



CALISTOGA PUBLIC FACILITIES CORPORATION

STAFF REPORT

TO: Board of Directors, Calistoga Public Facilities Corporation
FROM: Gloria Leon, Treasurer
DATE: July 16, 2019
SUBJECT: Annual Report of the Calistoga Public Facilities Corporation

Approved by:

A handwritten signature in blue ink that reads "Michael Kirn".

**MICHAEL KIRN,
President**

DESCRIPTION: Annual Report of the Calistoga Public Facilities Corporation.

RECOMMENDATION: Receive and File Report.

BACKGROUND/DISCUSSION: The Calistoga Public Facilities Corporation was created as a Section 501 (c) (4) non-profit public benefit corporation in September 1987 by the City of Calistoga as part of the initial financing of the new Police Station and parking lot. The costs of these improvements were funded, in part, through the issuance of a 1987 \$2,115,000 Certificate of Participation (COP).

This type of non-profit corporation is required by the Federal IRS code in order to issue a public financing instrument called a Certificate of Participation (COP). A COP is a typical California public financing instrument for public facilities or equipment. It is essentially a type of lease purchase that requires a third party for the lease transaction. The Calistoga Public Facilities Corporation (CPFC) assigns all of the rights, obligations and financial transactions to others, such as the City or Trustee for the COP.

Even though the CPFC is a separate legal entity, it is considered a "component unit" of the City and is included in the audit of the Comprehensive Annual Financial Report. The non-profit corporation had no direct financial transactions or obligations during the 2016/17 fiscal year and therefore there are no financial transactions of the CPFC.

In November 2007, the City issued a municipal lease for \$4,649,000 to provide funding for several community projects. The lease was secured by the public works facility and fire station and provided funds to complete the projects. The lease was issued for 20 years at 4.95% annual interest. The funds were invested to earn an estimated \$170,000 over the two-year period, which served to offset a portion of the interest costs. In addition, the lease incorporated the ability to pay off the financing in a shorter period than usual. This lease was reset on May 1, 2016.

In June 2011 the City issued a previously authorized USDA loan of \$3,750,000 to finance construction of the Mt Washington Water Tank project. This financing, along with funds previously authorized through Measure A, will fund the remainder of the project. The USDA loan was issued for 40 years at 2.5% annual interest. Debt service payments will be made from the Water Utility and were anticipated during the recently updated rates. The current outstanding balance at June 30, 2019 is \$2,784,852.

On April 5, 2016, through resolution 2016-029, the City Council approved a rate reset on the City's existing 2007 Capital Improvement Project Lease. A rate reset with the original lender, Westamerica Bank minimized the overall costs of the lease. The outstanding par amount that was refunded was \$3,870,414. The City's debt service is approximately \$374,000 and fiscal year savings approximately \$52,400 per year. The lease was issued for 12 years at 2.44% interest rate and payments to be made on a monthly basis commencing July 1, 2016. Current outstanding balance at June 30, 2019 is \$2,918,116.

On May 8, 2018 the City issued \$8,920,000 2018 Water and Wastewater Revenue Certificates of Participation ("2018 Refunding COPs"). The 2018 bond refinanced the 2005D Water, 2008 COPS Water, 2001 B Wastewater and 2005 COPs Wastewater. In total, the City refinanced approximately \$8.9 million of outstanding debt for interest rate savings. The current outstanding balance at June 30, 2019 for Water is \$3,720,000 and for Wastewater \$4,725,000.

2018/19 Activity

All debt service payments have been made on a timely basis for the 2007, 2011, and 2018 financing.

Future Financings

There are no anticipated future financings at this time.

