

**RESOLUTION #17-34**

**RESOLUTION APPOINTING FINANCIAL ADVISOR  
FOR THE CITY OF WOODBURY**

**WHEREAS**, there exists a need for the appointment of a Financial Advisor for the City of Woodbury for the year 2017; and

**WHEREAS**, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the resolution authorizing the award of contracts for "Professional Services" without competitive bids must be publicly advertised.

**WHEREAS**, this appointment and/or contract was advertised and is hereby awarded pursuant to a fair and open process in accordance with the provisions of N.J.S.A. 19:44A-20.4 et seq., with the award of the contract and/or the appointment being in the best interest and the most advantageous to the City of Woodbury considering all factors.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Woodbury that **ACACIA** is hereby appointed Financial Advisor for the City of Woodbury, commencing January 1, 2017 for a term of one (1) year terminating on December 31, 2017; and

**BE IT FURTHER RESOLVED** that a contract be entered into with the above appointee, in the form attached hereto, and such contract be awarded without competitive bidding as a "Professional Service" under the provisions of the Local Public Contracts Law because the aforesaid agreement encompasses professional services recognized, licensed and regulated by law, and is of a nature where it is not possible to obtain competitive bids and is hereby awarded under a fair and open process pursuant to N.J.S.A. 19:44A-20.4 et seq.; and

**BE IT FURTHER RESOLVED** that a notice of this resolution shall be published in the South Jersey Times as required by law within ten (10) days of its passage.

**ADOPTED** at the regular meeting of the Mayor and City Council of the City of Woodbury held January 3, 2017.

  
\_\_\_\_\_  
**DAVID TROVATO**  
President of Council

**ATTEST:**   
\_\_\_\_\_  
**ROY A. DUFFIELD**  
Clerk

Recorded vote:

Ayes (8): Swanson, McIlvaine, Johnson, Fleming, Parker, Reddin, Carter, Trovato

Nays, Abstentions: none

Absent (1): Tierney

**CITY OF WOODBURY  
CERTIFICATION AS TO THE AVAILABILITY OF FUNDS  
CHIEF FINANCIAL OFFICER**

I CERTIFY AS CHIEF FINANCIAL OFFICER, THAT WITH RESPECT TO THE AWARD OF A CONTRACT OR EXPENDITURE OF FUNDS TO:

Acacia

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FOR: Professional Contract - Temporary budget portion until budget adoption

Financial Advisor

RESOLUTION #	<u>17-34</u>	1/3/2017	AMOUNT: \$	<u>500.00</u>
ORDINANCE #	<u>                    </u>			

THAT FUNDS ARE AVAILABLE, AS OF THE DATE OF THIS RESOLUTION, FROM THE FOLLOWING:

		<u>Amounts Funded</u>
TEMPORARY BUDGET APPROPRIATION:	7-01-20-130-225	\$ 500.00

ADOPTED BUDGET APPROPRIATION:

DEDICATION BY RIDER:

RESERVE FOR FEDERAL & STATE GRANT:

CAPITAL ORDINANCE:

Dated: January 3, 2017

  
\_\_\_\_\_  
ROBERT LAW  
CHIEF FINANCIAL OFFICER



17-34

601 Route 73 North  
Suite 206  
Marlton, NJ 08053  
(856) 234-2266 Phone  
(856) 234-6697 Fax

January 3, 2017

City of Woodbury  
33 Delaware Street  
Woodbury, NJ 08096

Attention: Robert Law  
CFO/Deputy Administrator

Dear Mr. Law:

This letter agreement (this "Agreement"), dated as of 1/3/2017 (the "Effective Date"), will confirm the understanding and agreement between City of Woodbury (the "Client") and Acacia Financial Group, Inc. ("Acacia") as follows:

ENGAGEMENT OF ACACIA. The Client engages Acacia to perform the following financial advisory services in connection with the Client's issuance of bonds and/or notes (the "Advisory Services");

