

**List of Attachments for Resolution Item No. 10**

**– Reimburse 2016 Tax Exempt Obligations**

**Attachments:**

- 10-A Resolution
- 10-B Jones Hall Engagement Letter
- 10-C Professional Services Agreement with Fieldman, Rolapp & Associates

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS DECLARING ITS INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF TAX EXEMPT OBLIGATIONS TO BE ISSUED BY THE CITY OR AN ENTITY RELATED THERETO AND DIRECTING CERTAIN ACTIONS**

**WHEREAS**, the City of Milpitas (the "City") proposes to undertake the projects set forth in Exhibit A hereto (the "Projects"), to issue debt for the Projects and to use a portion of the proceeds of such debt to reimburse expenditures made for the Projects prior to the issuance of the debt; and

**WHEREAS**, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

**WHEREAS**, it is in the public interest and for the public benefit that the City declares its official intent to reimburse the expenditures referenced herein to implement the financing plan for the Projects.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, declares, and resolves as follows:

1. The City hereby declares its intent to issue tax exempt obligations (the "Obligations") and using a portion of the proceeds thereof to reimburse expenditures made by the City for the Projects before the issuance of the Obligations, and not more than 60 days before the date of adoption of this Resolution.
2. The City hereby declares that it reasonably expects (i) to pay certain costs of the Projects prior to the date of issuance of the Obligations and (ii) to use a portion of the proceeds of the Obligations for reimbursement of expenditures for the Projects that are paid before the date of issuance of the Obligations.
3. The City anticipates that the Obligations will be issued in an aggregate principal amount of approximately \$25,500,000.

PASSED AND ADOPTED this 15th day of December, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

**Exhibit A**

THE PROJECTS

Automated Water Meter Replacement

Los Coches Backbone

Water System Replacement Study

Water System Seismic Improvements

Hillside Pump Station Equipment Replacement

Minor Water Projects 2017

Lower Berryessa Bore and Jack

Supervisory Control and Data Acquisition

Seismic Reliability

Water Valve Replacement

Water Supply Augmentation Phase 2 – Seg. 1 Dempsey Recycled Water, Seg. 4 Yosemite

Recycled Water, Seg. 5 Landess Recycled Water

Water Supply Augmentation Phase 3 – Curtis Well

VTA BART Utilities construction reimbursement

November 23, 2015

475 Sansome Street  
Suite 1700  
San Francisco, CA 94111  
t. 415.391.5780  
f. 415.276.2088

Ms. Emma Karlen  
Finance Director  
City of Milpitas  
City Hall  
455 East Calaveras Boulevard  
Milpitas, California 95035

RE: Water Revenue Bonds or Water Revenue Certificates of Participation  
Terms of Engagement of Bond Counsel and Disclosure Counsel

Dear Ms. Karlen:

The City of Milpitas (the "City") is considering the issuance of water revenue bonds or water revenue certificates of participation (the "2016 Obligations") in order to finance improvements to the City's water system. If the 2016 Obligations are issued as bonds, the issuer will be a to-be-formed joint powers authority. If the 2016 Obligations are issued as certificates of participation, a to-be-formed joint powers will need to be involved in a role similar to the role filled by the Milpitas Public Financing Authority in the City's 2006 sewer financing. Utilizing the Milpitas Public Financing Authority in connection with the 2016 Obligations is not practical as, under the Dissolution Act, the existence of the Milpitas Public Financing Authority will terminate on September 1, 2033, which is one year after the Successor Agency's 2015 Tax Allocation Refunding Bonds are paid off. James Fabian has indicated that it is very likely that the final maturity of the 2016 Obligations will be later than September 1, 2033.

It is proposed that the firm act as Bond Counsel and Disclosure Counsel to the City for purposes of the proceedings for the issuance, sale and delivery of the 2016 Obligations.

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

- a. Consultation and cooperation with the City staff to assist in the formulation of a coordinated financial and legal issuance of the 2016 Obligations.
- b. Preparation of all legal proceedings for the formation of the to-be-formed joint powers authority (the "JPA").
- c. Preparation of all legal proceedings for the authorization, issuance and delivery of the 2016 Obligations by the City; including (a) preparation of resolutions of the governing board of the City and the JPA authorizing the issuance and sale of the 2016 Obligations and approving related



documents and actions, (b) preparation of all financing documents, including an indenture of trust or trust agreement authorizing the 2016 Obligations, (c) preparation of all documents required for the competitive or negotiated sale of the 2016 Obligations, (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 2016 Obligations.

