

**CONTRACT
FOR
Bond Council Services and Advisory Services**

This Contract, dated _____, 2015, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and Andrews Kurth LLC (the FIRM), whereby the FIRM agrees to provide the City with certain services as described herein and the City agrees to pay the FIRM for those services.

1. Scope of Services

In consideration of the compensation stated in **Paragraph 2**, the FIRM agrees to provide the City with the services as described in **Exhibit A – RFQ #14-041, Bond Counsel Services and Related Advisory Services and Exhibit B – Andrews Kurth LLC - Submittal to the City of Bryan** which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

“Bond Counsel Services and Related Advisory Services”

2. Payment

In consideration of the FIRM’s provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the FIRM according to the terms set forth in **Exhibit A and Exhibit B inclusive of the “Engagement Letter”**; **services will be provided on an as needed bases.**

3. Time of Performance

A. All work and services provided under this Contract must be completed as outlined in **Exhibit A and Exhibit B.**

B. **Time is of the essence of this Contract.** The FIRM shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the project timeline specified in **Exhibit A and Exhibit B.**

4. Warranty, Indemnification, & Release

A. As an experienced and qualified FIRM, the FIRM warrants that the information provided by the FIRM reflects high professional and industry standards, procedures, and performances. The FIRM warrants that the performance of all services under this Contract will be pursuant to a high standard of performance in the profession. The FIRM warrants that the FIRM will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the FIRM, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their services, or any document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the FIRM, its employees, associates, agents, or subcontractors.

B. The FIRM shall promptly correct any defective services or documents furnished by the FIRM at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the FIRM's services hereunder or of the scope of work itself shall in no way alter the FIRM's obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the FIRM is an independent contractor and not an agent or employee of the City. The FIRM and its employees are not the agents, servants, or employees of the City. As an independent contractor, the FIRM shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the FIRM shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The FIRM shall have ultimate control over the execution of the professional services. The FIRM shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the FIRM or any of the FIRM's subcontractors.

D. The FIRM must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the FIRM, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): FIRM shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the FIRM's negligent performance of the work, or by or on account of any claims or amounts recovered under the Worker's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. The FIRM shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by FIRM's negligence.

F. Release. The FIRM releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the FIRM or its employees and any loss of or damage to any property of the FIRM or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the FIRM's negligent performance of the work. Both the City and the FIRM expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. FIRM's Insurance

The FIRM agrees to maintain, on a primary basis, for the duration of this contract the insurance coverages and limits as described below. The FIRM must deliver to the City a certificate(s) of insurance evidencing that such policies are in full force and effect with verification within five (5) business days of notification of the City's intent to award a contract. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within five (5) business days may cause the proposal to be rejected. The City reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by the FIRM, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the FIRM under the Agreement.

WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY INSURANCE – Statutory & \$500,000/\$500,000/\$500,000 Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Contractor shall require the subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subcontractor. Waiver of subrogation in favor of the City required. This requirement may be waived with satisfactory evidence that the contractor is sole proprietor(s)/has no employees.

COMMERCIAL GENERAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors. Additional insured endorsement required.

BUSINESS AUTOMOBILE LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned, and hired automobiles. Should the Contractor not own any automobiles and furnish satisfactory evidence of this, the business auto liability requirement shall be amended to allow the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

PROFESSIONAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain Professional (Errors & Omissions) Liability to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission of the contractor or any person employed or acting on the contractor's behalf (including but not limited to sub-contractors). For policies written on a "claims-made" basis, contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract and that continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this contract. The contractor is solely responsible for any additional premium for the supplemental extended reporting period.

UMBRELLA or EXCESS LIABILITY Contractor may satisfy the minimum liability limits required for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. Contractor agrees to endorse City as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

CONTRACTOR'S INSURANCE TO BE PRIMARY Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under the contract.

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

SUBCONTRACTOR'S INSURANCE Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified, provided the Contractor's insurance does not afford coverage on behalf of the subcontractor.

CERTIFICATE OF INSURANCE Contractor shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. The certificate(s) shall contain a provision that coverage under such policies shall not be cancelled or non-renewed until at least thirty (30) days prior written notice, or ten (10) days' notice for cancellation due to non-payment of premiums, is given the City of Bryan.

If the event the City is notified that a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated. If the Contractor fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Contractor's expense.

