



October 2, 2014

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San Francisco, CA 94111
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Mr. Thomas C. Williams
City Manager
City of Milpitas
City Hall
455 East Calaveras Boulevard
Milpitas, California 95035

RE: Successor Agency to the Milpitas Redevelopment Agency
2015 Tax Allocation Refunding Bonds
Terms of Engagement of Bond Counsel and Disclosure Counsel

Dear Mr. Williams:

The Successor Agency to the Milpitas Redevelopment Agency (the "Successor Agency") is successor to the Milpitas Redevelopment Agency (the "Former Agency") and, in order to achieve debt service savings, proposes to issue the above-referenced bonds (the "2015 Refunding Bonds") to provide funds to refund the Former Agency's Redevelopment Project No. 1 2003 Tax Allocation Bonds (the 2003 Bonds") issued in the initial principal amount of \$200,000,000. Our firm acted as Bond Counsel and Disclosure Counsel with respect to the issuance of the 2003 Bonds, and in such capacity with respect several other issues of the City and its related entities. It is proposed that the firm act as Bond Counsel and Disclosure Counsel to the Successor Agency for purposes of the proceedings for the issuance, sale and delivery of the 2015 Refunding Bonds.

Our engagement as Bond Counsel will require us to provide to the Successor Agency all services customarily provided by bond counsel, including the following:

- a. Consultation and cooperation with the Successor Agency and City Agency staff to assist in the formulation of a coordinated financial and legal issuance of the 2015 Refunding Bonds.
- b. Preparation of all legal proceedings for the authorization, issuance and delivery of the 2015 Refunding Bonds by the Successor Agency; including (a) preparation of resolutions of the governing board of the Successor Agency authorizing the issuance and sale of the 2015 Refunding Bonds and approving related documents and actions, (b) preparation of approving resolutions of the Oversight Board, (c) preparation of all financing documents, including an indenture of trust authorizing the 2015 Refunding Bonds, (d) preparation of all documents required for the closing and delivery of the issue to the underwriter, (e) supervising the closing, and (f) preparation of all other proceedings



incidental to or in connection with the issuance, sale and delivery of the 2015 Refunding Bonds.

- c. Advise the Successor Agency prior to the issuance of the 2015 Refunding Bonds as to compliance with federal tax law as required to ensure that upon initial delivery to the underwriter interest on the 2015 Refunding Bonds is exempt from federal income taxation.
- d. Upon completion of proceedings to our satisfaction, provide a legal opinion (the "Bond Opinion") approving the validity and enforceability of the proceedings for the authorization, issuance and delivery of the 2015 Refunding Bonds, including a statement that interest on the 2015 Refunding Bonds is (a) excluded from gross income for purposes of federal income taxes and (b) exempt from California personal income taxation. The Bond Opinion will be addressed to the Successor Agency, and may also be relied upon the underwriter of the 2015 Refunding Bonds and other participants in the financing.
- e. Review as to completeness and accuracy those sections of the official statement to be disseminated in connection with the sale of the 2015 Refunding Bonds involving summary descriptions of the 2015 Refunding Bonds, the legal proceedings leading to the authorization and sale of the 2015 Refunding Bonds, the legal documents under which the 2015 Refunding Bonds will be issued, and federal tax law and securities law provisions applicable to the 2015 Refunding Bonds.
- f. Assist the Successor Agency in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the 2015 Refunding Bonds.
- g. Such other and further services as are normally performed by bond counsel in connection with similar financings.

In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Successor Agency with applicable laws relating to the 2015 Refunding Bonds.

Our engagement as Disclosure Counsel will require us to provide to the Successor Agency all services customarily provided by disclosure counsel, including the following:

- a. Prepare the Official Statement (both preliminary and final) in connection with the offering of the 2015 Refunding Bonds.
- b. Confer and consult with the officers and administrative staff of the Successor Agency as to matters relating to the Official Statement.



