

Interoffice Memorandum

To: Mayor Medellin and Councilmembers

CC: Steve Frazier, Interim City Administrator
Sonia Alvarez, City Clerk
Brent Richardson, City Attorney
Joseph Carrello, Communications Specialist

From: Tim Przybyla, Finance Director

Date: 1/2/18

Re: Late Distribution of Documents Related to Agenda Item B-4

Honorable Mayor and Councilmembers,

Attached with this memo are three agreements related to item B-4 of tomorrow's agenda. The reason that they are being distributed to you within less than 72 hours of the City Council meeting is that we were working with the three firms to finalize the wording related to insurance and indemnification 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

AGREEMENT FOR MUNICIPAL ADVISORY SERVICES

This contract ("AGREEMENT") is between the City of Madera ("CLIENT") 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
Community Facilities District No. 2006-1
Refunding Special Tax Bonds, Series 2018**

- 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 terminates.

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 three (3) 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:

- Review all underwriter and placement agent 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 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.
- Develop a detailed financing schedule and interested parties list
- Coordinate the efforts of bond counsel, disclosure counsel, underwriter(s), placement agent, trustee and consultants 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
- If needed, prepare and coordinate comprehensive presentations to the rating agencies and bond insurers
- Prepare detailed costs of issuance and, if public sale, recommend a gross spread level
- 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 the final official statement (1)
- Perform any other tasks or projects, as required, and amend this list as necessary to describe any new projects or tasks.
- If acting in the capacity of an Independent Registered Municipal Advisor (“IRMA”) with regard to the IRMA exemption of the SEC Rule, MA will review all third party recommendations submitted to the MA in writing by the City.

Note:

- (1) MA 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 MA and footnoted as such, MA takes no responsibility for the accuracy or completeness of any of the data contained therein as provided by others including the City. MA 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 either the successful closing of the financing or termination by either party. In addition, this agreement will be valid and binding until December 31, 2020, unless otherwise amended to extend the term.

3 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 will pay any standard reimbursable expenses accrued to date and otherwise contingent on the successful closing of the transaction.

4 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.

5 Payment and Expenses:

CONSULTANT proposes a total fee capped at \$17,500 plus a capped amount of standard expenses not-to-exceed \$750.

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.

6 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.

7 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, it's 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.

8 Indemnity:

CONSULTANT shall indemnify and save harmless the CLIENT, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the fault or negligence of CLIENT, its officers, agents, employees and/or servants in connection with

this Agreement.

CLIENT shall indemnify and save harmless CONSULTANT, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the fault or negligence of the CLIENT, its officers, agents, employees, and/or servants in connection with this Agreement.

9 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 ADMINISTRATOR
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

This agreement is entered into as of _____, 2018

DEL RIO ADVISORS, LLC

By: _____
Kenneth L. Dieker, Principal

CITY OF MADERA

By: _____
Andrew J. Medellin, Mayor

Attest:

By: _____
Sonia Alvarez, City Clerk

Approved as to form:

By: _____
Brent Richardson, City Attorney

PLACEMENT AGENT AGREEMENT

This Placement Agent Agreement (“Agreement”) is made and entered into by and between City of Madera, California (the “Issuer”) and Hilltop Securities Inc. (“HilltopSecurities”).

WITNESSETH:

WHEREAS, the Issuer presently intends to issue indebtedness in the approximate amount of \$2,500,000 for their 2018 Community Facilities District 2006-1 Refunding Bonds (the “2018 Bonds”) and, in connection with the authorization, sale, issuance and delivery of such indebtedness, the Issuer desires to obtain the professional services of HilltopSecurities to serve as the placement agent for the 2018 Bonds; and

WHEREAS, HilltopSecurities is willing to provide its professional services and its facilities as placement agent, acting not as a fiduciary, in connection with the issuance of the 2018 Bonds

NOW, THEREFORE, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

SECTION I DESCRIPTION OF SERVICES

Upon the request of an authorized representative of the Issuer, HilltopSecurities agrees to provide its professional services and its facilities as placement agent in connection with the issuance of the 2018 Bonds; and for having rendered such services, the Issuer agrees to pay to HilltopSecurities the compensation as provided in Section III hereof.