FINANCIAL IMPACT:

None

ATTACHMENTS:

1. Debt Schedule FY 2019-20
2. Agreement for Arbitrage Rebate Reporting Services

City of Calistoga

Fiscal Year 19-20 Budget

Debt Schedule

FY 2019-20

	Original Issue Amount	Balance 7/1/2019	Principal Pymts	Interest Pymts	Total	Principal Balance 6/30/2020
WATER FUND						
Water Revenue COP 2018 Issue Date: 05/08/2018 Principal Payments Due 10/1 2.875 % to 5.0% 'October 2044	\$ 3,905,000	\$ 3,720,000	\$ 165,000	\$ 137,306	\$ 302,306	\$ 3,555,000
USDA 2011 COP Issue Date: 08/10/2009 Principal Payments Due 07/12 2.5%/\$148,237 ** Principal varies based on drawdowns	\$ 3,750,000	\$ 2,784,852	\$ 66,000	\$ 68,796	\$ 134,796	\$ 2,718,852
TOTAL WATER DEBT	\$ 7,655,000	\$ 6,504,852	\$ 231,000	\$ 206,102	\$ 437,102	\$ 6,273,852
WWTP FUND						
Wastewater Revenue COP 2018 Issue Date: 05/08/2018 Principal Payments Due 10/1 2.875 % to 5.0% 'October 2044	\$ 5,015,000	\$ 4,725,000	\$ 270,000	\$ 171,988	\$ 441,988	\$ 4,455,000
TOTAL WWTP DEBT	\$ 5,015,000	\$ 4,725,000	\$ 270,000	\$ 171,988	\$ 441,988	\$ 4,455,000
GENERAL LONG TERM DEBT ACCOUNT GROUP						
Lease Payable-West America Pool, Fire, recreation, public works Issue Date: 05/01/2016 'February 1, 2028 2.44%	\$ 3,870,413	\$ 2,918,116	\$ 306,108	\$ 67,794	\$ 373,902	\$ 2,612,008
TOTAL LONG TERM DEBT	\$ 3,870,413	\$ 2,918,116	\$ 306,108	\$ 67,794	\$ 373,902	\$ 2,612,008
GRAND TOTAL	\$ 16,540,413	\$ 14,147,968	\$ 807,108	\$ 445,884	\$ 1,252,992	\$ 13,340,860

AGREEMENT FOR ARBITRAGE REBATE REPORTING SERVICES

This Agreement is made and entered into this 20 day of June 2019, by and between the City of Calistoga, hereinafter referred to as “**CITY**”, and Urban Futures, Inc., an independent contractor, hereinafter referred to as “**CONSULTANT**”.

RECITALS

WHEREAS, **CITY** requires on-going Arbitrage Rebate Reporting Services (hereinafter referred to as “**Services**”); and,

WHEREAS, **CONSULTANT** represents that it has the qualifications and experience provide such Services; and,

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, **CITY** and **CONSULTANT** hereby agree as follows:

ARTICLE I
SCOPE OF SERVICES; TERM

1.1 General Scope of Services.

CONSULTANT shall provide Arbitrage Rebate Reporting Services related to **CITY**. Services shall be completed in accordance with the duties and responsibilities as set forth in the Scope of Work attached hereto as Exhibit “A”, and incorporated herein by this reference.

1.2 Non-Exclusive Agreement.

CONSULTANT acknowledges that **CITY** may enter into agreements similar to this Agreement with other consultants.

1.3 Term.

The term of this Agreement shall continue until terminated by **CITY** or **CONSULTANT** pursuant to the provisions of this Agreement, for the duration of the bonds, defined to include refinancing of the existing bonds. The terms of this agreement may also be applied to the **CITY’S** future bond issuances.

ARTICLE II
RESPONSIBILITIES OF CONSULTANT

2.1 Control and Payment of Subordinates.

CITY retains **CONSULTANT** to provide Services. Any staff provided by **CONSULTANT** will not be considered employees of **CITY**. **CONSULTANT** shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. **CONSULTANT** shall be responsible for all reports and obligations with respect to such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

2.2 Conformance to Applicable Requirements.

All Services or work product provided by **CONSULTANT** shall be subject to the approval of **CITY**.

