



MEMORANDUM

TO: Finance and Administration Committee Members, Alternates
SLDMWA Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer

DATE: October 3, 2022

RE: **Board of Directors to Consider Finance & Administration Committee Recommendation Regarding Reallocation of FY 2023 OM&R Budget Funds, Associated Payment of Fieldman, Rolapp & Associates, Inc. Invoice**

BACKGROUND

Over the last several years, the Water Authority has used the services of Fieldman, Rolapp & Associates (FRA) in various financial matters. Specifically, FRA served as the Water Authority's financial advisor in completion of the bond financing efforts associated with the JPP Rewinds and DHCCP Bond Refunding. In addition, since July 2017, the Water Authority has been under contract with FRA for financial advisory services specific to San Luis Transmission Project (SLTP) financing. The 2017 contract (attached) enumerates numerous tasks associated with pursuing financing of SLTP. Between July 2017 and July 2021, the Water Authority paid approximately \$22,000 to FRA based on hourly invoices pursuant to this contract.

In August 2021, FRA ceased sending monthly invoices in accordance with the mutual understanding between the Water Authority and FRA that FRA's future SLTP financing work would be compensated out of bond proceeds. This understanding was reflected in the Board's adoption of Resolution 2021-489 in October 2021, which authorized the Water Authority to pursue the issuance of bonds to finance the costs of construction of SLTP, with Costs of Issuance including "fees and charges of any Authority municipal advisor" and "fees and disbursements of consultants and professionals."

Ultimately, as Water Authority staff reported in the September Board meeting, the Western Area Power Association (WAPA) sent a letter to U.S. Bureau of Reclamation and the Water Authority indicating that it was ceasing work on SLTP for the foreseeable future.

Given the extensive work FRA performed between August 2021 and August 2022 in furtherance of SLTP, including work beyond the tasks outlined in the 2017 contract, staff is recommending Board action to authorize reallocation of FY22 OM&R budget funds and payment to FRA.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend, and the Board of Directors should authorize, reallocation of FY 2023 OM&R budget funds and associated payment of Fieldman, Rolapp & Associates, Inc..

RECOMMENDATION

Water Authority Staff recommends reallocation of \$25,000 from the FY22 OM&R legal budget to allow for payment of \$95,000 to Fieldman, Rolapp & Associates, Inc.

ANALYSIS

The 2017 Professional Services Agreement with FRA includes a description of the Scope of Services associated with SLTP. Between August 2021 and August 2022, FRA performed work over and above tasks enumerated in that scope, including:

- Review, guidance, and participation in the numerous working sessions with WAPA on the development of the Project Development Agreement and MOU;
- Provision of alternatives to address issue related to payments needed due to delay in energization and emergency outages;
- Participation in briefings with CVP contractors re SLTP and provision of guidance on issues raised by non-Authority CVP contractors;
- Initiation and participation in meetings with construction insurance brokers; and
- Initiation and participation in meetings to seek alternative financing options such as TIP, other DOE financing options.

Given the extensive efforts and analyses completed by FRA, Water Authority Staff and FRA have discussed the situation and FRA has estimated that their efforts have cost approximately \$190,000 since August 2021 (see attached letter).

The 2017 Professional Services Agreement includes language in Section 3.04 indicating that “In the event Client abandons the Services of the Consultant prior to completion of Consultant’s work, Consultant shall be compensated for Services performed to the point of abandonment at the hourly rates specified in Exhibit B. An act of abandonment shall be deemed to have occurred when there has been a written notification to the Consultant by the Client of an abandonment.” As of September 2022, SLTP is on hold, and so compensation is appropriate. However, because it is customary within the municipal advisor industry for work to be conducted on a contingent basis with fees payable from bond proceeds, and there was an informal understanding with FRA regarding contingency, Water Authority staff and FRA staff have discussed payment of \$95,000, an amount less than the full cost of services.

BUDGET IMPLICATIONS

The FY23 OM&R budget includes \$70,000 for outside consultant services, which was included in the budget to pay for FRA services. The FY23 OM&R budget also includes \$25,000 for SLTP legal

Memo to SLDMWA Finance & Administration Committee, Board of Directors

October 3, 2022

Page **3** of **3**

services that is not anticipated to be utilized. Between the two line items, \$95,000 is available to compensate FRA for their SLTP efforts. There would be no additional budget impacts.

**PROFESSIONAL SERVICES AGREEMENT
FOR MUNICIPAL ADVISORY CONSULTING SERVICES**

This agreement has been entered into this 26th day of July, 2017 by and between SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, a joint powers authority duly organized and validly existing under and by virtue of the laws of the State of California (herein, the "Client") and FIELDMAN, ROLAPP & ASSOCIATES, INC. a California corporation (herein, the "Consultant").

