



CITY COUNCIL STAFF REPORT

DATE: NOVEMBER 6, 2013 CONSENT CALENDAR

SUBJECT: APPROVE AMENDMENT NO. 2 TO THE CONSULTING SERVICES AGREEMENT WITH HARRELL & COMPANY ADVISORS, LLC TO EXTEND THE TERM AND AMEND THE SCOPE OF SERVICES.

FROM: David H. Ready, City Manager

BY: Chief of Staff/City Clerk

SUMMARY

The City Council will consider an amendment to the financial consulting services agreement with Harrell & Company Advisors LLC, to extend the term an additional five (5) years and modify the scope of services to include "as needed" financial review and services as requested by the City.

RECOMMENDATION:

1. Approve Amendment No. 2 to the Agreement with Harrell & Company Advisors, LLC. A5548.
2. Authorize the City Manager to execute the Amendment to the Agreement.

STAFF ANALYSIS:

Harrell & Company Advisors has been providing financial consulting services to the City, and has served as the City's Financial Advisory for nearly 15-years. The firm has provided a variety of services consisting of financial analysis, assistance with bond issuance, the preparation of each Bond Issues' Official Statement, and the preparation of Continuing Disclosure Statements and other reports as required.

City Staff recommends the City Council extend the term of the financial consulting agreement for five (5) years, and amend the scope of services to include: "as-needed" review and analysis of financial documents, financial statements and development proposals along with the preparation of the ROPS and related Successor Agency financial issues.

Due to the special expertise, and Suzanne Harrell's significant knowledge about prior bond issues and other financing mechanisms of the City of Palm Springs, along with the excellent customer service and sound and practical plans and implementation of such financing, staff recommends the extension of the contract with Harrell & Company Advisors, LLC.

The City continues to reserve the right to terminate the Agreement at any time, with or without cause, upon thirty days written notice to Harrell & Company Advisors.

FISCAL IMPACT:

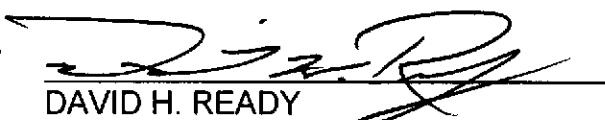
Harrell & Company Advisors LLC has reduced the fixed fee for bond issuance from \$20,000 to \$10,000, and has limited the overall compensation for any financing to \$70,000 no matter what the size of the issue. All other fees have remained without increase since 2000.

Fees for review and analysis of financial documents, financial statement and Successor Agency financial issues are on an as-needed basis at \$140.00 per hour.

The City budgets individually for all bond issuance costs as part of the debt issuance charges. Other financial consulting services are budgeted in various City budgets dependent upon the services required. Any funds spent on matters in the City's capacity as Successor Agency to the Palm Springs Community Redevelopment Agency, are placed on the allowed administrative budget and appropriate charges for the Successor Agency.



JAMES THOMPSON
Chief of Staff/City Clerk



DAVID H. READY
City Manager

Attachments:
Amendment No. 2

**AMENDMENT NO. 2 TO CONSULTING SERVICES AGREEMENT
Harrell & Company Advisors, LLC**

This Amendment No. 2 to the Consulting Services Agreement ("Amendment") is made and entered into this 6TH day of November, 2013, by and between the City of Palm Springs, California, a California Charter City ("City"), and in its capacity as Successor Agency to the City of Palm Springs Community Redevelopment Agency, and Harrell & Company Advisors, LLC, ("Consultant").

RECITALS

A. City and Consultant have entered into a Consulting Services Agreement, as amended, for the services of a financial advisor ("Agreement").

B. City and Consultant are agreeable to modifying certain terms and conditions to the Agreement pursuant to the terms of this Amendment.

