



CITY OF CALISTOGA

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Michael Kirn, City Manager
DATE: August 20, 2019
SUBJECT: Declaring Intention to Reimburse Expenditures Relating to Acquisition of a Portion of the Napa County Fairgrounds From the Anticipated Issuance of Long-Term Tax Exempt Obligations and Ratifying Approval of a Professional Service Letter Agreement with Urban Futures Inc., and Authorize Agreements with Brandis Tallman LLC and Jones Hall for Bond Issuance Services

Approved by

A handwritten signature in blue ink that reads 'Michael Kirn'. The signature is written in a cursive style.

Michael Kirn, City Manager

DESCRIPTION:

Resolution of the City Council of the City of Calistoga Declaring Intention to Reimburse Expenditures Relating to Acquisition of a Portion of the Napa County Fairgrounds From the Anticipated Issuance of Long-Term Tax Exempt Obligations and Ratifying Approval of a Professional Service Letter Agreement with Urban Futures Inc., and Authorize Agreements with Brandis Tallman LLC and Jones Hall for Bond Issuance Services.

RECOMMENDATION:

Consider Approving a Resolution Declaring Intention to Reimburse Expenditures Relating to Acquisition of a Portion of the Napa County Fairgrounds From the Anticipated Issuance of Long-Term Tax Exempt Obligations, Ratifying Approval of a Professional Service Letter Agreement with Urban Futures Inc., and Authorizing Agreements with Brandis Tallman LLC and Jones Hall for Services in Connection therewith, not to exceed \$51,500, \$60,000 and \$90,000 respectively.

SUMMARY:

The City appointed an *ad hoc* Council Committee on October 4, 2016 to discuss the creation of a Joint Powers Authority with Napa County for the Napa County

Fairgrounds, pursuant to which the City and the County would jointly operate the Fairgrounds. In March 2018, following the reordering of priorities by the County, the *ad hoc* committee shifted focus and began discussions with the County related to the purchase by the City of some or all the Fairgrounds. The City and County have agreed to terms whereby the City would purchase approximately 34.3 acres of the 70.6-acre property for \$225,000 per acre, subject to certain terms and provisions. After months of additional negotiations, the City and County have reached an agreement, known as the "Purchase and Sale Agreement." The City Council is also considering approval of the Purchase and Sale Agreement tonight. After formal execution of this Purchase and Sale Agreement, the 120-day due diligence period granted to the City will begin, and the City can move forward with plans for long-term financing if the City goes forward with the purchase after the due diligence period.

Certificates of participation or other long-term tax-exempt and taxable obligations (referred to herein as the "Bonds") will fund the City's acquisition of the agreed upon portion of the Fairgrounds and provide limited cash-flow to undertake certain improvements to the property such as roof repairs and other capital maintenance activities to keep the buildings in sound condition in the aggregate principal amount of approximately \$8,500,000, which would be payable from lease payments made by the City.

In order to use the proceeds of the Bonds to reimburse advances made by the City before the date of issuance of the Bonds, the City Council must declare its intention to reimburse such advances from the proceeds of the Bonds. If the attached Resolution is adopted, the City may be reimbursed for advances made by the City prior to the Bond issuance but no more than 60 days before the date of adoption of the Resolution. A reimbursement for advancements made by the City from bond proceeds is in the public interest because it will allow the funds used for interim financing to be reimbursed thereby maintaining the City liquid assets and maintains the City's operating reserve fund for future needs, including emergencies.

Additionally, in order to execute the financing, staff is requesting that the Council confirm the proposed financing team identified and discussed below. Staff, with the assistance of the financing team, plans to structure the Bond issue with level annual debt service payments and evaluate the benefits of a shorter call option in order to prepay the debt on an accelerated basis, if funds allow. Staff will also work with the financing team to foster retail investment from the local area by developing a marketing program to include Calistoga residents and the general area.

Staff will return to Council at a later date for final authorization to issue the taxable and tax-exempt obligations (in the form of "certificates of participation"), and the legal documents required for that issuance.