- d. Advise the City prior to the issuance of the 2016 Obligations as to compliance with federal tax law as required to ensure that upon initial delivery to the underwriter interest on the 2016 Obligations is exempt from federal income taxation.
- e. 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 2016 Obligations, including a statement that interest on the 2016 Obligations 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 City and the JPA, and may also be relied upon the underwriter of the 2016 Obligations and other participants in the financing.
- f. Review as to completeness and accuracy those sections of the official statement to be disseminated in connection with the sale of the 2016 Obligations involving summary descriptions of the 2016 Obligations, the legal proceedings leading to the authorization and sale of the 2016 Obligations, the legal documents under which the 2016 Obligations will be issued, and federal tax law and securities law provisions applicable to the 2016 Obligations.
- g. Assist the City in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the 2016 Obligations.
- h. 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 City with applicable laws relating to the 2016 Obligations.

Our engagement as Disclosure Counsel will require us to provide to the City 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 2016 Obligations.
- b. Confer and consult with the officers and administrative staff of the City as to matters relating to the Official Statement.
- c. Attend all meetings of the City 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 City to attend.
- d. Subject to the completion of proceedings to our satisfaction, provide a letter addressed to the City 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, if any, and information concerning the Depository Trust Company and the book-entry system for the 2016 Obligations, 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 2016 Obligations.
- 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 City or the 2016 Obligations.
- 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 City in Internal Revenue Service examinations, audits or inquiries, or Securities and Exchange Commission investigations.
- g. After Closing, unless specifically requested to do so by City, and agreed to by us, providing continuing advice to the City or any other party concerning any actions that need to be taken regarding the 2016 Obligations; e.g., actions necessary to assure that interest paid on the 2016 Obligations will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include rebate calculations for the 2016 Obligations).

For the Bond Counsel services described above, we propose that the City pay us a fee of \$60,000. For the Disclosure Counsel services described above, we propose that the City pay us a fee of \$35,000.

In addition, the City 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 \$3,000.

Payment of the foregoing fees and expenses is entirely contingent on the successful issuance of the 2016 Obligations, will be due and payable upon the delivery of the 2016 Obligations, and will be payable solely from the proceeds of the 2016 Obligations and from no other funds of the City.

If you have any questions or would like to discuss any of the foregoing, please give me a call at (415) 391-5780. Upon approval by the City, would you please, at your convenience, fax, e-mail or mail a copy of this letter to us showing your approval. Our fax number is 415-276-2088.

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

Very truly yours,

Stephen Melikian

Approved:

CITY OF MILPITAS

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

**PROFESSIONAL SERVICES AGREEMENT  
FOR FINANCIAL ADVISOR**

This agreement has been entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the City of MILPITAS (the "City") and Fieldman, Rolapp & Associates, Inc. (herein, the "Consultant").

**WHEREAS**, the City desires independent financial advisory services to be performed in connection with funding of water system improvements (herein, the "Project"); and

**WHEREAS**, the City desires to retain the professional and technical services of the Consultant for the purpose of debt issuance, (herein, the "Services");

**WHEREAS**, the Consultant is well qualified to provide professional financial advice to entities such as the City;

**NOW, THEREFORE**, in consideration of the above recitals and the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

**Section 1 Financial Advisory Services.**

As directed by the City, Consultant will provide services in connection with the Project as such Services are fully described in Exhibit A attached to this Agreement. Consultant is engaged in an expert financial advisory capacity to the City only. It is expressly understood that the Services rendered hereunder are rendered solely to the City of MILPITAS. Consultant does not undertake any responsibility to review disclosure documents on behalf of owners or beneficial owners of bonds or debt which may arise from the Consultant's work hereunder.

- 1.01 Consultant has been engaged for a specific task and has not been engaged or undertaken to review alternatives to the decision made by the City.

