

To: James L. App, City Manager  
From: Mike Compton, Director of Administrative Services  
Subject: Bond Counsel Services Contract  
DATE: January 20, 2004

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Needs:

Request that the City Council consider approval of a professional services agreement for bond counsel services.

Facts:

1. The Council at their July 2, 2002 approved a professional services agreement with Robert Haight for bond counsel services.
2. The compensation provision of that agreement provided for a fee of ½ of 1% of the first \$5 million of bonds sold and 1/8 of 1% for each subsequent million sold for non-land based financings. For example; an \$8 million bond sale would generate a fee of \$28,750.
3. Bond counsel has requested an increase in the fee provision given current industry rates for such work. Specifically, Mr. Haight has requested that the compensation provision for non-land based be set at the same rate as land based financings.
4. The rate for land based financings is \$25,000 plus components of Fact #2 above. Thus, for the same example noted above, the fee would be \$53,750.

Analysis &  
Conclusion:

Using data from recent financings undertaken by the City's financial advisor, Northcross, Hill and Ach, staff is of the opinion that the requested fee is higher than current industry rates and that the fee for non-land based financings should be lower than land based financed given their complexity and difficulty. Given these two factors, staff negotiated a flat fee of \$40,000 for all non-land based financings regardless of size of financing. Fee data is provided as follows:

\$3,440,000	City of Scotts Valley	Certificates of Participation	\$25,000
\$5,770,000	Town of Mammoth Lakes	Certificates of Participation	\$35,000
\$7,605,000	City of San Rafael	Certificates of Participation	\$35,000
\$14,900,000	Town of Colma	Certificates of Participation	\$40,000
\$5,185,000	Visalia RDA	Tax Allocation Bonds	\$42,500
\$6,390,000	Suisun City RDA	Tax Allocation Bonds	\$40,000
\$9,265,000	Davis RDA	Tax Allocation Refunding Bonds	\$40,000

Robert Haight has provided bond counsel services on all City long-term financings since 1999. Said financings included three general obligation bonds totaling \$38,000, 000, one tax allocation bond issue of \$4,090,000 and one installment sale sewer revenue bond issue of \$11,550,000. Staff is satisfied with the services provided by Robert Haight and is desirous of continuing said relationship.

Fiscal  
Impact:

The compensation provision of the agreement is a contingency fee arrangement. In other words, regardless of the amount of time and/or expense undertaken by bond counsel, no fee is payable unless bonds are sold.

Options:

- a. Adopt Resolution No. 04-xx approving a professional services contract with Robert Haight for bond counsel services; or
- b. Amend, modify, or reject the above option.

RESOLUTION NO. 04-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
APPROVING A PROFESSIONAL SERVICES CONTRACT WITH ROBERT HAIGHT  
FOR BOND COUNSEL SERVICES

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WHEREAS, from time to time it is desirable or necessary for the City to issue long-term debt; and

WHEREAS, the issuance of long-term debt requires the services of a bond counsel; and

WHEREAS, Robert Haight has satisfactorily provided said services on all recent City long-term financings;  
and

WHEREAS, Robert Haight and the City are desirous of establishing an ongoing contractual relationship.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that  
the professional services contract attached herewith as "Exhibit A" with Robert Haight for bond counsel  
services is approved.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 20<sup>th</sup> day of January 2004  
by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Frank R. Mecham, Mayor

ATTEST:

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Sharilyn M. Ryan, Deputy City Clerk

## AGREEMENT

By and Between

THE CITY OF EL PASO DE ROBLES AND  
ROBERT M. HAIGHT, ATTORNEY AT LAW,  
FOR BOND COUNSEL SERVICES IN CONNECTION WITH  
PUBLIC FINANCING PROCEEDINGS

This AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation organized and existing under the laws of the State of California (the "City") and ROBERT M. HAIGHT, Attorney at Law, Scotts Valley, California ("Attorney").

WHEREAS, the City contemplates, from time to time as needs arise, to issue long-term debt financings; and

WHEREAS, said long-term debt financings may include the Paso Robles Redevelopment Agency and/or the Paso Robles Public Financing Authority; and

WHEREAS, in connection with such proceedings the City requires the advice and assistance of bond counsel to provide necessary legal services; and

WHEREAS, Robert M. Haight, Attorney at Law, has provided said services to the City's satisfaction in the recent past.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. Duties of Attorney. Attorney shall perform all of the following services as are necessary for the successful issuance of long-term debt financing that may be issued from time to time:

A. Consultation and cooperation with the City, and/or Redevelopment Agency and/or Financing Authority attorneys, financing consultants and other consultants, underwriters, staff and employees of the City, Redevelopment Agency and the Financing Authority and assisting such consultants, underwriters, staff and employees in the formulation of a coordinated long-term debt financing.

B. Preparation of all legal proceedings for the authorization, issuance and sale of long-term debt instruments, including but not limited to preparation of a Trust Agreement, Installment Sale Agreement, Official Notice of Sale and Bid Form; preparation of all resolutions approving said Agreements and other documents and selling all or any part of an authorized long-term debt issue; preparation of all documents required for issuance of the long-term debt financing, and supervising such issuance; preparation of all other proceedings incidental or in connection with the sale and issuance of long-term debt financing.