- a) Assist and make recommendations on all aspects of the debt issuance, including the method of sale, structure, terms, timing, marketing and pricing.
- b) Examine, evaluate, and recommend an overall financing plan that is expected to result in the lowest cost of borrowing to the Client over the life of the debt.
- c) Assist in the preparation of the schedule, distribution list, meeting agendas, the preliminary and final official statements and other documents related to the marketing and issuance of bonds.
- d) Assist with the preparation for, and participate in, meetings and conference calls with the working group, investors, rating agencies and credit facility providers.
- e) Development of a credit rating strategy and assist with obtaining credit rating(s).
- f) Evaluate credit enhancement alternatives.
- g) In negotiated transactions: (i) analyze and recommend pricing levels based on the client's historical pricing and the pricing of comparable credits in the then current market and (ii) assist and advise in negotiations with investment banking groups regarding pricing and final terms of the security offering and make recommendations regarding the proposed purchase of the issue.
- h) In competitive transactions: (i) overall coordination of the sale process, (ii) assist in the preparation of the notice of sale and bid specifications; (iii) inform underwriting firms of the

structure and timing of the transaction; and (iv) independently evaluate bids, verify the TIC (or NIC) calculation, and recommend award.

- i) Advise on direct bank purchase and private placement structures including assistance with the RFP process and review and negotiation of term sheets.
- j) Assist in the evaluation and selection of underwriters/investment bankers, legal counsel, credit facility providers, trustees, verification agents, printers, and other professional service providers, including preparation of RFQ's, requests for proposals (RFPs) or bids and the evaluation of statements of qualifications, proposals or bids submitted in response thereto.
- k) Monitor and evaluate refunding opportunities with respect to outstanding Client's obligations.
- l) For refunding transactions, submit or assist with the submission of SLGS subscriptions, evaluate the efficiency of open market securities relative to SLGS and, if necessary, prepare bid specifications and receive bids for open market securities.
- m) Provide a transaction summary outlining pricing performance, market dynamics and other relevant data.
- n) Provide advice and guidance on post-issuance compliance.
- o) Assist in reviewing and updating the Client's debt policies.
- p) Analyze proposals presented by investment bankers and perform other related services as requested by the Client.
- q) Assist in all aspects of the closing of the bonds and/or notes.
- r) Provide any other services as requested by the Client.

As a registered Municipal Advisor with the Municipal Securities Rulemaking Board and the Securities Exchange Commission ("SEC"), Acacia also proposes to serve as Authority's Independent Registered Municipal Advisor ("IRMA") for the purpose of complying with the Municipal Advisor Rule of the SEC approved on September 18, 2013.

The Client hereby acknowledges and agrees that the financial models and presentations used by Acacia in performing its Advisory Services hereunder have been developed by and are proprietary to Acacia and are protected under applicable copyright laws. The Client agrees that it will not reproduce or distribute all or any portion of such models or presentations without the prior written consent of Acacia.

#### FEES AND EXPENSES.

Bond and Note Transaction Fees. For financial advisory services rendered to the Client in connection with the sale of bonds and notes, Acacia proposes to be compensated at a rate of \$0.85 per \$1,000 of par value issued with a minimum fee of \$10,000 per bond issuance and \$5,000 per note issuance, inclusive of expenses.

Consulting Fees. For general consulting fees rendered to the Client not directly related to the sale of bonds or notes, the Client agrees to compensate Acacia based upon the hourly rates set forth below:

<u>Title</u>	<u>Hourly Rate</u>
Co-President	\$195.00/hr.
Managing Director	\$185.00/hr.
Senior Vice President/Vice President	\$175.00/hr.
Assistant Vice President /Associate	\$165.00/hr.
Analyst	\$150.00/hr.
Administrative	\$ 50.00/hr.

Complex Financings/Transactions. If the Client requires assistance with a financing that includes a unique and/or complex structure or requires additional services or time beyond our typical scope, Acacia and the Client will in good faith negotiate the amount of the fee payable taking into account, among other things, the magnitude and complexity of the transaction.

Annual Disclosure Filing.