- c. Attend all meetings of the Successor Agency and any administrative meetings at which the Official Statement is to be discussed, deemed necessary by us for the proper exercise of their due diligence with respect to the Official Statement, or when specifically requested by the Successor Agency to attend.
- d. Subject to the completion of proceedings to our satisfaction, provide a letter addressed to the Successor Agency and the underwriter that, although we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements, no facts have come to our attention that cause us to believe that the Official Statement (except for any financial and statistical data and forecasts, numbers, estimates, assumptions and expressions of opinion, and information concerning the Bond Insurance Policy and the Insurer, and information concerning the Depository Trust Company and the book-entry system for the 2015 Refunding Bonds, contained or incorporated by reference in the Official Statement and the appendices to the Official Statement, which we will expressly exclude from the scope of this sentence) as of the date of the Official Statement or the date hereof contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Our duties in this engagement are limited to those expressly set forth above, except as expressly otherwise agreed in writing. Among other things, our duties do not include:

- a. Preparing requests for tax rulings from the Internal Revenue Service, or "no-action" letters from the Securities and Exchange Commission.
- b. Preparing blue sky or investment surveys with respect to the 2015 Refunding Bonds.
- c. Pursuing test cases or other litigation, such as contested validation proceedings.
- d. Making an investigation or expressing any view as to the creditworthiness of the Successor Agency or the 2015 Refunding Bonds.
- e. After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking under Securities and Exchange Commission Rule 15c2-12.
- f. Representing the Successor Agency in Internal Revenue Service examinations, audits or inquiries, or Securities and Exchange Commission investigations.
- g. After Closing, unless specifically requested to do so by Successor Agency, and agreed to by us, providing continuing advice to the



Mr. Thomas C Williams
 October 2, 2015
 Page 4

Successor Agency or any other party concerning any actions that need to be taken regarding the 2015 Refunding Bonds; e.g., actions necessary to assure that interest paid on the 2015 Refunding Bonds will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include rebate calculations for the 2015 Refunding Bonds).

For the Bond Counsel services described above, the Successor Agency will pay to us a fee of \$75,000. For the Disclosure Counsel services described above, the Successor Agency will pay to us a fee of \$45,000.

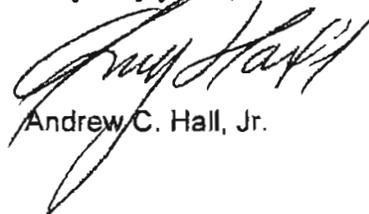
In addition, the Successor Agency shall pay to us all direct out-of-pocket expenses for travel outside the State of California (if any), messenger and delivery service, photocopying, closing costs, legal publication expenses and other costs and expenses incurred by us in connection with their services hereunder not to exceed the amount of \$3500.

Payment of the foregoing fees and expenses is entirely contingent on the successful issuance of the 2015 Refunding Bonds, will be due and payable upon the delivery of the 2015 Refunding Bonds and will be payable solely from the proceeds of the 2015 Refunding Bonds and from no other funds of the Successor Agency.

Needless to say, if you have any questions or would like to discuss any of the foregoing, please give me, Steve Melikian or Chris Lynch a call (415) 391-5780. Upon approval by the Successor Agency, would you please, at your convenience, fax or mail a copy of this letter to us showing your approval. Our fax number is (415) 391-5784.

We certainly look enjoying working with you and the others at the City on this refinancing.

Very truly yours,



Andrew C. Hall, Jr.

Approved:

SUCCESSOR AGENCY TO THE MILPITAS
 REDEVELOPMENT AGENCY

By _____

**CONSULTING SERVICES AGREEMENT BETWEEN
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS AND
FIELDMAN, ROLAPP & ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the Successor Agency to the Former Redevelopment Agency of the City of Milpitas ("Agency") and Fieldman, Rolapp & Associates as of _____ 2014.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the Financial Advisory services described in the Scope of Service attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on October 31, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant a guaranteed maximum price not to exceed Sixty-Three Thousand Dollars (\$63,000) for all services to be performed and reimbursable costs incurred under this Agreement. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement.

Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's fixed transaction advisory services pursuant to the scope of services further described in Exhibit A, including salaries and benefits of employees and related expenses of Consultant. Hourly rates for personnel performing services are shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement. Fees for additional services required beyond the original scope of services shall be negotiated based upon the billable hourly rates included in Exhibit B.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Invoice number;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- Description of work product deliverables included in the current invoice;
- For each milestone task, provide a brief description of work performed during the current billing cycle and tasks to be completed in the next billing cycle, along with current invoice reimbursable and anticipated reimbursable expenses for next billing cycle;
- At the Agency's option, invoices shall include the total number of hours of work performed under the Agreement by Consultant and each employee listed in Exhibit B performing services hereunder with an estimate of the time necessary to complete the remaining work described in Exhibit A;
- The Consultant's signature.