Certificates and notices should be provided to the City at the following address:

City of Bryan
Attn: Risk Department
PO Box 1000
Bryan, TX 77805

6. Termination

A. The City may terminate this Contract at any time upon **thirty (30)** calendar day's written notice. Upon the FIRM's receipt of such notice, the FIRM shall cease work immediately. The FIRM shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the FIRM fails to fulfill its obligations under this Contract, or if the FIRM violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the FIRM **five (5)** calendar days written notice. The FIRM will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the FIRM of liability to the City for damages sustained by the City because of any breach of contract by the FIRM. The City may withhold payments to the FIRM for the purpose of setoff until the exact amount of damages due the City from the FIRM is determined and paid.

7. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan:
Attn: Joe Hegwood, CFO
P.O. Box 1000
Bryan, Texas 77805
jhegwood@bryantx.gov
979-209-5081

The FIRM: Andrews Kurth LLP
Attn: Jerry V. Kyle, Jr.
111 Congress Ave., Suite 1700
Austin, Texas 78701
jerrykyle@andrewskurth.com
512-320-9200 (phone)
512-320-9292 (fax)

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the FIRM and supersedes all prior contracts, negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the FIRM without the prior written approval of the City.

F. The FIRM, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The FIRM must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. Reimbursable or other miscellaneous expenses incurred by the FIRM shall be included in the contract price; additional payment for such expenses will not be considered.

H. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

APPROVED FOR PROCESSING:

Joe Hegwood, Chief Financial Officer
Date: _____

APPROVED AS TO FORM:

Janis Hampton, City Attorney
Date: _____

CITY OF BRYAN:

Jason P. Bienski, Mayor
Date: _____

ATTEST:

Mary L. Stratta, City Secretary
Date: _____

FIRM:

(FIRMs – Corporate Seal)

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

ACKNOWLEDGEMENT of FIRM

This instrument was acknowledged before me on the _____ day of _____, 2015, by
_____ on behalf of _____.

Notary Public in and for the State of Texas

Exhibit B



111 Congress Avenue, Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

Jerry V. Kyle, Jr.
512.320.9271 Phone
512.542.5211 Fax
jerrykyle@andrewskurth.com

May 14, 2015

Mayor and City Council Members
City of Bryan
300 South Texas Avenue
Bryan, Texas 77803

Re: *Bond Counsel Services*

Dear Mayor and City Council Members:

We are pleased to submit to you a proposed agreement for Andrews Kurth LLP (“Andrews Kurth”) to serve as Bond Counsel with respect to bonds and other debt obligations that the City of Bryan, Texas (the “City”), intends to issue. (Such bonds, notes and other obligations are collectively referred to in this letter as the “Bonds.”) When approved by you, this letter will become effective and will evidence an agreement between the City and Andrews Kurth LLP, Austin, Texas.

As Bond Counsel, Andrews Kurth would prepare all required legal proceedings and would perform certain other necessary legal work in connection with the City’s authorization, issuance and sale of each series of the Bonds. Our services as Bond Counsel would include the following Basic Services, which we would carry out directly or in concert with officials and staff of the City:

- (1) Assistance, in consultation with City officials and staff and the City’s financial advisor, in the evaluation of legal matters related to financing innovations and opportunities that may arise from time to time;
- (2) Consultation with City officials and staff to review information to be included in the offering documents for each series of Bonds, but only to the extent that such information describes such series, the security therefor, their federal income tax status and our opinion;
- (3) Preparation of the ordinances authorizing issuance of each series of the Bonds (the “Ordinances”) and all other instruments which comprise the transcript of legal proceedings pertaining to the authorization, issuance and sale of each such series;

(4) Attendance at meetings, to the extent required or requested by the City or the City's financial advisor, to discuss the sizing, timing or sale of each series of the Bonds;

(5) Preparation and submission of transcripts of legal proceedings pertaining to the issuance of each series of the Bonds to the Attorney General of the State of Texas to obtain an approving opinion and to obtain the registration of the Bonds by the Comptroller of Public Accounts, as required by law;

(6) Supervision of the printing of each series of the Bonds and the delivery thereof to the purchasers, including, if requested, solicitation of bids from bond printers under the direction of the City to obtain the lowest possible printing costs for the City;

(7) Review of certified proceedings and performance of such additional duties as are necessary for the delivery, at the closing of each series of the Bonds, of an approving opinion, based on facts and law existing as of its date, generally to the effect that such series has been duly issued, executed and delivered in accordance with the Constitution and laws of the State of Texas, that the Bonds of each series constitute valid and legally binding obligations of the City as described in the respective ordinance (subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws in effect from time to time relating to or affecting the enforcement of rights of creditors of political subdivisions) and, when the Bonds are so delivered, that interest on such series of Bonds is excludable from the gross income of the owners thereof for federal income tax purposes under then existing law;