C. Application for any Internal Revenue Service or other rulings necessary to assure tax-exempt status of the interest represented by the long-term debt financing, or as required by the purchaser of the long-term debt.

D. Determination of the need for obtaining a permit to issue the long-term debt financing under the Securities Laws (state or federal) or no-action letters from the Securities Exchange Commission and California Corporations Commission.

E. Upon completion of proceedings to the satisfaction of Attorney and the City Attorney, providing a legal opinion to the City, and/or the Redevelopment Agency and/or the Financing Authority which approves in all regards the legality of all proceedings for the authorization and issuance of the long-term debt, the Trust Agreement and the Installment Sale Agreement, and all other transactions relating thereto, which opinion shall further state that the interest represented by the long-term debt financing is exempt from federal and state personal income taxation (subject to certain necessary qualifications under federal tax law), which opinion shall inure to the benefit of the purchasers of the long-term debt financings.

F. Attending all meetings, rating agency presentations, bond insurance company presentations and other meetings as requested by City staff.

G. Such other and further services as are normally performed by bond counsel in connection with similar tax-exempt financings, including but not limited to answering any and all questions concerning the financing and the financing documents at any time following the issuance of the long-term debt financing.

H. Attorney will not be responsible for the preparation or content of the official statement prepared by the financial advisor or underwriter, other than to examine said official statement as concerns description of long-term debt financing and matters within Attorneys' knowledge.

I. Attorney will not be responsible for monitoring or assuring compliance with the rebate requirements applicable under federal tax law to the Certificates, other than to render advice as to the legal interpretation of such requirements as set forth in the Trust Agreement relating to the Certificates.

2. Compensation. For the services of Attorney as listed in Section 1 the City will pay Attorney a fee based upon a per issuance according to the following schedule:

Non-Land Secured Bonds:	\$40,000
Land Secured Bonds:	\$25,000 for formation of district plus 1/2% of the first \$5,000,000 principal amount of the Bonds, plus 1/8% of the remaining principal amount of the Bonds.

In addition, the City shall pay to Attorney all direct out-of-pocket expenses incurred for shipping, delivery and courier services, photocopying, official transcript duplication and any costs of travel outside the State of California, but not to exceed \$2,000 (provided that any costs advanced by Attorney for legal publication costs shall be reimbursed without regard to such limit). Payment of said fees and expenses to Attorneys shall be due upon the issuance of Certificates or Bonds and the delivery of the proceeds thereof to the City. *Said fees and expenses shall be payable solely from the proceeds of*

*the Certificate or Bonds, and shall be entirely contingent upon the successful sale and delivery of the Certificates or Bonds.*

3. Responsibilities of the City. The City shall cooperate with Attorney and shall furnish Attorney with certified copies of all proceedings taken by the City, or otherwise deemed necessary by Attorney to render an opinion upon the validity of such proceedings. All costs and expenses incurred incidental to the actual issuance and delivery of the long-term debt financing, including legal publication costs, the cost and expense of preparing certified copies of proceedings required by Attorney in connection with the issuance of the long-term debt financing, all printing costs and publication costs, financial advisor and other consultant fees, and any other expenses incurred in connection with the issuance of long-term debt financing, shall be paid from the long-term debt financing proceeds and not by Attorney.

4. Responsibilities of Attorneys; Indemnification. Attorney shall indemnify, keep and save harmless the City, and City Council members, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property, that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by a negligent act or omission or wrongful misconduct of Attorney or their employees, subcontractors or agents. Attorney further agree to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the City or any of the other individuals enumerated above in any such action, Attorneys shall, at their expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

5. Professional Liability Insurance. Attorney shall maintain Professional Liability Insurance covering Attorneys' performance under this Agreement with a limit of liability of at least One Million Dollars (\$1,000,000) per claim and in annual aggregate. Prior to commencing work under this Agreement, Attorney shall furnish to City a Certificate of Insurance, or certified copy of such insurance policy, if requested, indicating compliance with requirements of this Section.

6. Termination of Agreement. The City may terminate this agreement at any time by giving written notice to Attorney with or without cause. In the event of termination, all finished and unfinished documents, exhibits, project data, reports and evidence shall, at the option of City, become its property and shall be delivered to it by Attorney. Under any circumstances, in the event this Agreement is terminated and long-term debt financing was underway and is eventually issued, Attorney shall be entitled to receive partial compensation for all services actually rendered under this Agreement, pro rated based on the total fees to which Attorney would have been entitled had this Agreement not been terminated.

7. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties hereto to enforce the terms of this Agreement or to determine the rights of the parties thereunder, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable attorneys' fees.

IN WITNESS WHEREOF, the City and Attorney have executed this Agreement as of the date first above written.

CITY OF EL PASO DE ROBLES

ROBERT M. HAIGHT, Attorney at Law

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By City Manager

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By Robert M. Haight