2.2 Deleted

2.3 Total Payment. Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly

executed contract amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the Agency and shall provide a written not-to-exceed price, in detail for performing this additional work.

- 2.4 Hourly Fees.** When required beyond the original scope of services, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the Agency terminates this Agreement pursuant to Section 8, the Agency shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The Agency shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Agency shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Agency. In no event shall Agency be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the Agency. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the

Agency upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Agency, City of Milpitas and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office

Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. Agency, the City of Milpitas and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the Agency and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the Agency shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to AGENCY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30)

days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the Agency.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The Agency shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish Agency with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of Agency for the self-insured retentions and deductibles

before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the Agency, Consultant may increase such deductibles or self-insured retentions with respect to Agency, its officers, employees, agents, contractors, consultants, and volunteers. The Agency may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the Agency.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to Agency at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Agency may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the Agency has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the Agency and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply

when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the Agency or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from Agency.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Agency or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Agency may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Agency in connection with this Agreement.

- 8.2 Extension.** Agency may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if Agency grants such an extension, Agency shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Agency, Agency shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the Agency.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
 - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters

covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency at any time upon demand of the Agency. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the Agency within the time period specified by the Agency shall be a material breach of this Agreement. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the Agency in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency. If Consultant were an employee, agent, appointee, or official of the Agency in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Emma Karlen, Successor Agency Finance Director (or her designee/successor) who is authorized to act

for, and on behalf of, Agency. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

James V. Fabian, CIPEA
Principal
Fieldman, Rolapp & Associates
1990 MacArthur Blvd, Suite 1100
Irvine, Ca 92612

Any written notice to the Agency shall be sent to:

Emma C. Karlen, Successor Agency Finance Director
Successor Agency to the Former RDA of the City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

10.11 Professional Seal. Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.12 Integration. This Agreement, including the exhibits, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 Exhibits. All exhibits referenced in this Agreement are incorporated by reference herein.

**SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS**

**CONSULTANT:
FIELDMAN, ROLAPP & ASSOCIATES**

Thomas C. Williams, Successor Agency
Executive Director

James V. Fabian, Principal

19900 MacArthur Blvd., Suite 1100
Irvine, CA 92612
Telephone: (949)660-7300
E-mail: jfabian@fieldman.com

APPROVED AS TO CONTENT:

95-2920834
Taxpayer Identification Number

Emma Karlen, Successor Agency Finance Director

APPROVED AS TO FORM:

Michael J. Ogaz, Successor Agency Counsel

EXHIBIT A

SCOPE OF SERVICES

The Agency requires Consultant to provide financial advisory services for a potential refunding of 2003 Tax Allocation Bonds (TABs). Consultant will provide financial advice from inception of the financing transaction through its completion. The scope of services generally includes the following, but is not limited to:

- Provide timely financial information and advice regarding general economic and capital market conditions and trends, financial products, credit and credit analysis, refunding/financing opportunities.
- Manage competitive or negotiated sales proceeds including analyzing bids, reviewing spreads, analyzing market levels, and clarifying syndicated roles with selected underwriter(s).
- Advise on the timing, method and structure of bond sales.
- Solicit bids related to escrow funds, insurance, and other bids Agency may request.
- Review of legal documentation including closing documents and transcripts.
- Participate in meetings, as requested, relating to the issuance of bonds.
- Assist the Agency with forming and implementing a rating strategy to optimize the Agency's credit ratings including preparing any presentation before rating agencies, or other parties as appropriate.
- Assist the Agency in preparation for any presentation before rating agencies.
- Assist with the preparation of presentations to the Successor Agency Board, Successor Agency Oversight Board, and attend Board meetings as needed.
- Provide ongoing information to Agency staff regarding the activity and status of the financing.