SECTION II TERM OF AGREEMENT

This Agreement shall become effective as of the date executed by the Issuer as set forth on the signature page hereof and, shall remain in effect thereafter until the Issuer has paid HilltopSecurities in full the placement agent fee and all reimbursable expenses.

SECTION III COMPENSATION AND EXPENSE REIMBURSEMENT

The fees due to HilltopSecurities for the services set forth and described in Section I of this Agreement with respect to the issuance of the 2018 Bonds during the term of this Agreement shall be calculated in accordance with the schedule set forth on Appendix A attached hereto. Unless specifically provided otherwise on Appendix A or in a separate written agreement between Issuer and HilltopSecurities, such fees, together with any other fees as may have been mutually agreed upon and all expenses for which HilltopSecurities is entitled to reimbursement, shall become due and payable concurrently with the delivery of the proceeds of the 2018 Bonds to the Issuer. HilltopSecurities has not received nor will it collect any compensation or other consideration from the buyer(s).

SECTION IV MISCELLANEOUS

1. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the State of California.
2. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.
3. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by the parties hereto.
4. No Fiduciary Duty. The Issuer acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the Issuer and HilltopSecurities in which HilltopSecurities is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) HilltopSecurities has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto irrespective of whether HilltopSecurities or any of its affiliates has provided other services or is providing other services to the Issuer on other matters; (iii) the only obligations HilltopSecurities has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.
5. Insurance. Without limiting HilltopSecurities's indemnification of City, and prior to commencement of Work, HilltopSecurities shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and SubHilltopSecurities 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

HilltopSecurities 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.
- ☞ \$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 HilltopSecurities 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 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. HilltopSecurities 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. HilltopSecurities 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 HilltopSecurities 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 HilltopSecurities's bid.

Maintenance of Coverage

HilltopSecurities 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 HilltopSecurities, its agents, representatives, employees, subcontractors or subHilltopSecurities as specified in this Agreement.

Proof of Insurance

HilltopSecurities 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 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 HilltopSecurities, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. HilltopSecurities hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subHilltopSecurities or subcontractors.

Enforcement of Contract Provisions (non estoppel)

HilltopSecurities acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform HilltopSecurities 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 HilltopSecurities maintains higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by HilltopSecurities.

Notice of Cancellation

HilltopSecurities 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

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

Additional Insurance

HilltopSecurities 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.

HILLTOP SECURITIES INC.

By: 

Mike Cavanaugh
Managing Director

As of January 3, 2018

City of Madera, CA

By: _____

Name: _____

Title: _____

Date: _____

\$2,500,000
City of Madera, CA
2018 CFD 2006-1 Refunding Bonds

APPENDIX A

The fees due HilltopSecurities for the 2018 Bonds will not exceed that listed below:

\$10,000

The Issuer shall be responsible for the following expenses, if any:

Bond Counsel fee and charges

Bank Counsel fee and charges

Disclosure Counsel fee and charges

Trustee or Escrow Bank

Municipal Advisor

Printing and distribution costs of documents

Cost of any required notices

Third party reports or providers such as an appraisal, title insurance, fiscal HilltopSecurities, assessment engineer or special tax HilltopSecurities.

HilltopSecurities will be responsible for our own travel expenses and our own legal fees. Our fee is entirely contingent on the successful completion of the 2018 Bonds. If the 2018 Bonds fails to close, we will not be reimbursed for any expenses.