DISCUSSION:

Staff is proposing to engage the following financing team members:

- Urban Futures, Inc. as municipal advisor
- Jones Hall as bond and disclosure counsel
- Brandis Tallman LLC as underwriter

Urban Futures, Inc.

Urban Futures, Inc. is a full-service municipal consulting firm serving California cities, counties, school districts, special districts, private higher education and non-profits since 1972. Over the past three years, Urban Futures, Inc. has served as the municipal advisor on over 53 general fund transactions for California municipalities. Urban Futures served as municipal advisor for the City of Calistoga 2018 Water & Wastewater Revenue Certificates of Participation which closed in May 2018.

Based on the firm's qualifications and experience with the City and in particular with California municipal bond financings in general, staff is recommending that Urban Futures serve as the municipal advisor on this transaction. The fee for their services is \$51,500.

Jones Hall

Jones Hall has been helping cities, counties, school districts, housing authorities, special districts and other public agencies finance public infrastructure through a practice devoted exclusively to municipal bond law since 1978. Jones Hall served as special counsel and disclosure counsel for the City of Calistoga 2018 Water & Wastewater Revenue Certificates of Participation which closed in May 2018. The firm also represented the City with respect to its 2007 Capital Improvement Projects Financing.

Based on the firm's qualifications and experience with the City and with California municipal bond financings in general, staff is recommending that Jones Hall serve as bond and disclosure counsel on this transaction. The not to exceed amount for legal services is \$90,000.

Brandis Tallman LLC

Brandis Tallman LLC is a full-service broker/dealer that provides bond underwriting and placement agent services to public agencies. Brandis Tallman has assisted the City with the following financings: 2007 Capital Improvement Projects Financing, two USDA loans in 2008 and 2011, Fiscal Year 2010-2011 and Fiscal Year 2011-2012 Tax and Revenue Anticipation Notes, and an Equipment Lease in 2011.

Based on the firm's qualifications and experience with the City and with California municipal bond financings in general, staff is recommending that Brandis Tallman LLC serve as underwriter on this transaction. Brandis Tallman's fee is based on the amount of the bond issuance and is \$6.90 per \$1,000 of issuance. For example, the fee for an \$8.5M bond issuance would be \$58,650.

City staff has reviewed the qualifications of the foregoing consultants and has confirmed that Urban Futures, Inc., Jones Hall and Brandis Tallman LLC each have specialized skills and experience relating to municipal bond financings. Agreements for

professional services are exempt from the City's competitive bidding requirements pursuant to Calistoga Municipal Code section 3.34.070(A)(1).

Due to the complexities of municipal bond financing, especially during the winter holidays, and the need to move quickly during the due diligence period the City Manager and Finance Director reached out to firms that have previously performed professional services associated with capital financing for the City. The recommended Resolution seeks to ratifies approval of the Letters of Engagement for financial and Bond Counsel services with Urban Futures, Inc., Jones Hall and Brandis Tallman LLC.

FINANCIAL IMPACT:

There will be no immediate financial impact to the General Fund. Payment for all financial and legal services rendered by the three firms is contingent upon successful sale of bonds. All costs associated with these services will be included in the total financing which will be repaid over the life of the thirty-year note.

CEQA REVIEW:

The proposed purchase of the Property has been reviewed in accordance with the California Environmental Quality Act and staff has determined that the proposed purchase itself will not have an impact on the environment and is therefore exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, which states that, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. Any future development or new uses of the Property, following its purchase by the City, will be subject to the appropriate level of CEQA analysis at the time it is proposed.

CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTIVES:

The recommended action supports Council Goal 4: Expand and improve recreational and community facilities.

ALTERNATIVES:

The Council could direct staff to identify and use an alternate financial advising and legal team. Staff anticipates that this process would take 3-4 weeks and would compromise the ability to price bonds for early January in order to close escrow within the 60-day close of escrow period contained in the sale agreement.