Consultant has based its fee with the assumption that the scope of services is a standalone refunding to be completed by March 31, 2015. As such, it is imperative that the Consultant exercises its due diligence and professional standards of care in meeting the stated refunding deadline.

CONTRACT MANAGEMENT

- Consultant shall perform the services and produce deliverables necessary to meet project objective of refunding by March 31, 2015. Accordingly, within 30 days of notification that the contract has been approved and notice to proceed has been issued, the Consultant and Agency shall agree to a management plan with more detailed tasks, deliverables and schedule.
- Monthly progress reports, if required by the Agency, shall be submitted and include the following: Major milestones, contract schedules, progress by task to date, description of the progress, including identification of problems, proposed solutions and revised completion dates if necessary.

KEY PERSONNEL

MEMBER	ROLE/RESPONSIBILITY	EXPERIENCE AND SKILLS
<p>James Fabian Principal Mr. Fabian will contribute 50% of work on each engagement.</p>	<p><u>Engagement Manager</u></p> <ul style="list-style-type: none"> ✓ Responsible for organizing and directing the team and the process. ✓ Advises and develops strategic objectives. Ensures fulfillment of goals. ✓ Primary communicator with Successor Agency staff and management. ✓ Attends City Council/Successor Agency/Oversight Board meetings, and stakeholder meetings or rating presentations. 	<p><u>Qualifications</u></p> <ul style="list-style-type: none"> ✓ 29 years of experience in municipal finance including 14 years in local government. ✓ 15 years of experience as a financial advisor to cities and redevelopment agencies. ✓ Shareholder of the firm. ✓ Has completed more than \$2.0 billion of municipal transactions. ✓ Primary focus is on city and redevelopment agency clients.
<p>Anna Sarabian, Ph.D. Senior Vice President Ms. Sarabian will contribute 35% of work on each engagement.</p>	<p><u>Project Manager</u></p> <ul style="list-style-type: none"> ✓ Back-up contact for the Successor Agency. ✓ Manages execution of FRA work products and deal execution. ✓ Provides senior level quantitative & technical analysis, and ad-hoc financial analysis, as needed. ✓ Reviews all financing and legal documents. 	<p><u>Qualifications</u></p> <ul style="list-style-type: none"> ✓ Ph.D. in Economics. ✓ Over 13 years of municipal finance experience – issuer and financial advisor. ✓ Has completed over \$4 billion of municipal transactions. ✓ Primary focus on city and redevelopment clients. ✓ Specializes in both fixed and variable rate general fund, general obligation and tax allocation debt. ✓ Experience in post-redevelopment tax allocation bond financings and issues.
<p>Jason Chung Associate Mr. Chung will contribute 15% of work on each engagement.</p>	<p><u>Primary Technical Consultant</u> Under the direction of the Project Manager:</p> <ul style="list-style-type: none"> ✓ Responsible for data gathering, preparation of excel worksheets and charts required for credit presentation. ✓ Provides primary technical and quantitative analysis. ✓ Prepares market comparables sales worksheet. 	<p><u>Qualifications</u></p> <ul style="list-style-type: none"> ✓ Experience in debt sizing and refunding analysis. ✓ Experience in cash flow and debt modeling analysis. ✓ Experience in preparing financial models.

The Consultant's personnel assigned to this contract shall not be replaced without the prior written consent of the Agency. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered.

In the event that any Agency or Consultant personnel become unavailable due to resignation, illness, or other factors, excluding assignment to project outside this contract, outside of the Agency's or Consultant's reasonable control, as the case may be, the Agency or the Consultant shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks. The Consultant will make every reasonable attempt to assign the personnel listed in his proposal.

Specific Tasks, Milestones and Deliverables include the following:

1. Evaluate legal approaches permitting various financing structures and propose financing methods.

- a) Consultant will work closely with the Agency's finance team members to review and evaluate all legal approaches permitting the various financing structures.
- b) Consultant will use a term sheet tool to identify the Agency's objectives and to develop a legal structure to meet those objectives.
 - o Work collaboratively with Agency's Staff and the finance team members to develop a term sheet to use as the blue print to draft the required legal documents.

Deliverable: Term Sheet outlining the proposed legal structure of the refunding bonds.

