

RESOLUTION NO. R-2019-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, APPROVING AN ENGAGEMENT AGREEMENT FOR BOND COUNSEL LEGAL SERVICES WITH NORTON ROSE FULBRIGHT US LLP; AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, City of Tyler, Texas (the City) anticipates accessing the public or private markets from time to time to issue securities to finance certain capital improvement projects within the City or to refinance securities previously issued by the City, which will require the City to comply with the applicable laws and administrative rules of the State of Texas (the State) and federal securities and federal tax laws related thereto; and

WHEREAS, the City requires legal counsel which specializes in public finance matters and is well versed in State and federal securities and federal tax laws and applicable administrative procedures to provide bond counsel legal services pertaining to the City's issuance of securities;

WHEREAS, the payment of such legal services shall be payable from the proceeds of such securities; and

WHEREAS, the City desires to continue to engage Norton Rose Fulbright US LLP to provide bond counsel legal services on all of the City's publicly offered or privately placed securities issues, an engagement agreement for bond counsel legal services pertaining to the City's anticipated future issuances of securities, a copy of which is attached hereto as Exhibit A (the "Engagement Agreement"); and

WHEREAS, House Bill No. 2826, 86th Leg., R.S, effective September 1, 2019 (HB 2820), requires that a political subdivision of the State, including the City, enter into a contingent fee contract for legal services only after: (i) the governing body of the political subdivision has provided written notice to the public stating certain provisions enumerated within HB 2826; (ii) the governing body of the political subdivision approved such contract in an open meeting called for the purposes of considering such contract; (iii) the governing body of the political subdivision has stated in writing certain findings made by the governing body upon the approval of such contract, and (iv) the Texas Attorney General need not approve the Engagement Agreement pursuant to the exception provided by Section 2254.102(e) of HB 2826; and

WHEREAS, the City caused notice of this resolution (the Resolution), this meeting, and the following provisions enumerated within HB 2826 to be provided to the public in accordance with the Texas Open Meetings Act and HB 2826:

1. The City intends to engage Norton Rose Fulbright US LLP to provide bond counsel legal services pertaining to the City's issuance of securities on the public or private market, including advising the City on any "official statement" to potential investors pursuant to federal securities laws and issuing a legal opinion as to the foregoing;
2. Norton Rose Fulbright US LLP has demonstrated to the City its competence, qualifications, and experience as an industry leader in public finance matters through the provision of bond counsel legal services;

3. Accessing the public or private markets through the issuance of securities and providing an "official statement" of the City to potential investors is governed by State and federal securities and federal tax laws and requires the advice of legal advisors that specialize in public finance matters that are well versed in public finance legal matters;
4. Engaging an attorney in private practice who specializes in public finance matters and is well versed in State and federal securities and federal tax laws pursuant to an hourly fee arrangement would likely result in higher fees to be paid by the City, and such fees incurred would be payable by the City by amounts on deposit in the City's General Fund, whether or not the securities are issued;
5. Fees for legal services in public finance matters, including bond counsel legal services, have traditionally been paid pursuant to a fixed fee arrangement, where such fees become payable only upon the successful issuance of the securities and are payable solely out of the proceeds of the securities;
6. Entering into a contract for bond counsel legal services with Norton Rose Fulbright US LLP (a firm that specializes in public finance matters and is well versed in State and federal securities and federal tax laws and which the City has a long relationship) payment of which is payable out of the proceeds received from the issuance of the securities is in the best interest of the City and the fee(s) payable under the contract are reasonable in the public finance market;
7. For each of the reasons state above, the execution of the Engagement Agreement with Norton Rose Fulbright US LLP is in the best interest of the residents of the City; and

WHEREAS, the meeting at which this Resolution is being considered is an open meeting called, in part, for the purposes of considering (i) the need for obtaining the bond counsel legal services that are the subject of the Engagement Agreement, (ii) the terms of the Engagement Agreement, (iii) the competence, qualifications, and experience of Norton Rose Fulbright US LLP, and (iv) the reasons the Engagement Agreement is in the best interest of the residents of the City and in compliance with HB 2826; and

WHEREAS, the City hereby finds and determines that the adoption of this Resolution is in the best interests of the residents of the City; now, therefore,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City.

PART 2: The City hereby finds that: (i) there is a substantial need for the bond counsel legal services that are the subject of the Engagement Agreement with Norton Rose Fulbright US LLP; (ii) the City does not currently employ attorneys and supporting personnel qualified to provide bond counsel legal services; (iii) the bond counsel reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard

to the outcome of the matter, because of the nature of the matter for which the bond counsel legal services will be obtained and because, until the issuance of the securities, the City will not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees which is not contingent on the issuance of the securities; and (iv) the relationship between the City and Norton Rose Fulbright US LLP is not improper and would not appear improper to a reasonable person.

PART 3: Based on the findings by the City described above, the City hereby approves entering into the Engagement Agreement with Norton Rose Fulbright US LLP and authorizes the City Mayor to execute the Engagement Agreement.

PART 4: All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, so that the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

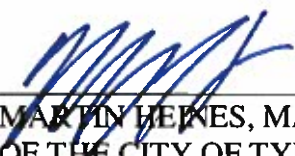
PART 5: This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

PART 6: If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Resolution would have been enacted without such invalid provision.

PART 7: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 8: This Resolution shall take effect immediately from and after its passage, as indicated below.

PASSED AND APPROVED this 13th day of November, A. D. 2019.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:



CASSANDRA BRAGER, CITY CLERK





DEBORAH G. PULLUM,
CITY ATTORNEY