2.3 Standard of Care; Licenses.

All Services to be provided by **CONSULTANT** pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices. **CONSULTANT** represents and warrants to **CITY** that it has all licenses, permits, qualifications and approvals that are legally required to practice its profession and to provide the Services hereunder. **CONSULTANT** further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

2.4 Project Representatives.

The **CITY** or its designee shall be the Project Representative of **CITY** for purposes of this Agreement and may issue all consents, approvals, directives and agreement on behalf of **CITY**, called for by this Agreement except as otherwise expressly provided in this Agreement. The engagement partner assigned by **CONSULTANT** shall act as Project Representative for **CONSULTANT** and shall provide management oversight of **CONSULTANT** employees at all times. **CONSULTANT** shall make best efforts to provide continuity of staff to **CITY** each year which this agreement is in effect. **CITY** retains the right to interview and approve **CONSULTANT** staff assigned to **CITY** prior to the start of work.

2.5 Accounting Records.

CONSULTANT shall maintain complete and accurate records with respect to costs and expenses incurred in the performance of this Agreement. All such records shall be clearly identifiable as being associated with this Agreement. **CONSULTANT** shall allow an authorized representative of **CITY**, during normal business hours, to examine, audit, and make transcripts of copies of such records. **CONSULTANT** shall allow **CITY** to inspect all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment (or completion of work) under this Agreement.

ARTICLE III **COMPENSATION**

3.1 Compensation.

Except as provided in this section, **CONSULTANT** shall receive compensation for all Services rendered under this Agreement at the rates set forth in the schedule of Compensation Rates and Charges attached hereto as Exhibit "B", and incorporated herein by reference. Total compensation shall not exceed the amounts specified in Exhibit "B" without written approval of **CITY'S** Project Representative. Assigned **CONSULTANT** staff shall not receive compensation for any services provided outside the Scope of Work unless such additional services (hereinafter "Additional Work") are approved in writing by **CITY** or its appointed representative prior to **CONSULTANT'S** staff performing the Additional Work.

3.2 Payment of Compensation.

CONSULTANT shall provide **CITY** an annual invoice that indicates the annual reports completed by bond issue by **CONSULTANT**, from the start of each billing period, as appropriate, through the date of the statement. **CITY** shall make any payment due within thirty (30) days after approval of the invoice by **CITY**.

3.3 Additional Work.

At any time during the term of this Agreement, **CITY** may request the **CONSULTANT** perform Additional Work. As used herein, "Additional Work" means any work that is determined by **CITY** to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. **CONSULTANT** shall not perform Additional Work until receiving prior written authorization from **CITY'S** Project Representative. It is specifically understood and agreed that oral requests and/or approvals of Additional Work shall be barred and are unenforceable.

3.4 Amendment of Scope of Work.

CITY shall have the right to amend the Scope of Work within the Agreement by written notification to **CONSULTANT**. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of **CONSULTANT** to secure **CITY'S** written authorization for Additional Work or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate **CITY** authorization.

3.5 Reimbursement for Expenses

CONSULTANT shall not be reimbursed for any expenses unless prior written authorization is obtained from **CITY**.

ARTICLE IV **INDEMNIFICATION AND INSURANCE**

4.1 Insurance Requirements.

CONSULTANT shall obtain, at its sole cost and expense and keep in force throughout the term of the Agreement, the following insurance coverage:

1. **MINIMUM SCOPE INSURANCE:** Coverage shall be at least as broad as:

- a. Commercial General Liability coverage (occurrence policy).
- b. Automobile Liability (any automobile).
- c. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- d. Errors and Omissions Liability Insurance appropriate to the consultant's profession. Architects' and Engineers' coverage shall be endorsed to include contractual liability (if applicable).

2. **MINIMUM LIMITS OF INSURANCE:** **CONSULTANT** shall maintain limits no less than:

- a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

e. Errors and Omissions Liability: \$1,000,000 per occurrence.