2. Analyze and report on the advantages and disadvantages of each proposed financing structure.

- a) Consultant will analyze and identify the advantages and disadvantages of each proposed financing structure in collaboration with the Agency's Underwriter.
- b) The redemption provisions for the TABs allow for a conditional call notice to be exercised. Consultant recommends distributing a conditional call notice the day after pricing to allow for redemption of the TABs only a few days after an extended closing period. This method will ensure maximum efficiency of the escrow fund by minimizing the amount of negative arbitrage until the TABs are called.
- c) Consultant will develop a matrix to outline the advantages and disadvantages of various scenarios to help Agency's staff make the most informed decision regarding the preferred approach.

Deliverables:

- (1) Memorandum documenting outcomes of the above task "a";
- (2) Written recommendation on the timing of the conditional call notice.

3. Assist with the selection of an Underwriter(s).

- a) Consultant will assist the Agency in selection of an Underwriter.
- b) Consultant will work with Agency staff to review the City's debt policy on underwriter selection.

- c) Consultant will assist in preparing a Request for Proposal (“RFP”), distributing the RFP, evaluating proposals and preparing a recommendation of the firm(s) to be selected as senior and co-managing underwriter(s) for the transaction.
- d) Consultant will assist the Agency draft syndicate policies to maximize the distribution of bonds and to ensure the fair treatment of all the firms.

Deliverables:

- (1) Request for Proposal (“RFP”) for underwriting services.
- (2) List of proposed firms who are active in tax allocation bond financings to which the RFP is to be distributed.
- (3) Evaluation summary of all underwriter proposals received.
- (4) Initial draft and final syndicate policies to maximize the distribution of bonds and to ensure the fair treatment of all firms participating in the transaction.

4. Evaluate the projected cash flow from future-year tax increment.

- a) Consultant will work closely with the Agency’s Fiscal Consultant (“Fraser & Associates”) to analyze the projected cash flow from future-year tax revenues to determine the level of current and future debt service coverage.
- b) Consultant will work with Fraser & Associates to make sure the projected cash flow provides a reasonable basis for demonstrating that available tax revenues will be sufficient to cover future debt service payments.

Deliverable: Analysis of the Cash Flow from future tax revenues provided by the Agency’s Fiscal Consultant.

5. Collaborate with the Agency’s Bond Counsel and Underwriter in recommending specific terms and conditions affecting the basic security of a debt issue.

- a) Consultant will work closely with the other consultants to review specific terms and conditions affecting the basic security of a debt issue.
- b) Consultant will review specific provisions of AB X1 26 related to the authorization of refunding bonds and the pledge of tax revenues deposited into the Redevelopment Property Tax Trust Fund (“RPTTF”) held by the county auditor-controller.
- c) Consultant will review the specific terms defining “Pledged Tax Revenues” and the “Covenants of the Agency” in the legal documents to provide the required security to the Bondholders, but not create onerous requirements for the Successor Agency going forward.

Deliverable: Review, edit, advise and comment on all legal documents related to the debt issuance.

6. *Prepare and submit the required AB 1484 “Debt Service Savings Report” to Department of Finance (“DOF”) and coordinate all follow up on all requested information to expedite approval.*

- a) Consultant will work closely with the Agency, Bond Counsel and Underwriter to coordinate the required written confirmation and approval from the Department of Finance before the 2015 Refunding bonds can be sold.

Deliverables:

- 1) Prepare and submit the required AB 1484 “Debt Service Savings Report” for the 2015 Refunding Bonds to be attached to the Resolution approving the refunding by the Oversight Board.
- 2) Consultant will handle all follow-up questions with DOF to ensure an expedited review.

7. *Provide specific recommendations to the Agency and the Agency’s Underwriter on the marketing of the Refunding Bonds.*

- a) Consultant will work collaboratively with the Agency’s Underwriter to structure the refunding bonds to appeal to the widest array of retail and institutional investors by securing the highest underlying ratings possible and to develop a mix of serial and term bonds with different coupons and yields based upon the market conditions at the time of sale.
- b) Consultant will discuss with the Agency’s Underwriter whether in-person meetings with the large institutional investors such as Franklin Fund, Vanguard and Putnam, are warranted, or whether to do an Investor Road Show to broadcast the deal to the widest possible investor base.
- c) Consultant will explore the idea of a retail-only order period to garner as many traditional retail investors as possible.