AGREEMENT

In consideration of the promises and covenants contained in this Amendment and other good and valuable consideration, the City and the Consultant agree:

SECTION 1. Section 4 of the Agreement (titled "Term"), including all subsequent subsections, is amended to read:

4. TERM

4.1 Term. Unless earlier terminated in accordance with Section 9.5 of this Agreement, this Agreement shall continue in full force and effect for a period of five (5) years ending on October 31, 2018, unless extended by mutual written agreement of the parties.

SECTION 2. Exhibit A (titled Scope of Services/Work) and Exhibit B (titled Schedule of Compensation) and all references in the agreement to Exhibit A and Exhibit B, are hereby superseded in their entirety and replaced with Exhibit A-1 Scope of Services and Compensation, attached hereto and incorporated herein.

SECTION 3. Section 11.5 is hereby added to the Agreement to read:

11.5 Fiduciary Duty. In connection with the services performed pursuant to this Agreement Consultant advises the City that it owes a fiduciary duty to the City, in that Harrell & Company must deal honestly and in good faith with the City and to act in the City's best interests without regard to financial or other interests of Harrell & Company Advisors. Harrell & Company Advisors is not aware that the services provided pursuant to this Agreement give rise to any conflict of interest that might impair their ability to satisfy the duty of loyalty pursuant to the MSRB's rules regarding the Fiduciary Duty of Municipal Advisor.

SECTION 4. City and Consultant agree that the terms of the Agreement, as amended, shall remain unchanged and in full force and effect, except as specifically provided in this Amendment.

In witness whereof, City and Consultant have executed and entered into this Amendment as of the date first written above.

CITY OF PALM SPRINGS,
A California Charter City

CONSULTANT
Harrell & Company Advisors, LLC

David H. Ready, City Manager

Suzanne Harrell, Managing Director

ATTEST:

APPROVED AS TO FORM:

James Thompson, City Clerk

Douglas C. Holland, City Attorney

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Service: Review and analysis of financial documents, financial statements and development proposals

Harrell & Company will review and analyze financial documents, financial statements and development proposals. This service will also include attendance at periodic finance committee meetings, review of City monthly financial reports and other financial duties as requested by the City Manager or Chief of Staff. Harrell & Company will provide such assistance on an as-needed/as-requested basis at a rate of \$140 per hour for time spent working on authorized projects.

Harrell & Company does not bill for any time spent relating to questions concerning outstanding bonds that arise after issuance or for travel time to the City. Typically, we spend about 10 or more hours a year on bond related questions.

Fees will be payable upon receipt of periodic invoices.

Service: Preparation of ROPS and related Successor Agency financial issues

Harrell & Company will prepare semi-annual ROPS, and provide any data or follow up materials as requested by the Department of Finance or staff. Harrell & Company will also review and analyze any Successor Agency financial transactions. Harrell & Company will provide such assistance on an as-needed basis at a rate of \$140 per hour.

Fees will be payable upon receipt of periodic invoices.

**Service: Preparation and Filing of Annual Continuing Disclosure Reports for
outstanding bond issues**

The Securities and Exchange Commission and the Municipal Securities Rulemaking Board require that the City and its related entities (such as the Successor Agency, and special districts like assessment districts) annually provide ongoing financial disclosure to the bond market. These reports are generally due within 180 to 270 days after the City's fiscal year end. The City must disclose in all future financings for a five year period if any of the deadlines for filing these reports has been missed. Further, during any year, if a material event should occur (such as a rating change or a bond defeasance), the City must also post notice of such event in a timely manner.

Harrell & Company will prepare and file all annual reports and any material event notices so that the City continues to stay in compliance with all the requirements for continuing disclosure for all series of outstanding debt. Harrell & Company will also prepare other reports required by State Law or bond indentures.

Harrell & Company proposes the following fees for these services as follows:

Preparation and Filing of Annual Report:

Tax Allocation	\$1,200	first issue for a project area
	\$200	each subsequent issue for project area
General Fund Lease	\$750	each issue
Revenue (Enterprise Fund)	\$1,500	first issue
	750	each subsequent issue for enterprise
Special Tax/Assessment	\$1,500	each issue

Preparation and Filing of Material Event Notices:	\$25 per notice
Report of Independent Financial Consultant (Required for PFC Bonds)	\$750
Report Required by California Debt and Investment Advisory Commission (POB)	\$500
Out-of-Pocket expenses (Taxpayer Data for Tax Allocation Bonds)	At cost

Fees will be payable upon receipt of periodic invoices.