(8) Prior to and in connection with the closing of each series of the Bonds, giving advice to the City to enable appropriate officials to comply with the arbitrage requirements of the Internal Revenue Code of 1986 as they affect the Bonds, including yield restrictions and rebate requirements;

(9) Attendance at bond sale, signing, closing and all other meetings and conferences as deemed necessary by the City Council or other responsible City official or staff;

(10) Preparation of Federal Income Tax Form 8038-G;

(11) At the closing of each series of the Bonds, delivery of an opinion regarding the applicability of federal and state securities laws to such series, the eligibility of the Bonds for investment by various fiduciaries and other regulated investors and the validity and enforceability of security agreements, indentures and other documents related to the Bonds and the security therefor;

(12) Attendance at rating agency presentations, investor meetings or other presentations relating to the marketing of the Bonds and consultation with City officials, staff and advisors and the City's financial advisor to develop such presentations; and

(13) Any other service necessary to the planning, authorization, issuance, sale and delivery of the Bond issues, as may be appropriate.

In addition to the foregoing Basic Services, as Bond Counsel, Andrews Kurth is prepared to undertake the following Additional Services, as directed by the City:

(1) Disclosure work or similar services (other than the preparation of certain sections of the offering documents for the Bonds as described in paragraph (2) under Basic Services above) to assist the City in the preparation of such offering documents, on such basis and to such extent as shall be directed by the City;

(2) Preparation of necessary ordinances, resolutions, notices, Department of Justice submissions and other legal documents necessary to call and conduct an election to authorize issuance of the Bonds, if necessary;

(3) Preparation of the "Blue Sky" surveys or securities registration services;

(4) In the case of a series of Bonds, or a portion thereof, that is issued to refund prior bonds of the City, providing advice regarding federal income tax and other issues unique to refunding transactions;

(5) Services rendered in connection with documentation related to credit or liquidity facilities or enhancements or other special structuring techniques or devices to be employed in connection with the issuance of variable rate obligations, unusual issues arising in connection with the City's financial reports or audits, special federal income tax issues, and any other special services not ordinarily required in connection with the issuance of fixed rate obligations;

(6) Services rendered in connection with the issuance of bonds or other obligations by entities acting on behalf of the City; and

(7) After the closing of any series of the Bonds and upon specific request of the City, providing assistance to the City concerning questions and issues that may arise prior to the maturity of the Bonds.

Unless otherwise agreed to by the City and Andrews Kurth, for all Basic Services performed hereunder in connection with the issuance and sale of Bonds, as defined in this letter, Andrews Kurth will be paid a fee of \$1.00 per each \$1,000 in proceeds of Bonds then being issued. The minimum fee for Basic Services for each series of Bonds shall be \$12,500. The fee for any Additional Services provided by Andrews Kurth will be (x) determined on an hourly rate

basis, applying rates then charged by Andrews Kurth for the same or similar services performed by attorneys and paralegals of similar experience for other clients, or (y) as agreed by the City and Andrews Kurth.

Payment of all fees for services as Bond Counsel will be made after the issuance and delivery of the series of the Bonds in connection with which such services are performed and within thirty (30) days after receipt by the City of an approved invoice therefor.

Andrews Kurth will be reimbursed for its reasonable and actual out-of-pocket expenses, such as the cost of reproduction of documents, out-of-town travel, long-distance telephone, telecopy and similar expenses, deliveries, filing fees and all items paid for by Andrews Kurth on behalf of the City, incurred in connection with the performance of any services hereunder. All of such expenses will be reasonable, and on an issue-by-issue basis Andrews Kurth will agree to a maximum amount of \$1,500 for such expenses (exclusive of Attorney General fees, for which the City would be responsible).

The City acknowledges that it is aware that Andrews Kurth represents many other governmental entities, companies and individuals. It is possible that during the time that we are representing you, some of our present or future clients will have disputes or transactions with you. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any other such other matter by such client to your material disadvantage.

Nothing herein shall be construed as creating any personal liability on the part of any officer of the City, and this agreement may be terminated by the City by giving thirty (30) days' written notice to Andrews Kurth.

Mayor and City Council Members
May 14, 2015
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If this proposed agreement for the services of Andrews Kurth as Bond Counsel is satisfactory, please evidence your acceptance and approval by executing three copies in the space provided below.

Very truly yours,



Jerry V. Kyle, Jr.

APPROVED:

CITY OF BRYAN, TEXAS

By: _____
Name: _____
Title: _____