Deliverable: Memorandum formalizing specific recommendations to the Agency and the Agency’s Underwriter on the marketing of the Refunding Debt.

8. *Review potential credit enhancement options including Reserve Fund Surety and Bond Insurance and make recommendation on whether they should be purchased.*

- a) Consultant will continue to monitor the market to determine the preference of providing a reserve fund surety or bond insurance.
- b) Consultant will send request for bond insurance and reserve fund surety bids along with all documents and any other pertinent information related to the refunding bonds to the bond insurers.

- c) At the time of the bond sale, Consultant will work collaboratively with the Agency's Underwriter to evaluate whether to insure all maturities or only certain maturities based on market conditions.

Deliverables:

- (1) Letters soliciting bond insurance and reserve fund surety bids.
- (2) Summary of received bids for bond insurance and reserve fund surety.

9. Assist the Agency in achieving the highest possible credit rating on each Tax Allocation Refunding Bond issuance.

- a) Consultant will prepare the Agency's credit presentation.
- b) Consultant will assist in coordinating presentation materials among all the Agency presenters and coach presenters on their specific parts.
- c) Consultant will assist in arranging face to face meetings with the rating analysts for the bond issuance.
- d) Consultant will provide a presentation that will highlight the Project Area's overall strong credit features and focus on presenting and highlighting key credit benchmarks and financial ratios, based on our experience and knowledge of what criteria the rating agencies typically assess.
- e) Consultant will facilitate obtaining a credit rating from Standard & Poor's.

Deliverables:

- (1) Letter requesting an underlying rating for the refunding bonds and providing all available documents and other pertinent information to provide to the rating agency for their analysis.
- (2) Credit presentation.

10. Assist the Agency in reviewing bond terms and related fees.

- a) In a negotiated sale of debt, Consultant will perform a thorough evaluation of market conditions preceding the negotiation of the terms of the sale of debt and assist the Agency with the negotiation of final issue structure, interest rates, interest cost, reoffering terms and gross underwriting spread to provide a recommendation on acceptance or rejection of the offer to purchase the debt.
- b) The Consultant's assistance and evaluation will focus on the following areas as determinants of interest cost: size of financing; sources and uses of funds; terms and maturities of the debt issue; investment of debt issue proceeds; distribution mixes among institutional and retail

purchasers; interest rate, reoffering terms and underwriting discount with comparable issues; and redemption provisions.

- c) Consultant will provide regular commentary on current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the Agency's proposed financing.
- d) Consultant will make specific recommendations as to the optimal time to enter the market and provide a market comparable worksheet to provide current market information on Tax Allocation Bonds.
- e) Consultant can act as the Agency's representative (in collaboration with Agency staff) in procuring the services for trustees, fiscal consultant, verification agent or financial printers for the official statement and related services, as necessary.

Deliverables:

- (1) Market updates.
- (2) Comparables sales worksheet.
- (3) Evaluation and recommendation with regard to proposed underwriter compensation.
- (4) As needed, requests for proposals for procuring trustees, fiscal consultants, verification agent, financial printers, etc.

11. Assist the Agency in closing of the Tax Allocation Refunding Bond issuance.

- a) Consultant will prepare a closing memorandum with wire instructions and coordinate with Trustee and Underwriter to ensure the smooth closing of the transaction.
- b) Consultant will work closely with the financing team to coordinate all aspects of the closing, review all closing documents and assist in the settlement of the costs of issuance.
- c) Consultant will prepare a closing laminate for Agency Staff to have as a summary reference guide.

Deliverables:

- (1) Closing memorandum.
- (2) Closing laminate.

12. Assist in representing the Agency and/or delivering presentations at various meetings if such meetings are necessary or desirable.

Consultant will attend all public meetings, workshops, and hearings that Agency Staff deem necessary including attending the City Council, Successor Agency and Oversight Board meetings.

Deliverable: Attendance and various presentations, as needed.