ATTACHMENTS:

1. Resolution
2. Letter Engagement Urban Futures

RESOLUTION NO. 2019-XXXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIORNIA, DECLARING INTENTION TO REIMBURSE EXPENDITURES RELATING TO ACQUISITION OF A PORTION OF THE NAPA COUNTY FAIRGROUNDS FROM THE ANTICIPATED ISSUANCE OF LONG-TERM TAX EXEMPT OBLIGATIONS, RATIFYING APPROVAL OF A PROFESSIONAL SERVICES LETTER AGREEMENT WITH URBAN FUTURES INC., AND AUTHORIZING AGREEMENTS WITH BRANDIS TALLMAN LLC, AND JONES HALL FOR SERVICES IN CONNECTION WITH BOND ISSUANCE

WHEREAS, the City Council of the City of Calistoga (the “City”) is proceeding to acquire a portion of the Napa County Fairgrounds from the County of Napa, and construct certain improvements thereon (collectively, the “Project”); and

WHEREAS, in order to provide funds to finance the Project, the City Council intends to issue and sell tax and tax-exempt bonds, notes or certificates of participation in the aggregate principal amount of approximately \$8,500,000, which are payable from lease payments made by the City (the “Bonds”); and

WHEREAS, in order to use the proceeds of the Bonds to reimburse advances made by the City for the Project before the date of issuance of the Bonds, but not more than 60 days before the date of adoption of this Resolution, Section 1.150-2 of the United States Income Tax Regulations requires that City Council declare its intention to reimburse such advances from the proceeds of the Bonds; and

WHEREAS, it is in the public interest and for the public benefit that the City declare its official intent to reimburse the expenditures referenced herein; and

WHEREAS, the City desires to hire a financing team to assist with the issuance of the Bonds and the financing of the Project; and

WHEREAS, the City Council of the City wishes at this time to authorize the engaging of the professionals necessary to undertake the financing; and

WHEREAS, staff has reviewed the qualifications of the recommended professionals and requests that the City Council ratify a Professional Service Agreements with Urban Futures, Inc., and authorize agreements with Jones Hall and Brandis Tallman LLC.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calistoga as follows:

1. The City Council hereby declares that it reasonably expects to issue the Bonds and to use a portion of the proceeds thereof to reimburse expenditures made by

the City for the Project before the date of issuance of the Bonds, and not more than 60 days before the date of adoption of this Resolution. The Bonds are anticipated to be issued in an aggregate principal amount which is sufficient to raise funds for the Project in the approximate amount of \$8,500,000.

2. The City Council finds that proposed purchase of the Property has been reviewed in accordance with the California Environmental Quality Act and staff has determined that the proposed purchase itself will not have an impact on the environment and is therefore exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3), the “general rule” exemption, which states that, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA. Any future development or new uses of the Property, following its purchase by the City, will be subject to the appropriate level of CEQA analysis at the time it is proposed.
3. The City Council hereby confirms and ratifies the appointment of Urban Futures, Inc., as municipal advisor and ratifies a Professional Services Letter Agreement in a total amount not to exceed \$51,500.
4. Authorizes staff to execute agreements with Brandis Tallman LLC, as underwriter in an amount not to exceed \$60,000 and Jones Hall, as bond counsel and disclosure counsel in an amount not to exceed \$90,000 to act on behalf of the City in the preparation of the financing documents needed to issue and deliver the Bonds.
5. The City Council hereby authorizes the City Manager to execute Professional Service Agreements on behalf of the City of Calistoga, in a form approved by the City Attorney, with minor revisions that may be approved by the City Manager and City Attorney and to take such further actions and execute such further documents necessary to effectuate the purpose of this Resolution.
6. This Resolution shall take effect immediately upon approval and adoption thereof.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Calistoga at a regular meeting thereof held this **20th day of August 2019**, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

CHRIS CANNING, Mayor

ATTEST:

IRENE CAMACHO-WERBY,
City Clerk

July 15, 2019

FROM: Urban Futures, Inc.
Michael Busch, CEO
Wing-See Fox, Managing Director

TO: Michael Kirn, City Manager
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

RE: Engagement Letter for Issuance of 2019 Certificates of Participation

Dear Mr. Kirn:

This letter specifies the terms of the engagement between Urban Futures, Inc., located at 17821 E. 17th Street, Suite 245, Tustin, CA 92780 and City of Calistoga located at 1232 Washington Street, Calistoga, CA 94515.

