




DATE SUBMITTED 10/31/18  
 SUBMITTED BY CITY MANAGER'S OFFICE  
 DATE ACTION REQUIRED 11/07/18

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION (X)  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS SP

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: <b>DISCUSSION/ACTION: WASTEWATER TREATMENT PLANT IMPROVEMENTS</b>	
1. AUTHORIZATION FOR STAFF TO ENGAGE WITH URBAN FUTURES, INC., NORTON ROSE FULBRIGHT AND HILLTOP SECURITIES FOR WASTEWATER REVENUE BOND MUNICIPAL ADVISORY, BOND AND DISCLOSURE COUNSEL AND UNDERWRITING SERVICES;  2. ADOPTION OF RESOLUTION NO. 2018- <u>64</u> AUTHORIZING CITY STAFF AND CONSULTANTS TO PREPARE NECESSARY DOCUMENTATION FOR THE ISSUANCE OF BONDS TO FINANCE WASTE WATER TREATMENT PLANT IMPROVEMENTS	
DEPARTMENT INVOLVED: PUBLIC SERVICES, FINANCE, CITY MANAGER'S OFFICE	
BACKGROUND/SUMMARY:  City staff is requesting the City Council to hereby authorize staff and consultants to move forward with all necessary documentation for the issuance of bonds to finance the improvements necessary at the City's Wastewater Treatment Facility. Please see attached paperwork for further information.	
FISCAL IMPACT: \$50,000.00  <i>As budgeted in Enterprise Funds</i>	FINANCE INITIALS <u></u>
STAFF RECOMMENDATION:	DEPT. INITIALS <u></u>
MANAGER'S RECOMMENDATION: n/a	CITY MANAGER'S INITIALS <u></u>
MOTION:	
SECONDED: AYES: NAYES: ABSENT:	APPROVED ( )      REJECTED ( ) DISAPPROVED ( )      DEFERRED ( )  REFERRED TO:

October 24, 2018

**FROM:** Urban Futures, Inc.  
Douglas P. Anderson, Director, Public Finance Group

**TO:** Stefan T. Chatwin, City Manager  
City of Imperial  
420 South Imperial Avenue  
Imperial, CA 92251

**RE:** Engagement Letter for 2019 Wastewater Revenue Bonds

Dear Mr. Chatwin,

This letter specifies the terms of the proposed engagement between Urban Futures, Inc., located at 17821 E. 17<sup>th</sup> Street, Suite 245, Tustin, CA 92780 and the City of Imperial, located at 420 South Imperial Avenue, Imperial, CA 92251.

This engagement between the City of Imperial (the "City") and Urban Futures, Inc. shall become effective as of the date of its acceptance as provided below.

#### **Scope of Municipal Advisory Activities to be Performed**

Assembling a team that works for the municipality is a key part of the debt issuance process. Among the first to join the team is the municipal advisor. As municipal advisor, Urban Futures, Inc. will successfully perform the following duties.

- Assist in developing the plan of finance and related transaction timetable;
- Identify and analyze financing solutions and alternatives for funding the capital improvement and/or refunding plan;
- 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/placement agents, 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 advance 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 regards 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 will be November 7, 2018 and the end date is one year after the effective date or at the successful close of the transaction, whichever occurs first. 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 and bonds are successfully issued, Urban Futures Inc. will be compensated pro-rata for services provided up to the termination date.

*Urban Futures, Inc.*

## **Compensation and Out-of-Pocket Expenses**

Compensation for the municipal advisory activities to be performed for this engagement is contingent upon the successful sale of bonds, and such compensation may be paid from the costs of issuance account of the bond issue at bond closing.

For the subject transaction, the fee for financial advisory services is \$47,500. In addition, Urban Futures, Inc. will charge expenses in an amount not to exceed \$2,500. Such expenses may include 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 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 material 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. 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 investment 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](http://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.

### **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,

Douglas P. Anderson  
Director, Public Finance Group  
Urban Futures, Inc.