WHEREAS, the Client desires consulting services to be performed in connection with the construction of a transmission line, (herein, the "San Luis Transmission Project").

WHEREAS, the Client desires to retain the professional and technical services of the Consultant for the purpose of providing financial advice to develop, recommend and implement a funding plan for the San Luis Transmission Project(herein, the "Services").

WHEREAS, the Consultant is well qualified to provide professional advice to public entities such as the Client and is ready, willing and able to perform said professional and technical services hereinafter set forth; and

WHEREAS, the Consultant is registered as a municipal advisor with both the United States Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

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

Section 1 Consulting Services.

As directed by the Client, Consultant will provide municipal advisory consulting services, as such Services are more fully described in Exhibit A attached to this Agreement. Consultant is engaged in an expert consulting capacity to the Client only. It is expressly understood that the Services rendered hereunder are rendered solely to the Client.

Section 2 Additional Requested Services (Amendment of Services).

The Client 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. The Services to be provided under this Agreement may only be amended by a modification as provided for in Section 6.

Section 3 Compensation

- 3.01 For Consultant's performance of Services as described in this Agreement, 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 Client abandons the Services of the Consultant prior to completion of Consultant's work, Consultant shall be compensated for Services performed to the point of abandonment at the hourly rates specified in Exhibit B. An act of abandonment shall be deemed to have occurred when there has been a written notification to the Consultant by the Client of an abandonment.
- 3.05 The schedule of Consultant fees set forth in this Agreement and Exhibit B is guaranteed by Consultant for a period of eighteen (18) 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 Client has the right to approve or disapprove any proposed changes in Consultant's staff providing service to the Client. The Client and Consultant agree that such personnel are employees only of Consultant and shall not be considered to be employees of the Client in any way whatsoever.

Section 5 Term of Agreement.

This Agreement shall terminate after the completion of Consultant's Services or until an abandonment has occurred, as described in Section 3.04 hereof.

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 written consent of the parties; provided that the Disclosures (as defined herein) required by Section 16 will be updated by the Consultant as required by law. This shall not prohibit the Client 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 Client on request. Work products developed by the Consultant shall be the property of the Client, provided that Consultant may use such work products developed for the Client 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 Client under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Client. This agreement may not be assigned by the Consultant without the prior written consent of the Client.

Section 9 Disclosure.

- 9.01 The Consultant has provided G-42 disclosure to the Client. The Client acknowledges by the execution of this Agreement that:
- (a) the Client has independently selected the Consultant; and
 - (b) all compensation to be received by the Consultant has been fully disclosed in the attached Exhibit B.
- 9.02 The Consultant does not assume the responsibilities of the Client, or the responsibilities of the other professionals and vendors representing the Client. Consultant assumes no responsibility for the scope and accuracy of information included in any disclosure document.

Section 10 Confidentiality.

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

Section 11 Indemnification.

The Client 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 Client as an additional insured shall be submitted to the Client 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 Client 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 Choice of Law.


The validity, interpretation and construction of this Agreement and of each part hereof shall be governed by the laws of the State of California. Venue for any lawsuit concerning this Agreement is Orange County, California.

Section 16 Conflict of Interest and Other Required Disclosures.


Consultant covenants and agrees to provide to the Client disclosures of material conflicts of interest and certain legal or disciplinary events required by Municipal Securities Rulemaking Board Rule G-42 (the "Disclosures"). The Disclosures, and each delivery thereof, as provided from time to time, shall be incorporated by reference as of the date thereof into this Agreement to the same extent as if set forth herein. The initial Disclosures are as set forth in Exhibit C to this Agreement.

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

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

By:  Title: Assistant Executive Director
Date: July 27, 2017

FIELDMAN, ROLAPP & ASSOCIATES, INC.
19900 MacArthur Boulevard, Suite 1100
Irvine, CA 92612

By:  Title: Senior Vice President
Date: July 26, 2017

**EXHIBIT A
TO
CONSULTING SERVICES AGREEMENT
BY AND BETWEEN
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
AND
FIELDMAN, ROLAPP & ASSOCIATES, INC.**

SCOPE OF SERVICES

- In connection with the San Luis Transmission Project, the Consultant will review with the Client the cost and the intended sources of funding and repayment
- The Consultant will review cash and fixed rate debt funding methods and will review other methods of financing upon further consultation with the Client. Consultant will research and analyze the availability of cash, bonds, direct debt or Federal loan programs for use in funding the San Luis Transmission Project develop and recommend a specific financing option.
- Consultant will be available for presentation to the Client's Board as directed by Staff.
- At the direction of Client, Consultant will implement the financing plan. If such plan included the issuance of debt, Consultant will follow the below scope of services unless otherwise agreed to by both Consultant and Client:

1. Method of Sale.

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 Client, Consultant shall review the official statement for each debt issue relating to the San Luis Transmission Project to insure that Client's official statement is compiled in a manner consistent with industry standards.