This engagement between City of Calistoga (the “City”) and Urban Futures, Inc. (“UFI”) shall become effective as of the date of its acceptance as provided below.

Scope of Municipal Advisory Activities to be Performed

As municipal advisor, UFI will successfully perform the following duties on behalf of the City, as needed.

- Assist in developing the plan of finance and related transaction timetable;
- Identify and analyze financing solutions and alternatives for funding the capital improvement plan or refunding;
- Advise on the method of sale, taking into account market conditions and near-term activity in the municipal market;
- Assist in the preparation of any rating agency strategies and presentations;
- Coordinate internal/external accountants, feasibility consultants and escrow agents, as appropriate;
- Assist with the selection of the financing team including underwriters, trustee, bond and disclosure counsel;
- Assist with underwriter compensation issues, syndicate structure and bond allocations;
- Assist with negotiated sales (as applicable), including advice regarding retail order periods and institutional marketing, analysis of comparable bonds and secondary market data, and verify cash flow calculations;

- Assist with competitive bond sales (as applicable), including posting of the notice of sale and preliminary official statement, and preparation of the bid verification, true interest cost (TIC) calculations and reconciliations/verifications of bidding platform calculations, preparation of notice of sale, obtaining CUSIP numbers;
- Prepare and/or review preliminary cash flows/ preliminary refunding analysis;
- Analyze whether to use SLGS, open markets and/or agency securities for purposes of investment of bond proceeds;
- Manage the escrow bids or review SLGs applications for structuring refunding escrow;
- Assist in procuring printers, verification agents, etc.;
- Plan and coordinate bond closings;
- Prepare any required post-sale reports of bond sales; and
- Evaluate market conditions and pricing performance of senior manager and co-managers' distribution of bonds.

Independent Registered Municipal Advisor (“IRMA”)

If acting in the capacity of an Independent Registered Municipal Advisor (“IRMA”) with regard to the IRMA exemption of the SEC Rule, Urban Futures, Inc. will review all third-party recommendations submitted to Urban Futures, Inc. in writing by the City.

Term of Engagement Agreement

The commencement date of the agreement is July 15, 2019 and the end date is two years after the effective date. Any extensions must be mutually agreed upon by all parties in writing.

Termination of Engagement Agreement

The 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 Urban Futures, Inc. of such termination, and specifying the effective date thereof. Urban Futures, Inc. shall discontinue all Services affected by such termination within thirty (30) days of receipt of such notice, unless otherwise instructed by the City in writing. Urban Futures, Inc. may terminate this agreement by giving the City sixty (60) days written notice.

In the event Services are terminated by the City, Urban Futures, Inc. will be compensated for services provided up to the termination date.

Compensation and Out-of-Pocket Expenses

Compensation for the municipal advisory activities to be performed for this engagement is contingent upon the successful sale on bonds.

For the subject transaction, the fee for financial advisory services is \$50,000, and a reimbursement of expenses in an amount not to exceed \$1,500. Expense reimbursements will cover the following:

- Mandatory SEC/MSRB Compliance Requirements & Reporting
- Data Services (Bloomberg, Thompson Reuters, DBC)
- Travel (mileage, airfare, hotels, etc.)