City of Imperial

By: \_\_\_\_\_

Title: \_\_\_\_\_

October 23, 2018

Norton Rose Fulbright US LLP  
555 South Flower Street  
Forty-First Floor  
Los Angeles, California 90071  
United States

**Don Hunt**  
**Partner**  
Direct line +1 213 892 9316  
don.hunt@nortonrosefulbright.com

Tel +1 213 892 9200  
Fax +1 213 892 9494  
nortonrosefulbright.com

Mr. Stefan T. Chatwin  
City Manager  
City of Imperial  
420 South Imperial Avenue  
Imperial, California 92251

Re: Wastewater System Financing

Dear Mr. Chatwin

We are pleased to provide a proposal to serve as Bond Counsel and Disclosure Counsel to the City of Imperial (the "City") in connection with the issuance by the City or related entity of tax-exempt new money bonds for the City wastewater system.

Norton Rose Fulbright US LLP, which is one of the largest law firms in the United States, has consistently been among the leading law firms in terms of number of public finance transactions for which it has acted as Bond Counsel.

As Bond Counsel, Fulbright will assist in developing the structure of the financing and provide customary Bond Counsel services necessary to enable the City to authorize, issue, sell and deliver bonds or other obligations under existing laws, as more fully set forth below. In addition, we would make our offices available to the City for the purpose of conducting meetings with regard to the documents relating to an offering of bonds or other obligations, and for pre-closings and closings of any transactions.

To the extent necessary, we will undertake statutory, decisional and constitutional law research inquiries as to the validity and legal authority of any method of financing chosen by the City. We will prepare, where necessary, the various resolutions, ordinances, trust indentures, notices inviting bids and security agreements required for each transaction. Where necessary, the Firm will review agreements for any credit support facility, bond insurance policy, escrow deposit, trustee, paying agent or registrar agreement, and we would discuss and comment upon such agreements with City staff and the Municipal Advisor engaged by the City in connection therewith. The Firm will also be available to discuss and comment upon any aspect of the transaction related to its role as Bond Counsel, including any issues concerning the rating agencies or any other participant to the transaction. We will prepare or review all documents of the City necessary for the closing and delivery of the Bonds to the purchasers. The Firm will also prepare or review the various closing certificates and opinions required of trustees, accountants, consulting engineers, and other interested parties. At the closing, the Firm would deliver a final approving opinion in respect of the bonds or other obligations, stating, among other things, that such obligations are valid and binding obligations of the City and, if applicable, that interest on such obligations is



exempt from personal income taxes under the laws of the United States and the State of California.

The proposed financing will be reviewed by the Firm's Tax Department to assure that all aspects of the financing are in compliance with the requirements of the Internal Revenue Code, relevant Internal Revenue Service rulings and Treasury Department regulations so that the federal tax exemption of interest paid on the obligations is applicable to the extent possible. More specifically, such a review would entail an analysis of the financing structure to determine if such obligations are "arbitrage bonds" within the meaning of the Internal Revenue Code. In connection with such review, our Tax Department would prepare a certificate as to arbitrage which would be delivered at the closing. In addition, the Firm would review the applicable requirements under California tax laws, regulations and procedures to insure the availability of State tax exempt status.

Subject to completion of all legal proceedings and issuance of the bonds to our satisfaction, Norton Rose Fulbright US LLP will issue its approving legal opinions with respect to the authorization, sale and delivery of the bonds and, if applicable, the exclusion of the interest on the bonds from gross income for Federal and State income tax purposes. We will issue appropriate supplemental opinions and certificates as may be necessary or appropriate.

Our fees for services as Bond Counsel and Disclosure Counsel for the water financing for the City would be \$83,000, plus \$2,000 for disbursements and preparation of transcripts.

Such fees are entirely contingent on the successful delivery of the bonds. In the event the bonds are not sold and delivered, the City shall not be liable for any legal services provided or costs incurred by the Firm.