**Section 2 Additional Requested Services.**

The City may request that Consultant provide additional services beyond the scope of those referenced in Section 1 above and specifically listed in Exhibit A to this Agreement. Services performed for the City by Consultant that are not otherwise specifically identified in Exhibit A to this Agreement shall be Additional Services. Additional Services include, but are not limited to, the following:

- 2.01 Assisting the City in obtaining enabling legislation or conducting referendum elections.
- 2.02 Extraordinary services and extensive computer analysis in the structuring or planning of any debt issue or financing program.
- 2.03 The repeat of any element of a service described in Exhibit A to this Agreement which is made necessary through no fault of Consultant.

- 2.04 Financial management services, including development of financial policies, capital improvement plans, economic development planning, credit analysis or review and such other services that are not ordinarily considered within the scope of services described in Exhibit A to this Agreement.
- 2.05 Services rendered in connection with any undertaking of the City relating to a continuing disclosure agreement entered into in order to comply with Securities and Exchange Commission Rule 15c2-12 or other similar rules.
- 2.06 Services rendered to the City in connection with calculations or determination of any arbitrage rebate liability to the United States of America arising from investment activities associated with debt issued to fund the Project.

**Section 3 Compensation**

- 3.01 For Consultant's performance of Services as described in this Agreement, including Additional Services requested by the City, the Consultant's compensation will be as provided in of Exhibit B attached to this Agreement,
- 3.02 Payment of Consultant's expenses shall be made at the time and in the form as provided for in Exhibit B to this Agreement.
- 3.03 Unless otherwise specified, payment of Consultant's compensation and expenses is due thirty (30) days after submission of Consultant's invoice for services.
- 3.04 In the event the Services of the Consultant are abandoned prior to completion of Consultant's work, Consultant shall be compensated for Services performed to the point of abandonment as if such Services were an additional service pursuant to Section 2 of this Agreement[, subject to a maximum fee of \$0. An act of abandonment shall be deemed to have occurred when no action has been taken by the City relative to the services of the Consultant for a period of three (3) months from the date of the initial performance of a service, and there has been a written notification to the Consultant of an abandonment of the Project by the City.
- 3.05 The schedule of Consultant fees set forth in this Agreement and Exhibits is guaranteed by Consultant for a period of twelve (12) months from the date of this Agreement.

**Section 4 Personnel.**

Consultant has, or will secure, all personnel required to perform the services under this Agreement. Consultant shall make available other qualified personnel of the firm as may be required to complete Consultant's services. The City has the right to approve or disapprove any proposed changes in Consultant's staff providing service to the City. The City and Consultant agree that such personnel are employees only of Consultant and shall not be considered to be employees of the City in any way whatsoever.

**Section 5 Term of Agreement.**

This Agreement shall continue in full force and effect for a period of twenty-four (24) months from the date hereof unless terminated by either party by not less than thirty (30) days written notice to the other party except that the Agreement shall continue in full force and effect until completion of Consultant's services or until an abandonment shall have occurred as described in Section 3.04 hereof. This Agreement may be extended from time to time as agreed by the City and the Consultant.

**Section 6 Modification.**

This Agreement contains the entire agreement of the parties. It may be amended in whole or in part from time to time by mutual consent of the parties. This shall not prohibit the City and Consultant from entering into separate agreements for other services.

**Section 7 Work Products.**

All work products or any form of property developed by the Consultant in providing the Services shall be provided to the City on request. Work products developed by the Consultant shall be the property of the City, provided that Consultant may use such work products developed for the City and may employ those work products to develop refinements or additional work products in the course of its business.

**Section 8 Assignment.**

The rights and obligations of the City under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the City. This agreement may not be assigned by the Consultant without the consent of the City except for compensation due Consultant.

**Section 9 Disclosure.**

Consultant does not assume the responsibilities of the City, nor the responsibilities of the other professionals and vendors representing the City, in the provision of services and the preparation of the financing documents, including initial and secondary market disclosure, for financings undertaken by the City. Information obtained by Consultant and included in any disclosure documents is, by reason of experience, believed to be accurate; however, such information is not guaranteed by Consultant.