Fiduciary Duty

Urban Futures, Inc. is currently registered as a Municipal Advisor with the Securities and Exchange Commission (“SEC”) and Municipal Securities Rulemaking Board (“MSRB”). As such, Urban Futures, Inc. has a Fiduciary Duty to the City and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the City with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the City’s determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and
- d) undertake a reasonable investigation to determine that Urban Futures, Inc. is not forming any recommendation on materially inaccurate or incomplete information; Urban Futures, Inc. must have a reasonable basis for:
 - i. any advice provided to or on behalf of the City;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or investors in the City securities; and
 - iii. any information provided to the City or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

Urban Futures, Inc. must deal honestly and with the utmost good faith with the City and act in the City’s best interests without regard to the financial or other interests of Urban Futures, Inc. Urban Futures, Inc. will eliminate or provide full and fair disclosure (included herein) to the City about each material conflict of interest (as applicable). Urban Futures, Inc. will not engage in municipal advisory activities with the City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the City’s best interests.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of the date of the Agreement, there are no actual or potential conflicts of interest that Urban Futures, Inc. is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. Urban Futures, Inc. represents that in connection with the issuance of municipal securities, Urban Futures, Inc. may receive compensation from the City for services rendered, which compensation is contingent upon the successful closing of a transaction and/or is based on the size of a transaction. Consistent with the requirements of MSRB Rule G-42, Urban Futures, Inc. hereby discloses that such contingent and/or transactional compensation may present a potential conflict of interest regarding Urban Futures, Inc.'s ability to provide unbiased advice to enter into such transaction. This conflict of interest will not impair Urban Futures, Inc.'s ability to render unbiased and competent advice or to fulfill its fiduciary duty to the City. If Urban Futures, Inc. becomes aware of any potential conflict of interest that arises after this disclosure, Urban Futures, Inc. will disclose the detailed information in writing to the City in a timely manner.
- The fee paid to Urban Futures, Inc. increases the cost of financing to the City. The increased cost occurs from compensating Urban Futures, Inc. for municipal advisory services provided.
- Urban Futures, Inc. does not act as principal in any of the transaction(s) related to this Agreement.
- During the term of the municipal advisory relationship, this agreement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this agreement and the revised writing will be promptly delivered to the City.
- Urban Futures, Inc. does not have any affiliate that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by Urban Futures, Inc.;
- Urban Futures, Inc. has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business;
- Urban Futures, Inc. has not received any payments from third parties to enlist Urban Futures, Inc. recommendation to the City of its services, any municipal securities transaction or any municipal finance product;
- Urban Futures, Inc. has not engaged in any fee-splitting arrangements involving Urban Futures, Inc. and any provider of investments or services to the City;
- Urban Futures, Inc. does not have any other engagements or relationships that might impair Urban Futures, Inc.'s ability either to render unbiased and competent advice to or on behalf of the City or to fulfill its fiduciary duty to the City, as applicable; and
- Urban Futures, Inc. does not have any legal or disciplinary event that is material to the City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Legal Events and Disciplinary History

Urban Futures, Inc. does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The City may electronically access Urban Futures, Inc.'s most recent Form MA and each most recent Form MA-I filed with the Commission at the following website: www.sec.gov/edgar/searchedgar/companysearch.html. There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Within the Municipal Securities Rulemaking Board ("MSRB") website at www.msrb.org, the City of Calistoga may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Recommendations

If Urban Futures, Inc. makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the City and is within the scope of the engagement, Urban Futures, Inc. will determine, based on the information obtained through reasonable diligence of Urban Futures, Inc. whether a municipal securities transaction or municipal financial product is suitable for the City. In addition, Urban Futures, Inc. will inform the City of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which Urban Futures, Inc. reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the City; and
- whether Urban Futures, Inc. has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the City's objectives.

If the City elects a course of action that is independent of or contrary to the advice provided by Urban Futures, Inc., Urban Futures, Inc. is not required on that basis to disengage from the City.

Record Retention

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, Urban Futures, Inc. is required to maintain in writing, all communication and created documents between Urban Futures, Inc. and the City for 5 years.

If there are any questions regarding the above, please do not hesitate to contact Urban Futures, Inc. If the foregoing terms meet with your approval, please indicate your acceptance by executing both copies of this letter and returning one copy.

Sincerely,



Michael Busch, CEO
Urban Futures, Inc.

City of Calistoga

By: Michael Kun 7/12/19
CITY MANAGER