

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as “City”) and Norton Rose Fulbright US, LLP., a Texas Limited Liability Partnership, whose address of record is 555 South Flower Street, 41<sup>st</sup> Floor, Los Angeles, California 90071 (hereinafter referred to as “Consultant”).

WHEREAS, City is undertaking a project to prepare a General Obligation Bond ballot measure and issue bonds; and

WHEREAS, Consultant represents that it possesses the professional skills to provide financial advisory services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the financial services described in Exhibit “A” attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Finance Officer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A".

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City,

Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. RESERVED.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of Twenty Million Dollars (\$20,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the

performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Finney 5/31/18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

CONSULTANT  
NORTON ROSE FULBRIGHT US,  
LLP, A Texas Limited Liability  
Partnership

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 555 S. Flower Street  
41<sup>st</sup> Floor  
Los Angeles, CA 90071

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

May 16, 2018

Norton Rose Fulbright US LLP  
555 South Flower Street  
41<sup>st</sup> Floor  
Los Angeles, California 90071  
United States

Maryann L. Goodkind, Counsel  
Tel +1 213 892 9328  
maryann.goodkind@nortonrosefulbright.com

**By E-Mail**

Venus Rodriguez, Finance Director  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

Re: Response to Request for Proposal for Bond Counsel and Disclosure Counsel Services

Dear Ms. Rodriguez:

Norton Rose Fulbright US LLP (the "Firm" or "Norton Rose Fulbright") is delighted to submit this proposal (the "Proposal") to serve as Bond Counsel and Disclosure Counsel to the City of Merced (the "City"). We understand that the City Council is considering authorizing a general obligation bond measure for voter approval at the upcoming November 2018 in the estimated amount of \$49 million to finance City Facilities including new police station, two fire stations, upgrade to Public Works yard, and remodel several park restrooms (the "Request").

**Experience.** Norton Rose Fulbright has one of the largest public finance practices in the United States, with over 50 attorneys who work in the area of public finance or federal income taxation as it relates to public finance. We enjoy a reputation as one of the leading public finance firms, with a current nationwide ranking as bond counsel of third in the country in par amount of bonds issued. Over the past five years, the Firm's California-based bond attorneys have closed more than 600 transactions for California counties, cities and public agencies, representing over \$50 billion in principal amount of municipal securities.

The Firm has extensive experience both in preparing the election resolutions and navigating the election process with the county registrar of voters and in general obligation bond issuance. We will ensure that the substance and mechanics of the planned election and financing work as intended and that the interests of the City are served and protected. Norton Rose Fulbright has assembled a team of highly experienced attorneys to provide legal services to the City. The Firm has acted as bond counsel and disclosure counsel in many successful general obligation bond elections, representing over \$86.9 billion in voter-approved authorization, assisting schools, community colleges and cities throughout California in the election/bond issuance process for more than twenty-five general obligation bond ("GO Bond") measures.

The proposed team will be led by **Maryann Goodkind**, Counsel, who has assisted the City with numerous financings over the last fifteen years. **Don Hunt**, Partner, who has over forty years of experience advising on General Obligation bond elections, acted as bond counsel for the first city general obligation bond election in California immediately following voter approval of Proposition 13 in 1978. **Jonathan Guz**, Senior Associate, has assisted clients in various finance transactions

including general obligation bonds, tax allocation bonds and revenue bonds financings, conduit 501(c)(3) financings, tax and revenue anticipation notes and certificates of participation. Tax Partner, **Peter Smith**'s practice focuses on the tax aspects of public finance transactions. He also has significant experience in other facets of U.S. federal tax law, including tax-exempt organizations and international tax matters, as well as on healthcare transactions.