**Section 10 Confidentiality.**

The Consultant agrees that all financial, statistical, personal, technical and other data and information designated by the City as confidential shall be protected by the Consultant from unauthorized use or disclosure. The City acknowledges that the Consultant is required to comply with applicable laws governing disclosure of public information.

**Section 11 Indemnification.**

The City and Consultant shall each indemnify and hold harmless the other from and against any and all losses, claims, damages, expenses, including legal fees for defense, or liabilities, collectively, damages, to which either may be subjected by reason of the other's acts, errors or omissions, except however, neither will indemnify the other from or against damages by reason of changed events and conditions beyond the control of either or errors of judgment reasonably made.

**Section 12 Insurance.**

12.01 Consultant shall maintain workers' compensation and employer's liability insurance during the term of this Agreement.

12.02 Consultant, at its own expense, shall obtain and maintain insurance at all times during the prosecution of this contract. Such insurance must be written with a Best Guide "A"-rated or higher insurance carrier admitted to write insurance in the state where the work is located.

12.03 Insurance coverages shall not be less than the following:

A. Workers' Compensation

1. State worker's compensation statutory benefits
2. Employer's Liability - policy limits of not less than \$1,000,000.

B. Comprehensive General Liability coverage with policy limits of not less than \$1,000,000 combined single limit for bodily injury and property damage and including coverage for the following:

1. Premises operations
2. Contractual liability
3. Products
4. Completed operation

C. Errors and omissions with policy limits of \$2,000,000.

12.04 If requested, certificates of insurance naming the City as an additional insured shall be submitted to the City evidencing the required coverages, limits and locations of operations to which the insurance applies, and the policies of insurance shall contain a 30 day notice of cancellation or non-renewal.

**Section 13 Permits/Licenses.**

The Consultant shall obtain any permits or licenses, as may be required for it to complete the services required under this Agreement.

**Section 14 Binding Effect.**

- 14.01 A waiver or indulgence by the City of a breach of any provision of this Agreement by the Consultant shall not operate or be construed as a waiver of any subsequent breach by the Consultant.
- 14.02 All agreements contained herein are severable and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid agreements or covenants were not contained herein, and the remaining provisions of this Agreement shall not be affected by such determination and shall remain in full force and effect. This Agreement shall not fail because any part or any clause hereof shall be held indefinite or invalid.
- 14.03 Each party hereto represents and warrants that this Agreement has been duly authorized and executed by it and constitutes its valid and binding agreement, and that any governmental approvals necessary for the performance of this Agreement have been obtained.

**Section 15 Arbitration Requirement.**

- 15.01 Any controversy, claim or dispute arising out of or relating to this Agreement shall be settled solely and exclusively by binding arbitration in Irvine, California.
- 15.02 Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of JAMS/Endispute ("JAMS"), with the following exceptions if in conflict: (a) one arbitrator shall be chosen by JAMS; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the JAMS rules and regulations) of the proceedings has been given to such party.
- 15.03 Each party shall bear its own attorneys fees and expenses.
- 15.04 The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive.
- 15.05 All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided, however, that nothing in this Section shall be construed as precluding the bringing of an action for injunctive or other equitable relief.
- 15.06 The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law.
- 15.07 IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES INAPPLICABLE OR INVALID, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING

HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

**Section 16 Conflict of Interest**

16.01 Compensation contingent on the completion of a financing or project is customary for municipal financial advisors. To the extent that compensation to the Consultant under this Agreement, specified in Exhibit B, is contingent on the issuance of debt or completion of a financing or project, a potential conflict of interest exists as Consultant would have an incentive to recommend to the City the completion of a transaction or project that might be unnecessary.

IN WITNESS Whereof, the parties have duly executed this Agreement as of the day and year first above set forth.

**CITY OF MILPITAS**

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

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

Date: \_\_\_\_\_

**FIELDMAN, ROLAPP & ASSOCIATES, INC.**

19900 MacArthur Boulevard, Suite 1100  
Irvine, CA 92612

By: James O. Fabian

Title: Principal

Date: 11/9/2015

**EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL ADVISOR  
BY AND BETWEEN  
THE CITY OF MILPITAS  
AND  
FIELDMAN, ROLAPP & ASSOCIATES**

*Scope of Services*

**A. General Services.**

The Consultant shall perform all the duties and services described in Section 1 of this Agreement and shall provide such other services as it deems necessary or advisable to accomplish the Project, consistent with the standards and practice of professional financial advisors prevailing at the time such services are rendered to the City.