Service: Financial advisory services in connection with bond issuance

Financial Assessment/Financing Plan. Harrell & Company works with staff to develop a Financing Plan for each financing. The bond structure is consistent with the City's objectives for any financing.

The financing structure developed for the City financing ensures that

- the credit rating is appropriate for the issue, while raising the required funds;
- takes into account financing limitations (such as the 25 year sunset on the Measure J tax and former RDA plan limits); and
- provides the City with the most flexibility in the future.

We analyze the various financing conditions as they arise and advise the City on the advantages and disadvantages to each. In connection with lease financing, this includes the selection of City assets to be leased which meet both financial and seismic qualifications of the rating agency.

Once the structure is decided, the Financing Plan is finalized.

Revenue Projections. Harrell & Company prepares revenue projections for inclusion in the Official Statement when required (for example, former Redevelopment Agency tax increment).

Financing Schedule. Harrell & Company develops and monitors the schedule of activities during the financing to assist the City in meeting agenda deadlines and public notice requirements.

Bond Sizing. Harrell & Company prepares all numerical analysis associated with the issuance of the bonds, including preparation of sources and uses and debt service cashflows and refunding analysis. Harrell & Company has the expertise to prepare all numerical analysis in-house.

Review Legal Documents. Harrell & Company reviews all legal documents prepared by bond counsel in connection with the issuance of the bonds. Ms. Harrell also prepares staff reports for the bond approval for inclusion in the City's agenda and coordinates with the City Clerk on documentation required to be on file.

Disclosure Issues. Ms. Harrell is well versed in defining disclosure issues necessary to meet SEC and GFOA guidelines, and incorporates any required disclosure in the Official Statement.

Terms and Conditions of Sale. The bond issue is structured using terms and conditions which most advantageously meet current market conditions and the objectives of the City. Generally, the financing structure addresses sizing considerations for the proposed debt, the leased assets and, in consultation with the City's bond counsel, any tax law implications.

Official Statement. We provide the City staff with a list of information that will be required disclosure for the financing. Ms. Harrell prepares the official statement and works closely with the City's disclosure counsel to make sure all relevant financial information is included in the

official statement, and will provide for distribution to the underwriter, both in printed and electronic formats.

Harrell & Company routinely prepares official statements in-house while many financial advisors do not. This provides the firm with the foundation to prepare the best presentation of financial information that is relevant to investors. This generally goes beyond just the cookie-cutter approach to drafting this document. We believe it is the City's chance to shine, and this includes not only making sure that the legal structure and risks are well documented, but that special and important features of the City's financial operations are highlighted.

Rating Agency Presentations. Working with staff, Harrell & Company will also determine strategies for submitting the financing to the rating agencies. Ms. Harrell emphasizes the City's operations and management in a comprehensive presentation.

Presentations prepared for analysts in connection with the City's most recent financings highlight financial performance in the face of the economic downturn. A comprehensive presentation that markets both the issuer and the financing by laying out the City's objectives and the security for the bonds, disclosing all positive and negative credit factors, and plans to mitigate any negative factor, is critical to obtaining the highest credit rating. Each presentation that Harrell & Company prepares is highly individualized for each public agency.

Bond Sale. Ms. Harrell works with the staff to select the most competitive time frame possible for marketing the City's bonds. In the case of this negotiated sale, we:

- prepare Request for Proposals for Underwriter and assist in the selection process;
- advise the City on the propriety of the underwriter's proposed pricing and compensation relative to the current market conditions;
- negotiate to provide the lowest available rates and costs to the City;
- provide the City with a pricing analysis and comparison of its transaction with other recent sales of comparable credit quality; and
- provide quantitative schedules showing the results of the final pricing.