4.2. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by **CITY**. At the option of **CITY**, either: **CONSULTANT'S** insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to **CITY**, its officers, officials, employees, agents and volunteers; or **CONSULTANT** shall provide a financial guarantee satisfactory to **CITY** guaranteeing payment of losses and related investigations, claims administration and defense expense.

4.3 Other Insurance Provisions.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

a. **CITY**, its officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of **CONSULTANT**; and with respect to liability arising out of work or operations performed by or on behalf of **CONSULTANT** including materials, parts or equipment furnished in connections with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code § 27882(b). General liability coverage can be provided in the form of an endorsement to **CONSULTANT'S** insurance, or as a separate owner's policy.

b. For any claims related to this project, **CONSULTANT'S** insurance coverage shall be primary insurance as respects to **CITY**, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by **CITY**, its officers, officials, employees, agents or volunteers shall be excess to **CONSULTANT'S** insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be endorsed to state that **CITY** shall receive no less than thirty (30) days prior written notice of cancellation of any policies of insurance required hereunder.

4.4. Acceptability of Insurers

Insurance is to be placed with insurers with current A.M. Best's rating of no less than B+.

4.5. Verification of Coverage.

CONSULTANT shall furnish **CITY** with original certificates and amendatory endorsements effecting coverage required by **CITY**. All certificates and endorsements are to be received and approved by **CITY** before work commences. **CITY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

4.6. Subcontractors:

CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

4.7. Indemnification and Hold Harmless.

CONSULTANT shall defend, indemnify, hold free and harmless **CITY**, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless **CITY**, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CONSULTANT**, its employees and/or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement.

CITY shall defend, indemnify, hold free and harmless **CONSULTANT**, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless **CONSULTANT**, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CITY**, its employees and/or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement.

4.8 Additional Insurance.

Further, **CONSULTANT** shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any

of its officers', employees', or authorized subcontractors' own actions during the performance of this Agreement.

ARTICLE V **TERMINATION**

5.1 Notice of Termination.

CITY may terminate the whole or any part of this Agreement at any time and without cause by giving sixty (60) days written notice to **CONSULTANT** of such termination, and specifying the effective date thereof. **CONSULTANT** shall discontinue all Services affected by such termination within thirty (30) days of receipt of such notice, unless otherwise instructed by **CITY** in writing. **CONSULTANT** may terminate this agreement by giving the **CITY** sixty (60) days written notice.

5.2 Termination Without Cause.

If **CITY** terminates this Agreement without cause, **CONSULTANT** shall be paid for Services performed through the date of termination, upon receipt of written documentation of said Services by **CITY**. **CONSULTANT** shall be paid within sixty (60) days of **CITY'S** receipt of **CONSULTANT'S** invoice. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services.

5.2 Termination for Cause.

Should **CONSULTANT** default in the performance of any covenant, condition, or agreement contained in this Agreement and the default is not cured within thirty (30) days after written notice of the default is served on **CONSULTANT** by **CITY**, then **CITY**, in addition to any other remedies at law or equity, may terminate this Agreement. **CONSULTANT** shall be compensated for Services that have been completed and accepted by **CITY**. **CONSULTANT** shall be liable to **CITY** for any reasonable additional costs incurred to correct or cure unsatisfactory work performed by **CONSULTANT** that, at **CITY'S** discretion, must be revised, in part or in whole, to complete the Project.

5.4 Procurement of Similar Services.

In the event this Agreement is terminated as provided by this Article, with or without cause, in whole or in part, **CITY** may procure, any and all services as may be necessary to complete the Project.

5.5 Work Product.

Upon termination of this Agreement, **CITY** may require **CONSULTANT** to provide all finished or unfinished documents, data, studies, drawings, reports, etc., prepared by the **CONSULTANT'S** assigned staff in performance of this Agreement.

be accomplished by a written instrument. Such instrument shall contain an expressed assumption by the subcontractor of all conditions and terms and covenants contained in this Agreement.