AGREEMENT FOR LEGAL SERVICES
BETWEEN
CITY OF MADERA
AND
JONES HALL, A PROFESSIONAL LAW CORPORATION
FOR BOND COUNSEL SERVICES
IN CONNECTION WITH REFINANCING TRANSACTION

This AGREEMENT FOR LEGAL SERVICES (this "Agreement") is entered into as of this third day of January, 2018, between the CITY OF MADERA, a general law city duly organized and existing under the laws of the State of California (the "City") and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys").

B A C K G R O U N D :

1. The City previously issued bonds (the "Prior Bonds") for its Community Facilities District No. 2006-1 and desires to refund the Prior Bonds that remain outstanding via the issuance of refunding bonds in 2018 (the "2018 Bonds"), to be sold, via a private placement, to a bank or other financial institution.

3. In connection with such proceedings the City requires the advice and assistance of special legal counsel to provide necessary legal services, and Attorneys are competent to provide such legal services.

A G R E E M E N T :

In consideration of the mutual covenants hereinafter contained, and for other good and valuable consideration, the City and Attorneys hereby agree as follows:

Section 1. Identification of Client. Attorneys shall represent the City in connection with the issuance and sale of the 2018 Bonds. Attorneys shall not represent and shall owe no duties to any other party than the City, including but not limited to the placement agent, the financial advisor, the private placement bank, and other participants to the financing. Attorneys' services as special counsel to the City are limited to those contracted for in this Agreement; City's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the City will not affect, however, our responsibility to render an objective Final Approving Opinion.

Section 2. Duties of Attorneys as Bond Counsel. Attorneys shall perform all of the following bond counsel services as are necessary for the City in connection with the issuance and sale of the 2018 Bonds to a bank or other financial institution:

- Preparation of resolutions and ordinance of the City Council of the City approving reassessment proceedings and entrance into a fiscal agent agreement or trust agreement pursuant to which the 2018 Bonds will be issued; making all filings required with the California Debt and Investment Advisory Commission (CDIAC); and preparation of all certificates,

requisitions, federal tax forms, opinions and other documents required to close the transaction.

- Determination of the need for obtaining any approvals or exemptions to execute and deliver the financing documents under federal and state securities laws from the Securities Exchange Commission or other regulatory bodies.
- Upon completion of proceedings to Attorneys' satisfaction, providing a legal opinion (the "Final Approving Opinion") approving the validity and enforceability of the proceedings for the authorization, execution and delivery of the 2018 Bonds, and stating that interest on the 2018 Bonds is excluded from gross income for federal income tax purposes and such interest is exempt from California personal income taxation. The Final Approving Opinion will be addressed to the City, and may also be addressed to other participants in the financing. If a portion of the 2018 Bonds are issued on a federally taxable basis, the Final Approving Opinion will be modified accordingly.
- Attending all teleconferences, City Council meetings and other meetings as requested by City staff.
- Consultation and cooperation with the City employees and staff, financial consultant, placement agent and other consultants.
- Such other and further services as are normally performed by special counsel in connection with similar tax-exempt financings, including but not limited to answering any and all questions concerning the financing and the financing documents prior to the closing of the transaction; *provided, however, that special counsel shall not be responsible for, or involved in, any discussions, negotiations, compromises, reasoning, or planning concerning the 2018 Bonds.*

Attorneys' Final Approving Opinion will be delivered by Attorneys on the date of the closing of the 2018 Bonds (the "Closing"). In rendering the Final Approving Opinion, Attorneys will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Attorneys without undertaking to verify the same by independent investigation, and Attorneys will assume continuing compliance by the City with applicable laws relating to the 2018 Bonds.

Section 3. Excluded Services. Our duties in this engagement are limited to those expressly set forth above in Section 2, except as expressly set forth in a written amendment to this Agreement. Among other things, our duties do not include:

- a. Pursuing test cases or other litigation, such as contested validation proceedings.
- b. Making an investigation or expressing any view as to the creditworthiness of the City, the placement agent or the 2018 Bonds.
- c. After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking under Securities and Exchange Commission Rule 15c2-12, if applicable.
- d. After Closing, unless specifically requested to do so by the City, and agreed to by Attorneys, providing continuing advice to the City or any other party concerning any actions that need to be taken regarding the 2018 Bonds.
- e. Addressing any other matter not specifically set forth above that is not required to render our Final Approving Opinion.
- f. Preparing an official statement, limited offering memorandum or any other disclosure document used for selling the 2018 Bonds.