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, validation actions, the need to obtain federal tax rulings, the use of derivative products, investment agreements, guaranteed investment contracts, or other similar matters are to be initiated only upon written direction of the City and will be billed at our then applicable discounted Public Finance rates. No such services are expected to be performed as of this time, and will be performed only upon written direction of the City.

Mr. Stefan T. Chatwin  
October 23, 2018  
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You are advised that the firm maintains Professional Errors and Omissions insurance coverage applicable to the services which we would be rendering.

If this arrangement is satisfactory to you, please return to us a copy of this letter executed by an authorized officer of the City.

Respectfully submitted,

Norton Rose Fulbright LLP

By:   
Donald L. Hunt, Partner

Terms of Bond Counsel Employment

Approved This \_\_\_\_ Day

of \_\_\_\_\_, 2018

CITY OF IMPERIAL

Name: \_\_\_\_\_

Title: \_\_\_\_\_

October 22, 2018

Mr. Stefan T. Chatwin, City Manager  
City of Imperial, California

Re: Underwriter Engagement Letter

Dear Mr. Chatwin:

On behalf of Hilltop Securities Inc. (“we” or “HilltopSecurities”), we wish to thank you for the opportunity to serve as underwriter for the planned financing (the “Securities”), in connection with the 2019 Wastewater Revenue Bonds. This letter will confirm the terms of our engagement; however, it is anticipated that this letter will be replaced and superseded by a bond purchase agreement to be entered into by the parties (the “Purchase Agreement”) if and when the Securities are priced following the successful completion of the public offering process.

1. Services to be provided by HilltopSecurities. City of Imperial (the “Issuer”) hereby engages HilltopSecurities to serve as the sole managing underwriter of the proposed offering and issuance of the Securities, and in such capacity HilltopSecurities agrees to provide customary underwriting services, including but not limited to:

- a. Review and evaluate of the proposed terms of the offering and the Securities
- b. Coordinate with the Issuer (if applicable) for the offering of the Securities
- c. Develop a marketing plan/bid specifics for the offering, including identification of potential investors
- d. Assist in the preparation of offering documents
- e. Assist in obtaining rating(s) for the Securities (if applicable)
- f. Contact potential investors, provide them with offering-related information, respond to their inquiries and, if requested, coordinate due diligence sessions
- g. Consult with Bond Counsel and other service providers about the offering and the terms of the Securities
- h. Relay information regarding the offering process to the Issuer

- i. Negotiate the pricing, including the interest rate, and other terms of the Securities
  - j. Obtain CUSIP number(s) for the Securities and arrange for their DTC book-entry eligibility (if applicable)
  - k. Plan and arrange for the closing and settlement of the issuance and the delivery of securities
1. Such other usual and customary underwriting services as may be requested

As an underwriter, HilltopSecurities will not be required to purchase the Securities except pursuant to the terms of the Purchase Agreement, which will not be signed until successful completion of the pre-sale offering period. This letter does not obligate HilltopSecurities to purchase any of the Securities. Any commitment to purchase Securities is subject to future credit, legal and business approvals by HilltopSecurities.

2. No Advisory or Fiduciary Role. Issuer acknowledges and agrees that: (i) the primary role of HilltopSecurities, as an underwriter, is to purchase Securities for resale to investors in an arm's length commercial transaction between Issuer (and Borrower under a conduit issue), and HilltopSecurities and that HilltopSecurities has financial and other interests that may differ from those of the Issuer; (ii) HilltopSecurities is not acting as a municipal advisor, financial advisor, or fiduciary to Issuer or the Issuer and has not assumed any advisory or fiduciary responsibility to Issuer or the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether HilltopSecurities has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligation HilltopSecurities has to Issuer or the Issuer with respect to the transaction contemplated hereby expressly are set forth in this agreement; and (iv) Issuer and the Issuer has consulted or will consult its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. Under the role of placement agent, Hilltop will arrange for the placement of Securities to investors in an arm's length commercial transaction between Issuer (and Borrower under a conduit issue), and the purchaser of such Securities.