5. Procure and Coordinate Additional Service Providers.

Should Client desire, the Consultant may act as Client'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 Client's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if Client directs.

6. Provide Financial Advice to Client Relating to Financing Documents.

Simultaneous with the review of official statements for each debt issue relating to the San Luis Transmission 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 San Luis Transmission 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 Client's staff to design a financing structure for each debt issue relating to the San Luis Transmission Project that is consistent with Client'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 Client officials in preparing for the presentations.

9. Conduct Credit Enhancement Evaluation and Procurement.

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 credit enhancement.

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 Client'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 Authority 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 Authority 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) above, the Consultant will recommend accepting or rejecting offers to purchase the debt issue. If Client 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.

13. Additional Debt Test

Consultant will provide the appropriate documentation and calculation in connection with Client's compliance with its additional bonds test.

EXHIBIT B
TO
CONSULTING SERVICES AGREEMENT
BY AND BETWEEN
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
AND
FIELDMAN, ROLAPP & ASSOCIATES, INC.

FEES

Unless agreed to otherwise in writing by Client and Consultant, for services performed pursuant to Section 1 of this Agreement the Client will be billed on an hourly basis, plus expenses.

The table below reflects the hourly rates in effect as of the date of execution of this Agreement.

<u>Personnel</u>	<u>Hourly Rate</u>
Executive Officer	\$345.00
Principal	\$315.00
Principal/Senior Vice President	\$295.00
Vice President	\$245.00
Assistant Vice President	\$210.00
Senior Associate	\$165.00
Associate	\$140.00
Analyst	\$95.00
Administrative Assistant	\$75.00
Clerical	\$45.00

EXPENSES

Expenses will be billed for separately and will cover, among other things, travel, overnight courier, computer, and fax transmission charges. Advances made on behalf of the Client 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 Client upon prior authorization.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL ADVISOR
BY AND BETWEEN
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
AND
FIELDMAN, ROLAPP & ASSOCIATES

MSRB Rule G-42 requires that municipal advisors provide to their s disclosures relating to all material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. With respect to all aspects of the relationship between Consultant and the Client, Consultant adheres to its fiduciary duty to the Client, which includes a duty of loyalty to the Client in performing all municipal advisory activities for the Authority. The duty of loyalty obligates Consultant to deal honestly and with the utmost good faith with the Client and to act in the Client's best interest without regard to any interest Consultant has or may have. Consultant has a wide range of clients so our success and profitability are not dependent on maximizing short-term revenue generated from individual recommendations to our clients but is instead dependent on long-term profitability based on a foundation of integrity, quality and adherence to our fiduciary duty. Furthermore, Consultant's supervisory structure provides strong safeguards against individual representatives of Consultant violating their duty due to personal interests.

Consultant makes the following representations to the Client with regard to the Services:

- A. Other than the compensation described in the Agreement, we have no other interest, direct or indirect, that would interfere with or impair in any matter or degree the performance of our obligations. During our work on the Services, we do not intend to acquire or obtain any such interest, direct or indirect. If any such interest is acquired or obtained, we will immediately advise the Client.
- B. We have not provided any gift or consideration to any officer, employee or agent of the Client to either obtain the Agreement or any assignment from the Client, including the Services. Neither our firm, nor its officers or employees will provide any such gift or consideration to any officer, employee or agent of the Client to influence decisions with regard the Services or our obligations under the Agreement.
- C. At the present time, Consultant has determined, after exercising reasonable diligence, that it has no known material conflicts of interest that would impair its ability to provide advice in accordance with its fiduciary duty to municipal entity clients such as the Authority. To the extent any such material conflicts of interest arise after the date of this disclosure, Consultant will provide information with respect to such conflicts.

Information Regarding Legal Events and Disciplinary Actions

MSRB Rule G-42 requires that municipal advisors provide their clients disclosures of legal or disciplinary events material to the evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Consultant sets out required disclosures and related information below:

- A. There are no legal or disciplinary events material to the Authority's evaluation of Consultant or the integrity of Consultant's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I with the Securities and Exchange Commission (the "SEC").
- B. Consultant's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001612429>