Norton Rose Fulbright has extensive expertise in and familiarity with disclosure matters, including issues relating to federal and state securities laws, internet dissemination of Official Statement disclosure and the ongoing disclosure requirements imposed by SEC Rule 15c2-12. Members of the proposed team have regularly served as disclosure counsel and provide advice regarding continuing disclosure matters and SEC enforcement. In addition, the Firm has tremendous resources to complement our team expertise in securities litigation, regulatory investigations, and corporate disclosure. Rick Weber and Cliff Gerber, past presidents of the National Association of Bond Lawyers, are nationally recognized leaders in municipal disclosure and we regularly consult them on behalf of our clients. We provide specific securities law training to our municipal clients at their request, at no additional charge and offer continuing legal education credit to their in-house lawyers. To minimize liability exposure, we recommend that our public finance issuers, at a minimum: (1) adopt policies and procedures for information that is readily accessible to investors, (2) assign responsibility for disclosure to one or more officials, (3) provide regular training to officials charged with disclosure, and (4) keep publicly available financial and operating disclosure current.

Our Los Angeles office has completed approximately \$10 billion in aggregate principal amount of general obligation bond issues, comprising more than 600 issues, as bond counsel, disclosure counsel and underwriter's counsel in the past five years. The Norton Rose Fulbright team is fully prepared to use our experience and expertise to guide the City through the questions that often arise in connection with the use of proceeds of general obligation bonds. We have recently been awarded the contract from the City of Bell for the issuance of GO Bonds. A few of the GO Bond matters that we have advised on include:

- Served as co-bond counsel on \$173,120,000 City and County of San Francisco Tax-Exempt General Obligation Bonds (Public Health and Safety, 2016), Series 2017A. Closed February 1, 2017.
- Served as disclosure counsel on \$143,815,000 City of Los Angeles General Obligation Refunding Bonds Series 2016-A (Taxable). Closed December 21, 2016.
- Served as bond counsel and disclosure counsel for the \$28,985,000 City of Industry General Obligation Refunding Bonds Series 2014. Closed May 28, 2014.
- Served as co-bond counsel for the \$14,160,000 East Bay Municipal Utility District Special District No. 1, Issue of 1970, Wastewater System General Obligation Refunding Bonds, Series G. Closed February 27, 2014.
- Served as underwriter's counsel for the \$9,745,000 City of Millbrae 2013 General Obligation Refunding Bonds. Closed July 11, 2013.

**General Obligation Bond Elections.** We undertake a number of responsibilities in connection with the pre-election process. Following consultation with City staff, interested council members, a needs assessment consultant, the City's municipal advisor and underwriter, we assist the client in determining the phrasing and scope of the Bond Measure; insuring that the Bond Measure complies with State and County standards for length and scope. We prepare the Resolution

Calling for Election and also review survey results, if any; and coordinate with the County Registrar of Voters.

In addition, we prepare a calendar of events in anticipation of the Bond Election; coordinating the delivery of certified copies of the Resolution to appropriate County officials. We also deliver legal advice to the City regarding its relationship with the Bond Campaign, the prohibition on use of City facilities and resources during the "campaign phase", and participation by City officials and others (please note we cannot represent the Campaign itself); review and comment upon Ballot Arguments and Rebuttals, if necessary, and the Tax Rate Statement prepared by or on behalf of the City; canvassing results of the Bond Election; and assembly of the transcript of Election Proceedings for your permanent files. Following a successful Election, the Firm assists the City, its financial advisor and underwriter to prepare for the first issue of Bonds.

**Assembly Bill 195.** *Assembly Bill 195* ("AB 195"), is a technical cleanup bill to Assembly Bill 809 ("AB 809"). AB 809 was signed into law in 2015 and required the amount of money to be raised annually and the rate and duration of the tax to be levied to be included in the statement of the measure. AB 809 did not apply to measures placed on the ballot by a local governing body. AB 195 corrects the drafting error, making the AB 809 requirements applicable to measures placed on the ballot by a local governing body, defined as the governing body of a city, county, city and county, including a charter city or charter county, or district, including a school district. Accordingly, ballot measures that impose a new tax, including bond measures, will be impacted by the new information that is required to be included in ballot questions by AB 809 and AB 195 and will limit the number of words available in the ballot question to convey the purposes of the measure. It should be noted that AB 195 also includes a requirement that "[t]he statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure." What language complies under this standard will be dependent upon the facts of each measure.