The City may, with the concurrence of Consultant, expand this Agreement to include Additional Services not specifically identified within the terms of this Agreement. Any Additional Services may be described in an addendum to this Exhibit A and are subject to compensation described in Exhibit B to this Agreement.

**B. Transaction Services.**

The Consultant shall assume primary responsibility for assisting the City in coordinating the planning and execution of each debt issue relating to the Project. Insofar as the Consultant is providing Services which are rendered only to the City, the overall coordination of the financing shall be such as to minimize the costs of the transaction coincident with maximizing the City's financing flexibility and capital market access. The Consultant's proposed debt issuance Services may include, but shall not be limited to, the following:

- Establish the Financing Objectives
- Develop the Financing Schedule
- Monitor the Transaction Process
- Review the Official Statement, both preliminary and final
- Procure and Coordinate Additional Service Providers
- Provide Financial Advice to the City Related to Financing Documents
- Compute Sizing and Design Structure of the Debt Issue
- Plan and Schedule Rating Agency Presentation and Investor Briefings
- Conduct Credit Enhancement Procurement and Evaluation
- Conduct Market Analysis and Evaluate Timing of Market Entry
- Recommend Award of Debt Issuance
- Provide Pre-Closing and Closing Assistance

Specifically, Consultant will:

1. Establish the Financing Objectives.

At the onset of the financing transaction process for the Project, the Consultant shall review the City's financing needs and in conjunction with the City's management, outline the objectives of the financing transaction to be undertaken and its proposed form.

Unless previously determined, Consultant shall recommend the method of sale of debt and outline the steps required to achieve efficient market access.

2. Develop the Financing Timetable.

The Consultant shall take the lead role in preparing a schedule and detailed description of the interconnected responsibilities of each team member and update this schedule, with refinements, as necessary, as the work progresses.

3. Monitor the Transaction Process.

The Consultant shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue relating to the Project. The Consultant shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. The Consultant shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.

4. Review the Official Statement .

Upon direction of the City, the Consultant shall review the official statement for each debt issue relating to the Project to insure that the City's official statement is compiled in a manner consistent with industry standards.

5. Procure and Coordinate Additional Service Providers.

Should the City desire, the Consultant may act as City's representative in procuring the services of financial printers for the official statement and related documents, and for the printing of any securities. In addition, the Consultant may act as the City's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if the City directs.

6. Provide Financial Advice to the City Relating to Financing Documents.

Simultaneous with the review of official statements for each debt issue relating to the Project, the Consultant shall assist the managing underwriters, bond counsel and/or other legal advisors in the drafting of the respective financing resolutions, notices and other legal documents. In this regard, the Consultant shall monitor document preparation for a consistent and accurate presentation of the recommended business terms and financing structure of each debt issue relating to the Project, it being specifically understood

however that the Consultant's services shall in no manner be construed as the Consultant engaging in the practice of law.

7. Compute Sizing and Design Structure of Debt Issue.

The Consultant shall work with the City's staff to design a financing structure for each debt issue relating to the Project that is consistent with the City's objectives, that coordinates each transaction with outstanding issues and that reflects current conditions in the capital markets.

8. Plan and Schedule Rating Agency Presentation and Investor Briefings.

The Consultant shall develop a plan for presenting the financing program to the rating agencies and the investor community. The Consultant shall schedule rating agency visits, if appropriate, to assure the appropriate and most knowledgeable rating agency personnel are available for the presentation and will develop presentation materials and assist the City officials in preparing for the presentations.

9. Conduct Credit Enhancement Evaluation and Procurement.

Upon the City's direction, the Consultant will initiate discussions with bond insurers, letter of credit providers and vendors of other forms of credit enhancements to determine the availability of and cost benefit of securing financing credit support.

10. Conduct Market Analysis and Evaluate Timing of Market Entry.

The Consultant shall provide regular summaries of current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the City's proposed financing.

a. Competitive Sales.