1.3. Coordinate meetings of the financing team on an as-needed basis.

- b) Consultant will ensure milestones are met in a timely manner and that the preparation for the issuance of bonds occurs according to schedule, Consultant will work with the rest of the finance team to draft a schedule of responsibilities.
- c) Consultant will coordinate the team to make certain that financing activities are occurring according to schedule.
- d) If needed, Consultant will prepare an Interested Parties List to be used to distribute all legal and financing documents to all required parties.

Deliverables:

- (1) Interested Parties List.
- (2) Financing Schedule.
- (3) Coordinate finance team meetings/conference calls and prepare agendas and other relevant materials for such events.

**EXHIBIT B
COMPENSATION SCHEDULE**

Financial advisory services (as detailed in Exhibit A - Scope of Services) performed in connection with refinancing of the Agency's Tax Allocation Bonds (TABs) will be billed at the amounts set forth below and will be contingent upon, and payable at the successful closing of the debt issue. As with other expenses related to the refunding, payment to the Consultant will be made from the Cost of Issuance (COI) fund held by the Trustee for the bond sale.

Transaction Size		Negotiated Sale Fees
\$1	to	\$150,000,000
		\$63,000

ADDITIONAL SERVICES

For all other services not related to the specified refinancing transaction as described in Exhibit A, a negotiated not-to-exceed amount will be established through amendment to this contract in the same manner and form as the original contract.

SCHEDULE OF FEES	
Executive Officer	\$300 Per Hour
Principal	\$290 Per Hour
Principal/Senior Vice President	\$275 Per Hour
Vice President	\$225 Per Hour
Assistant Vice President	\$195 Per Hour
Senior Associate	\$150 Per Hour
Associate	\$125 Per Hour
Analyst	\$85 Per Hour
Administrative Assistant	\$65 Per Hour
Clerical	\$35 Per Hour

Expenses

Expenses incurred as part of transaction will be billed for separately and will cover among other things, travel, conference calls, lodging, subsistence and overnight courier. Advances made on behalf of the City for costs of preparing, printing or distributing disclosure materials or related matter whether by postal services or electronic means, may also be billed through to the Agency upon prior authorization. Additionally, a surcharge of 6% of the net fee amount is added to verifiable out-of-pocket costs for recovery of costs such as telephone, postage, document reproduction and the like. Expenses will be capped at \$6,000.

**CONSULTING SERVICES AGREEMENT BETWEEN
THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF
MILPITAS AND
FRASER & ASSOCIATES**

THIS AGREEMENT for consulting services is made by and between the Successor Agency to the Former Redevelopment Agency of the City of Milpitas ("Agency") and Fraser & Associates ("Consultant") as of _____, 201_.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on March 31, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Assigned personnel should have an MAI or SRPA designation. Exhibit A shall name any specific personnel who shall be performing services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$27,500 for all services to be performed and reimbursable costs incurred under this Agreement as shown in Exhibit A. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to Consultant for services rendered pursuant to this Agreement. Consultant shall

submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the Agency to pay Consultant. In the event that an invoice is not acceptable to the Agency, said invoice shall be returned to Consultant within thirty (30) days of the Agency's receipt of the invoice with a detailed explanation of the deficiency. Agency's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice. Alternatively, the Agency may pay for all services performed by the Consultant through the cost of issuance account established as part of the bond refunding, should the bond be successfully sold.

2.3 Total Payment. Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the Agency and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed Two Thousand Five Hundred Dollars (\$2,500). Expenses not listed in Exhibit B are not chargeable to Agency. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement pursuant to Section 8, the Agency shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The Agency shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Agency shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency employees and reviewing records and the information in possession of the Agency. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Agency. In no event shall Agency be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the Agency's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the Agency.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the Agency. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the Agency upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 Deleted

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. Agency and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the Agency and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the Agency shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to AGENCY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

4.3 Deleted

4.4 **Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish Agency with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of Agency for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the Agency, Consultant may increase such deductibles or self-insured retentions with respect to Agency, its officers, employees, agents, contractors, consultants, and volunteers. The Agency may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the Agency.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to Agency at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Agency may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the Agency has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions

of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the Agency or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Agency or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Agency may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Agency in connection with this Agreement.