Section 4. Conflicts; Prospective Consent. Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the City, one or more of Attorneys present or future clients will have transactions with the City. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the execution and delivery of the 2018 Bonds, including the placement agent. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent you as provided in this Agreement, either because such matters will be sufficiently different from the execution and delivery of the 2018 Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the execution and delivery of the 2018 Bonds. Execution of this Agreement will signify the City's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

Section 5. Compensation. For the legal services of Attorneys listed in Section 2, the City will pay Attorneys a flat fee equal to \$20,000 for bond counsel services, including costs. Payment of said fees and expenses to Attorneys shall be due upon the issuance of the 2018 Bonds, and payable solely from the proceeds of the financing.

The compensation set forth in this Section 5 is not set by law but is negotiable between Attorneys and the City.

Section 6. Responsibilities of the City. The City shall cooperate with Attorneys and shall furnish Attorneys with certified copies of all proceedings taken by the City, or otherwise deemed necessary by Attorneys to render an opinion upon the validity of such proceedings. All costs and expenses incurred incidental to entrance into the 2018 Bonds, including legal publication costs, the cost and expense of preparing certified copies of proceedings required by Attorneys in connection with the closing of the financing, all printing costs and publication costs, financial advisor, placement agent and other consultant fees, and any other expenses incurred by the City in connection with the financing, shall be paid from financing proceeds and not by Attorneys.

Section 7. Assignment. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the City.

Section 8. Independent Contractor. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances will Attorneys be considered an agent, partner, or employee of the City.

Section 9. Professional Liability Insurance. Attorneys shall maintain Professional Liability Insurance covering Attorneys' performance under this Agreement with a limit of liability of at least \$1,000,000 per claim and in annual aggregate. At the request of the City, Attorneys shall furnish to City a Certificate of Insurance, or certified copy of such insurance policy, if requested, indicating compliance with requirements of this Section.

Section 10. Termination of Agreement.

(a) Termination by City. This Agreement may be terminated at any time by the City with or without cause upon written notice to Attorneys.

(b) Termination by Attorneys. This Agreement may be terminated by Attorneys upon 15 days' written notice to City if City fails to follow written legal advice given by Attorneys.

(c) Termination Upon Execution and Delivery of 2018 Bonds. This Agreement shall terminate upon the execution and delivery of the 2018 Bonds and delivery of the Final Approving Opinion.

(d) Consequences of Termination. In the event of termination, all finished and unfinished documents shall at the option of the City become its property and shall be delivered to the City by Attorneys.

Section 11. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties hereto to enforce the terms of this Agreement or to determine the rights of the parties thereunder, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable attorneys' fees.

Section 12. Indemnification. Attorneys shall indemnify and hold harmless the City from and against any and all losses, claims, demands, damages, liabilities, actions, judgments and awards (collectively, "Claims") sustained by the City that are determined in a final, binding judgment against Attorneys by a court of competent jurisdiction to have proximately resulted from professional negligence of Attorneys in connection with its performance of legal services under this Agreement. Nothing in this Section shall obligate Attorneys to pay or reimburse the City for any damages, legal costs or expenses incurred, including attorneys' fees, unless Attorneys are adjudicated liable for such damages, legal costs or expenses incurred, including attorneys' fees, in such a final judgment.

IN WITNESS WHEREOF, the City and Attorneys have executed this Agreement as of the date first above written.

CITY OF MADERA

**JONES HALL, A PROFESSIONAL
LAW CORPORATION**

By _____
Mayor

Vice President