6.5 Equal Opportunity Employment.

CONSULTANT represents that it is an equal opportunity employer and shall not discriminate either directly or indirectly against an employee or applicant for employment with **CONSULTANT** on the basis of race, color, religion, national origin, ancestry, sexual preference, sex or age. **CONSULTANT** shall also take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, national origin, ancestry, sexual preference, sex, age, or other prohibited grounds.

6.6 Attorney's Fees.

If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover reasonable attorney's fees and costs of suits.

6.7 Governing Law.

This Agreement shall be governed by and construed with the laws of the State of California. Any Action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Orange.

6.8 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

6.9 Right to Employ Other Consultants.

CITY reserves the right to employ other consultants in connection with this Project.

6.10 Covenant Against Contingent Fees.

CONSULTANT warrants that he/she/it has not employed or retained any company or person, other than a bona fide employee working with **CONSULTANT**, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, **CITY** shall have the right to annul this Agreement without liability or, in its discretion to deduct from **CONSULTANT'S** compensation provided under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6.11 Conflict of Interest.

CONSULTANT covenants that he/she/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. **CONSULTANT** further covenants that in the performance of this Agreement, **CONSULTANT** shall not employ any person having any such conflict of interest.

6.12 Statement of Economic Interest.

If **CITY** determines **CONSULTANT** comes within the definition of **CONSULTANT** under the Political Reform Act (Government Code §87100 et. seq.), **CONSULTANT** shall complete and file and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with the **CITY** disclosing **CONSULTANT** and/or such other person's financial interests.

6.13 No Waiver of Breach; Time.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.14 Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

6.15 Taxes.

CONSULTANT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. **CONSULTANT** agrees to indemnify and hold **CITY** harmless from any liability which it may incur to the United States or to the State of California as a consequence of **CONSULTANT'S** failure to pay, when due, all such taxes and obligations.

6.16 Compliance With Law.

CONSULTANT shall comply with applicable federal, state and local laws, rules and regulations affecting the **CONSULTANT** and his/her/its work hereunder.

6.17 Title to Documents.

Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by **CONSULTANT** under the Agreement shall be vested in **CONSULTANT**, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of **CITY**. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to **CITY** without restriction or limitations on their use. **CONSULTANT** will retain copies of the above described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of **CITY** during the term of this Agreement or until ninety (90) days after receipt of final payment from **CITY**.

6.18 Validity.

The validity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

6.19 Headings.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

6.20 Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

6.21 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so; the Parties hereto are formally bound to the provision of this Agreement.

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

CITY:

THE CITY OF CALISTOGA

By: Signature: Michael Kirt

Name: MICHAEL KIRT

Title: CITY MANAGER

CONSULTANT:

URBAN FUTURES, INC:

By: M. P. Busch

Michael P. Busch

President & CEO

EXHIBIT "A"
SCOPE OF WORK

ARBITRIAGE REBATE REPORTING

The **CONSULTANT** will be expected to provide Arbitrage Rebate reporting for the **CITY'S** outstanding bond transactions as required by the Internal Revenue Service (IRS). Specifically, **CONSULTANT** will:

1. Review of all outstanding bond issues to determine the existing level of arbitrage compliance and future compliance needs;
2. Data collecting;
3. Data review and analysis; and
4. Performing calculations, including:
 - computing/verifying the allowable yield limit for each issue
 - computing the estimated rebate liability, if any, as of the bond year end
 - computing the amount of excess earnings, if any, rebatable to the
 - U.S. Treasury, as of the 5th year (or final) installment date

EXHIBIT "B"
COMPENSATION RATES AND CHARGES

ARBITRAGE REBATE REPORTING

Arbitrage Rebate Reports will be prepared for \$500 per bond, per bond year.