, delivery or publication, as appropriate, of all notices required to be given in the bond issuance and sale proceedings.
- e. Prepare a paying agent agreement (or similar issuance document) and all other legal documents that are necessary for the authorization, issuance and sale of the bonds.
- f. Prepare a preliminary and final official statement describing the terms of the bonds offered for sale, security for their repayment, credit enhancements (if any) and their issuer(s), City and its financial condition, material risks to prospective purchasers of the bonds, legal matters related to the financing, credit ratings of the bonds, contractual arrangements between City and the underwriter(s) of the bonds, and other information material to prospective purchasers of the bonds.
- g. Prepare a continuing disclosure undertaking for the financing so that the underwriter(s) for the financing may comply with their responsibilities under Rule 15c2 12(b).
- h. Coordinate the preparation of typewritten bonds.
- i. Prepare a comprehensive closing memorandum and prepare and arrange the execution and delivery of a receipt for the bonds, a receipt for the proceeds of the bonds, signature certificates, an arbitrage/rebate certificate and associated certificates of underwriter and insurer (if any), Form 8038-G, DTC Letter of Representations, CDIAAC report of final sale, forms of opinions of other counsel, and all other necessary closing certificates/documents.
- j. Prepare and deliver to each participant in the financing a complete transcript of the proceedings for the authorization, issuance and sale of the bonds.
- k. Upon due and proper completion of the proceedings to satisfaction of KMTG, deliver a final approving opinion confirming the validity of the bonds and opinions that interest on the bonds is excludable from gross income for federal income tax purposes, and is exempt from State of California personal income taxes, under existing statutes, regulations, rulings and court decisions.

2. Services Outside the Scope of this Agreement. KMTG's duties in this engagement are limited to those set forth in Paragraph 1. Among other things, KMTG has not undertaken to do any of the following:

If Option 1:

- a. Perform an independent investigation to determine the accuracy, completeness, or sufficiency of the official statement or other disclosure document.
- b. Conduct any investigation regarding the qualification for sale of the Obligations in any jurisdiction; however, KMTG will coordinate with the placement agent regarding any statements requested to be added to the official statement so that the Obligations may be sold in particular jurisdictions.
- c. Render services under this Agreement in connection with compliance by City after the closing with the covenants contained in the financing documents, including, without limitation, the calculation of any arbitrage/rebate liability City may have and preparation of any annual reports or material events notices pursuant to City's continuing disclosure undertaking.
- d. Render services under this Agreement with respect to any litigation concerning the financing.

If Option 2:

- a. Perform an independent investigation to determine the accuracy, completeness or sufficiency of the official statement, or other disclosure document.
- b. Render services under this Agreement in connection with compliance by City after the closing with the covenants contained in the bond documents, including, without limitation, the calculation of any arbitrage/rebate liability City may have and preparation of any annual reports or material events notices required pursuant to City's continuing disclosure undertaking.
- c. Render services under this Agreement with respect to any litigation concerning the financing.
- d. Conduct any investigation regarding the qualification for sale of bonds in any jurisdiction; however, KMTG will coordinate with the underwriter(s) regarding any statements requested to be added to the official statements so that the bonds may be sold in particular jurisdictions.

If City requests KMTG to provide any such services, compensation therefor shall be made and calculated at KMTG's hourly rate schedule for the type of services requested (public finance or litigation) in effect at the time such services are rendered.

3. **Commencement of Services.** KMTG's obligation to provide legal services under this Agreement shall commence upon KMTG's receipt of a copy of this Agreement signed and dated by City.

4. **Completion of Services.** KMTG's representation of City with respect to the Obligations will be concluded upon their execution and delivery.

5. **Duties of KMTG and City.**

a. **Duties of KMTG.** KMTG shall provide those legal services reasonably required to represent City in the matters described in Paragraph 1 of this Agreement. KMTG shall also take reasonable steps to keep City informed of significant developments and to respond to City's inquiries.

b. **Duties of City.** City shall be truthful with KMTG, cooperate with KMTG, keep KMTG informed of developments, perform the obligations City has agreed to perform under this Agreement, and pay statements from KMTG in a timely manner.

6. **KMTG Personnel.** While one attorney at KMTG may be primarily responsible for completing the work that is within the scope of this Agreement, that attorney may also delegate work to other attorneys, paralegals, law clerks and office personnel within KMTG when it is determined that such delegation is appropriate in representation of City's interests. If City so requests, City will be notified prior to any delegation and a decision will be made in consultation with City.