- 8.2 **Extension.** Agency may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and

agrees that, if Agency grants such an extension, Agency shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Agency, Agency shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the Agency.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency at any time upon demand of the Agency. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for

the Agency and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the Agency within the time period specified by the Agency shall be a material breach of this Agreement. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the Agency in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency or of the City of Milpitas. If Consultant were an employee, agent, appointee, or official of the Agency or of the City of Milpitas in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Emma C. Karlen, who is authorized to act for, and on behalf of, Agency. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:
Donald J Fraser, President,
Fraser & Associates
225 Holmfirth Court,

Roseville CA 95661

Any written notice to Agency shall be sent to:
Emma C. Karlen, Successor Agency Finance Director
455 East Calaveras Boulevard
Milpitas, California 95035

- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

SUCCESSOR AGENCY TO THE FORMER
REDEVELOPMENT AGENCY OF THE
CITY OF MILPITAS

FRASER & ASSOCIATES

Thomas Williams, Agency Executive Director

Donald J. Fraser, President

APPROVED AS TO FORM:

Taxpayer Identification Number

Michael Ogaz, Agency Counsel

EXHIBIT A

SCOPE OF SERVICES

1. **Tax Increment Projection**: An estimate of the 2014-15 tax increment revenues expected to be received in the Project Area will be prepared, along with a projection showing the future tax increment revenues estimated to be annually allocated to the Agency. The tax increment projections will include an analysis of the impact of senior liens on revenue available for debt service, including pass through payments.
2. **Analysis of County Allocation Procedures**: A review of County procedures used for the calculation of tax increment, including tax increment from the application of tax rates to incremental value and unitary property taxes, will be prepared for the current year revenue estimate. This analysis ensures that the current year revenue estimate is accurate.
3. **Review of Historical Revenues**: Fraser & Associates will review the growth in taxable values over the past five fiscal years and provide a table showing such trends. In addition, an analysis will be prepared of the actual tax increment receipts to the initial County levy in order to determine collection trends.
4. **Appeals Analysis**: An analysis of recently resolved and open appeals will be prepared. The tax increment projections will be revised as needed for the potential impact of appeals.
5. **Housing Market Impact Analysis**: Recent volatility in the housing market has caused rating agencies to require additional information concerning housing prices and property transfers. As a result, the impact that housing price declines have had on the Project Area, if any, will be analyzed. We will also review recent sales data in order to determine whether housing price declines and Proposition 8 reductions may be leveling off or reversing.
6. **Plan Limits Review**: The Project Area's plan limits will be reviewed in order to determine any potential impact on the bond issue and on the tax increment revenue stream.
7. **Impacts of Redevelopment Dissolution Act**: We will review the impact of AB 26 and AB 1484 on the flow of revenues to the Agency.
8. **Fiscal Consultants Report**: A Fiscal Consultants Report (FCR) will be prepared summarizing the analysis of historical, current and projected tax increment revenues. The FCR will include our methodology in preparing the tax increment study. The FCR is typically included as an appendix to the Official Statement for the bond issue.
9. **Official Statement Tables**: Fraser & Associates will provide tables on the revenues in the Project Area for inclusion in the offering document based on the data utilized in the services described above.

10. **Document Review**: Other documents (Official Statement; Indenture of Trust; etc.) will be reviewed and commented on by Fraser & Associates.
11. **Bond Rating Agency and Other Meetings**: Fraser & Associates will be available to represent the Agency in meetings and presentations to the bond rating agencies (Moody's and Standard and Poor's) and bond insurance companies (AMBAC, MBIA, and FGIC or others). Other meetings will also be attended, as requested by the Agency.

EXHIBIT B

COMPENSATION SCHEDULE

Services shall be compensated on the basis of a fixed fee of Twenty Two Thousand Dollars (\$22,000) for items one through eight above, inclusive of one meeting. Service items nine through eleven shall be compensated on a time and material basis in accordance with my standard hourly rate of \$250 per hour.

It is estimated that hourly rate services will not exceed Three Thousand Dollars (\$3,000). Expenses are estimated at \$2,500. Expenses include, but are not limited to: authorized travel; mileage at the current IRS per mile rate or equivalent rental car fee; copy expenses; shipping and messenger services; long distance phone calls; the acquisition of property tax data (Top 10, etc.) and other similar expenses.