**Fee proposal.** In general, we try to be as flexible as possible with our clients in terms of structuring satisfactory fee agreements, and the City should feel free to suggest an alternative arrangement to the fees proposed below.

We propose that fees and out of pocket expenses for election/voter authorization of the general obligation bonds be based on actual time expended by the Firm attorneys and paralegals as outlined below, capped at \$20,000.

Hourly Rates

Partners - \$650.00  
Senior Associate - \$540.00  
Counsel - \$540.00  
Senior Paralegal - \$300.00  
Tax Partner - \$700.00

For Bond Counsel services rendered in connection with the first series of general obligation bonds to be issued, we propose a flat fee of \$65,000 and, in connection with each additional series of general obligation bonds to be issued, we propose a flat fee of \$47,500. The fee for each series is payable only upon the successful delivery of that series of bonds.

For Disclosure Counsel services rendered in connection with each series of general obligation bonds to be issued, we propose to charge a flat fee of \$32,500.

We propose to provide Bond and Disclosure counsel services for each issue of general obligation bonds on a fixed, contingent fee basis. The fee for each series is payable only upon the successful delivery of that series of general obligation bonds and, if the financing is not closed, we would receive no compensation. Additionally, if the general obligation ballot proposition is not approved, we would expect to be compensated for services based on our hourly fee schedule identified above, capped at \$10,000.

The provisions herein for payment of fees on a fixed fee basis pertain to the ordinary and customary services rendered in connection with transactions of the type described herein. Services performed which are occasioned by unforeseen delays, litigation, adverse litigation, validation action, the need to obtain federal tax rulings, the use of derivative products or investment agreements, or other similar matters are to be billed at hourly rates described above.

The City shall also pay to the Firm reimbursement \$1,800 per series of bonds, notes or other obligations used for the Firm's out-of-pocket expenses incurred in connection with preparation of transcripts and legal services rendered by Norton Rose Fulbright as Bond Counsel and Disclosure Counsel under this Agreement.

**Approach.** When we take on new work, we look closely at the needs of the client, the timeframe for completion and the complexity of the work. The partner drafts and reviews legal documents, supervises the team, conducts the work and delegates tasks, as necessary, and is responsible for the standard of quality and the overall cost. The team presented to the City is fully capable of providing all of the necessary services listed in the Request beginning immediately. Our team approach, and the presence of over 50 public finance lawyers nationwide, ensures that we will be responsive to all of the City's needs and will be able to seek expertise outside the core group of team members if necessary.

Norton Rose Fulbright stresses a team approach in public finance to assure that senior level "hands on" coverage is always available to our clients. We are committed to providing the highest quality of service in an efficient and effective manner, including meeting or beating each and every required deadline, promptly returning all telephone calls, and keeping our clients informed at all times. In addition, our team will be available to address any on-going questions that the City may have, including advising City staff regarding the use of bond proceeds, the Do's and Don'ts of bond election campaigns, responding to inquiries from the Citizens Oversight Committee, financing structure issues, continuing disclosure concerns, and other on-going post-issuance compliance matters relevant to outstanding tax-exempt issues.

All of the above factors distill into a single distinctive characteristic of Norton Rose Fulbright's public finance work: **service**. We understand that our top priority is and must be service to our clients. Norton Rose Fulbright's long-term goal of providing superior service to clients has been recognized by Chambers Global which ranks us among the leading US firms for banking and finance.

The Firm is pleased to submit this Proposal in response to the referenced Request, and hereby confirms that it has reviewed and understands the terms of the Request, and is prepared to undertake the work described therein. We have the staffing and capacity to commence work under any contract awarded under the Request promptly following notification.

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NORTON ROSE FULBRIGHT

Thank you very much for inviting us to submit our Proposal. Should you have any questions, or require any additional information with respect to our proposal, please do not hesitate to contact Maryann Goodkind at the phone number listed above. We look forward to hearing from you soon.

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**Maryann Goodkind, Counsel**  
On behalf of Norton Rose Fulbright US LLP