7. **Insurance.** KMTG shall maintain Professional Liability Insurance covering KMTG's performance under this Agreement with a limit of liability of at least \$1,000,000 per claim and in annual aggregate, and meet the other insurance requirements set forth on Exhibit A. At the request of the City, KMTG shall furnish to City a Certificate of Insurance indicating compliance with requirements of this section.

8. **Disclaimer of Guarantee.** By signing this Agreement, City acknowledges that KMTG has made no promises or guarantees to City about the outcome of City's matter, and nothing in this Agreement shall be construed as such a promise or guarantee.

9. **Fees and Expenses.**

a. **Fees.** For Option 1 KMTG's compensation, both fees and out-of-pocket expenses (such as travel, delivery and courier service, postage, long distance telephone tolls, and similar expenses), for the special counsel services described above shall be in the amount of \$20,000. For Option 2 both fees and out-of-pocket expenses (such as travel, delivery and courier service, postage, long distance telephone tolls, and similar expenses) for bond counsel services shall be \$20,500 and disclosure counsel services shall be \$20,000 payable from the proceeds of the bond sale.

b. **Payment of Fees and Expenses.** Except as provided in the next sentence, the fees and expenses provided for under subparagraph (a) shall be paid solely

from the proceeds of the Obligations issued and will be payable at the time of execution and delivery of the Obligations.

c. Termination of KMTG. In the event of termination of KMTG by City prior to the execution and delivery of the Obligations, City shall pay KMTG a fee determined by the extent of the services rendered by KMTG to the date of termination at the rate of \$250 per hour, plus KMTG's out-of-pocket expenses.

d. Statements. KMTG shall send City a statement for fees and costs incurred. City shall pay any statement from KMTG within thirty days after the date of the statement. KMTG's statements shall clearly state the basis thereof, including the amount (and rate and basis for calculation in the case of hourly charges).

10. Legal Action Upon Default. If City does not pay the balance when due or breaches any other terms of this Agreement, KMTG may commence any legal action for collection of the balance due. City and KMTG agree that all legal proceedings related to the subject matter of this Agreement shall be maintained in courts sitting within the State of California, County of Madera. City and KMTG agree that the jurisdiction and venue for such proceedings shall lie exclusively with such courts. Further, the prevailing party in any such dispute shall be entitled to reasonable costs, including attorneys' fees.

11. Arbitration of Fee Dispute. If a dispute arises between KMTG and City regarding KMTG's fees or costs under this Agreement and KMTG files suit in any court, or begins an arbitration proceeding other than through the State Bar or a local bar association under Business and Professions Code sections 6200-6206, City will have the right to stay that suit or arbitration proceeding by timely electing to arbitrate the dispute through the State Bar or a local bar association under Business and Professions Code sections 6200-6206, in which event KMTG must submit the matter to that arbitrator.

12. City Files. At City's request, upon the termination of services under this Agreement, KMTG will promptly release all of City's papers and property to City (subject to any applicable protective orders or non-disclosure agreements).

13. Destruction of City's File. If City does not request the return of City's papers and property, KMTG will retain City's file for a period of seven years from the date of execution and delivery of the Certificates, after which time KMTG may have City's file destroyed. City acknowledges that it will not be notified prior to the destruction of its papers and property and consents to the same. If City desires to have City's file maintained beyond seven years after City's matter is concluded, separate arrangements with KMTG must be made.

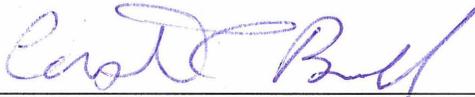
14. Termination. This Agreement may be terminated by City or KMTG, or modified by mutual consent, at any time. In the event of termination by City, KMTG shall be compensated in accordance with Paragraph 9(d) above. KMTG and City each agree to sign any documents reasonably necessary to complete KMTG's discharge or withdrawal.

15. **Modification by Subsequent Agreement.** This Agreement may be modified only by a written instrument signed by both parties.

KMTG:

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
A Professional Corporation

DATED: 6/6/18

By: 
Constantine Baranoff, Shareholder

CITY:

CITY OF MADERA

DATED: _____

By: _____

Name: _____

Title: _____

Exhibit A
Insurance Requirements for Consultants

Without limiting Attorneys (referred to herein as "Consultant")'s indemnification of City, and prior to commencement of work under this Agreement, 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 (if applicable), 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:
\$1,000,000 **General Liability** (including operations, products and completed operations) per occurrence, \$2,000,000 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. City 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, 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 City 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.