3. Fees and Expenses. HilltopSecurities' underwriting fee/spread will not exceed 0.85% of the principal amount of the Securities issued. The underwriting fee/spread will represent the difference between the price that HilltopSecurities pays for the Securities and the public offering price stated on the cover of the final offering document. If the issue is privately placed, the fee will not exceed 0.85% of the principal amount of the Securities issued. The Issuer and/or Borrower will be responsible for paying all other costs of issuance, including without limitation, bond counsel, underwriter's counsel, rating agency, and all other expenses incident to the performance of the Issuer's obligations under the proposed offering. Issuer further acknowledges it is aware of the "Municipal Advisor Rule" of the Securities and Exchange Commission (effective July 1, 2014) and the underwriter exclusion from the definition of "municipal advisor" for a firm serving as an



underwriter or placement agent for a particular issuance of municipal securities. Issuer expects that HilltopSecurities will provide advice on the structure, timing, terms, and other matters concerning the Securities.

4. Term and Termination. The term of this engagement shall extend from the date of this letter to the closing of the offering or placement of the Securities. Notwithstanding the foregoing, either party may terminate HilltopSecurities' engagement at any time upon at least 30 days' prior written notice to the other party.

5. Miscellaneous. This letter shall be governed and construed in accordance with the laws of the State of California. This Agreement may not be amended or modified except by means of a written instrument executed by both parties hereto. This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement may be executed in counterparts.

If there is any aspect of this Agreement that you believe requires further clarification, please do not hesitate to contact us. If the foregoing is consistent with your understanding of our engagement, please sign and return the enclosed copy of this letter.

Again, we thank you for the opportunity to assist you with your proposed financing and the confidence you have placed in us.

Very truly yours,  
Hilltop Securities Inc.

By: 

Mike Cavanaugh  
Managing Director

This Letter and Agreement is hereby accepted for and on behalf of City of Imperial, California on this \_\_\_\_ day of \_\_\_\_, 2018.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**RESOLUTION NO. 201564**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL AUTHORIZING STAFF AND CONSULTANTS TO PREPARE NECESSARY DOCUMENTATION FOR THE ISSUANCE OF BONDS TO FINANCE WASTEWATER TREATMENT PLANT IMPROVEMENTS AND APPROVING FINANCING TEAM MEMBERS IN CONNECTION THEREWITH

**WHEREAS**, the City desires to issue obligations to finance additional wastewater improvements; and

**WHEREAS**, the City desires to approve the members of the financing team in connection with the proposed issuance of wastewater revenue bonds to be issued on a tax-exempt basis (the "Bonds");

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City (the "City Council") as follows:

Section 1. Approval of Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Authorization to Prepare Documents. The City Council hereby authorizes staff, the Municipal Advisor, Bond Counsel and Disclosure Counsel to prepare necessary documentation for review and approval by the City Council for the issuance of bonds to finance Wastewater Treatment Plant Improvements. The bonds will be on a parity with the 2005 Wastewater Certificates of Participation and the 2012 Wastewater Revenue Bonds.

Section 3. Approval of Certain Financing Team Members. The City Council hereby approves the appointment of (a) Norton Rose Fulbright US LLP, to provide Bond Counsel and Disclosure Counsel services in connection with the Bonds, (b) Hilltop Securities, as Underwriter in connection with the Bonds, and (C) Urban Futures, Inc., as Municipal Advisor in connection with the Bonds. The City Manager is hereby authorized and directed to execute services agreements with these financing team members.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption.

Section 5. Certification. The City Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

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Geoff Dale  
Mayor

ATTEST:

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Debra Jackson  
City Clerk

I, Debra Jackson, the City Clerk of the City do hereby certify that the foregoing resolution was duly adopted by the City Council at a regular meeting thereof held on \_\_\_\_\_, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Debra Jackson  
City Clerk