For all types of competitive sale of debt, the Consultant shall undertake such activities as are generally required for sale of securities by competitive bid including, but not limited to the following:

- Review and comment on terms of Notice of Sale Inviting Bids
- Provide advice on debt sale scheduling
- Provide advice on the use of electronic bidding systems
- Coordinate bid opening with the City officials
- Verify bids received and make recommendations for acceptance
- Provide confirmation of issue sizing, based upon actual bids received, where appropriate
- Coordinate closing arrangements with the successful bidder(s)

b. Negotiated Sales.

In the case of a negotiated sale of debt, the Consultant shall perform a thorough evaluation of market conditions preceding the negotiation of the terms of the sale of debt and will assist the City with the negotiation of final issue structure,

interest rates, interest cost, reoffering terms and gross underwriting spread and provide a recommendation on acceptance or rejection of the offer to purchase the debt. This 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
- Review of the rating in pricing of the debt issue
- Investment of debt issue proceeds
- Distribution mix among institutional and retail purchasers
- Interest rate, reoffering terms and underwriting discount with comparable issues
- Redemption provisions

11. Recommend Award of Debt Issuance.

Based upon activities outlined in Task 10(a) and 10(b) above, the Consultant will recommend accepting or rejecting offers to purchase the debt issue. If the City elects to award the debt issue, the Consultant will instruct all parties and help facilitate the actions required to formally consummate the award.

12. Provide Pre-Closing and Closing Activities.

The Consultant shall assist in arranging for the closing of each financing. The Consultant shall assist counsel in assuming responsibility for such arrangements as they are required, including arranging for or monitoring the progress of bond printing, qualification of issues for book-entry status, signing and final delivery of the securities and settlement of the costs of issuance.

**EXHIBIT B  
TO  
PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL ADVISOR  
BY AND BETWEEN  
THE CITY OF MILPITAS  
AND  
FIELDMAN, ROLAPP & ASSOCIATES**

*Compensation and Expenses*

**Transaction Based Compensation**

For Services referenced in Section 1 of this Agreement, [including Services performed after the adoption by the Governing Body of the City Council, the Consultant will be compensated as described in the table below:

<u>Transaction Size</u>		<u>Fees</u>
\$1	to	\$57,500
\$30,000,001	and above	to be negotiated

Payment of compensation earned by Consultant pursuant to this Part 1 shall be contingent on, and payable at the closing of the debt issue(s) undertaken to finance the Project.

**Hourly Compensation**

For Services and Additional Services referenced in Section 1 and Section 2 of this Agreement, including Services performed prior to the adoption by City Council, the Consultant will be compensated at the then current hourly rates. The table below reflects the rates in effect as of the date of execution of this Agreement.

<u>Personnel</u>	<u>Hourly Rate</u>
Executive Officer.....	\$300.00
Principal.....	\$290.00
Senior Vice President .....	\$275.00
Vice President.....	\$225.00
Assistant Vice President .....	\$195.00
Senior Associate .....	\$150.00
Associate.....	\$125.00
Analyst.....	\$85.00
Administrative Assistant.....	\$65.00
Clerical.....	\$35.00

Hourly Compensation will be billed on a monthly basis.

## **Expenses**

Expenses will be billed for separately and will cover, among other things, travel, lodging, subsistence, overnight courier, conference calls, and computer charges. 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 City upon prior authorization. Additionally, a surcharge of 6% of the compensation 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 \$3,500.

## **Limiting Terms and Conditions**

The above compensation is based on completion of work orders within six months of the City's authorization to proceed, and assumes that the City will provide all necessary information in a timely manner.

The fee shown above in Part 1 presumes attendance at up to 8 meetings in the City's offices or such other location within a 25-mile radius of the City place of business as the City may designate. Preparation for, and attendance at City Council meetings on any basis other than "by appointment" may be charged at our normal hourly rates as shown in Part 2, above.

## **Abandonment**

If, once commenced, the services of the Consultant are terminated prior to completion of our final report for any reason, the Consultant will be compensated for professional services and reimbursed for expenses incurred through the time of receive notification of such termination at the standard hourly rates shown above, subject to a minimum charge of \$0.