In the case of a competitive sale of bonds, Harrell & Company:

- conducts the public sale, using an internet platform such as IPREO®;
- arranges for advertising of the bond sale in nationally prominent financial publications
- coordinates local publication requirements; and
- evaluates the bids and recommend the most favorable bid for award.

Market Access. Ms. Harrell uses a variety of sources to obtain current market information. This information is critical in timing of the bond sale as well as in negotiating market rates in a negotiated sale.

The primary tool used by Ms. Harrell to access current market information is the Thomson Municipal Market Monitor ("TM3"). TM3 provides real-time data for:

Municipal Market Data Index (MMD)

Municipal Market News

*Results of Competitive and Negotiated
Bond Sales in the Primary Market*

*Trade Data in the Secondary Market
Upcoming Bond Sale Calendar*

In the pricing phase of a bond issue, we access TM3 for all the recent bond pricings of similar security or credit quality and the MMD Index for the date of the sales. Harrell & Company maintains a data base of these bond sales going back to 2006.

In a negotiated sale, we will compile all the relevant information and provide a comparison of the proposed rates on the City's financing with all other comparable financings. Because the market changes over time, we focus primarily on the spread to MMD proposed for the City's financings compared to the actual spreads on other financings. This ensures that the City is getting a competitive market interest rate for its bonds.

TM3 also provides data on upcoming competitive and negotiated bond sales, which are reviewed when scheduling the City's bond sale. Typically, the City's bond sale would be scheduled around any large upcoming sales. Other factors taken into account in scheduling the upcoming bond sale is the April 17th deadline for income taxes, since buyers usually are redeeming their investments around that date instead of making new investments. We recommended delaying the sale for a few weeks past that date to make sure that wasn't a factor in the sale.

TM3 has a market news and commentary feature as well. This feature provides real-time information on market conditions, federal reserve board actions and calendars, latest economic news releases and other helpful information used in monitoring the market for planning purposes and for up-to-date pricing trends as the bond sale date approaches.

Bond Closing. Following the pricing of the bonds, we prepare final cashflows, complete the official statement with the final pricing information, and begin the process of documentation for closing the transaction. This includes reviewing all the closing documents prepared by bond counsel and making sure that any necessary representations are made by parties to the financing. We will also review the arrangement for closing and transfer of funds.

Post Issuance Services. Harrell & Company works with the City to fulfill its continuing disclosure responsibilities under the Securities and Exchange Commission Rule 15c2-12 and the use of the MSRB's Electronic Municipal Market Access ("EMMA") system.

In addition, every two years subsequent to sale, the rating agencies review each bond issue for changes in the underlying credit factors. Ms. Harrell assists the City staff in maintaining these rating agency relationships, preparing required updated information as well as getting ready for dialogue with the analysts as the reviews occur.

Meetings. Ms. Harrell attends any meetings as requested or required and prepares any presentations necessary for the City Council.

Harrell & Company proposes the following fees for these services as follows:

- A fixed fee of \$10,000 for preparation of the preliminary/final official statements for each separately sold and marketed bond issue.
- A fixed fee for all other financial advisory services in connection with each series of bond issue separately marketed and sold as follows –

<u>Issue Size</u>		<u>Fixed</u>
<u>Greater Than or Equal To</u>	<u>Less Than</u>	<u>Fee</u>
\$0	\$5 Million	\$25,000
\$5 Million	\$10 Million	40,000
\$10 Million	\$15 Million	50,000
\$15 Million	\$25 Million	60,000
\$25 Million	N/A	75,000

These fees are contingent on the successful sale of bonds and payable from bond proceeds.

- Out-of-pocket expenses billed at cost. These fees are also billed at closing.

These fees are generally applicable to any type of financing. The total fee including preparation of the official statement will be limited to not more than a total of \$70,000 for such issue regardless of the size of the borrowing.