- (i) For services in connection with the on-going annual disclosure and the filing of certain financial information and notices in connection with the provisions of Rule 15C2-12(b)(5), Acacia proposes that compensation be an annual fee of \$950 billed at the time such services are rendered.
- (ii) If Acacia is requested to prepare updated financial information for the Borough, including Appendix A to the Official Statement (not otherwise being updated in connection with the sale of bonds or notes), Acacia proposes to be compensated on an hourly basis at the hourly rates listed above with a maximum fee of \$1,000 for such service.

INDEMNIFICATION.

The Client hereby expressly agrees to indemnify and hold harmless Acacia, its affiliates and its and their officers, directors, partners, limited partners, members, employees, agents, consultants and controlling persons and their respective successors and assigns (Acacia and each such person being an "Indemnified Person"), from any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Person may become subject (i) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Official Statement, including documents described in or incorporated by reference, or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or (ii) arising in any manner out of or in connection with the services performed by Acacia or any other Indemnified Person or the matters that are the subject of this Agreement.

The Client shall reimburse Acacia and any other Indemnified Person for all reasonable expenses (including reasonable fees and expenses of legal counsel) as incurred in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with the services or matters that are the subject of this Agreement (including, without limitation, in connection with asserting or enforcing rights under this Agreement and the indemnification obligations set forth herein); provided, however, that the Client shall not be liable to indemnify any Indemnified Person in respect of any loss, claim, damage, liability or expense to the extent that it is finally judicially determined that such loss, claim, damage, liability or expense resulted directly from the gross negligence or willful misconduct of such Indemnified Person.

### TERM AND TERMINATION.

(a) Term. The appointment and authorization of Acacia under this Agreement shall commence on the Effective Date and shall terminate at the earliest of (i) a date mutually agreed upon by the Client and Acacia in writing; or (ii) upon at least thirty (30) days' prior written notice of one party to the other parties specifying the date of termination (the "Term"). Notwithstanding any such termination of this Agreement, the Client shall remain responsible for any fees accrued during the Term, and the reimbursement of Acacia's expenses pursuant to Paragraph 2 of this Agreement incurred during the Term and not yet paid.

(b) Survival. The provisions of Paragraphs 3, 4, 6 and 7 of this Agreement shall survive the termination of this Agreement.

### ACACIA'S DISCLOSURES PURSUANT TO MSRB RULE G-42

Conflicts of Interest. Acacia receives compensation for municipal advisory activities to be performed that (i) is contingent upon the size of the transaction, which could create an incentive to otherwise increase the size of a transaction; or (ii) is contingent upon the closing of the transaction, which could create an incentive to otherwise close a transaction. Acacia manages this conflict by implementing written policies and procedures for supervision that ensure that Acacia adheres to its fiduciary duties to its municipal advisory clients. Acacia is not aware, after reasonable inquiry, of any other actual or potential material conflict of interest that could reasonably be anticipated to impair its ability to provide advice to or on behalf of its clients in accordance with its fiduciary duties to its clients.

Legal or Disciplinary Events. Acacia does not have any legal or disciplinary events that are material to a client's evaluation of Acacia or the integrity of Acacia's management or advisory personnel, nor does Acacia have any legal or disciplinary events that are required to be disclosed on its Forms MA and MA-I, which are filed with the SEC. Copies of Acacia's most recent Forms MA and MA-I are accessible on the SEC's EDGAR system Company Search Page at <https://www.sec.gov/edgar/searchedgar/companysearch.html> by searching for either Acacia Financial Group, Inc. or Acacia's CIK number, which is 0001613001. Acacia has not made any material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the SEC since Acacia's initial filing of Form MA on July 25, 2014.

DISPUTE RESOLUTION. All disputes, claims or controversies arising out of or in any way relating to this Agreement or the services rendered by Acacia (including with respect to enforcement of this Agreement) that are not resolved by mutual agreement shall be resolved solely and exclusively by binding arbitration to be conducted before the American Arbitration Association (the “AAA”). Arbitration proceedings shall be held in [New York City, NY] before a single arbitrator and shall be conducted in accordance with the commercial arbitration rules of the AAA unless specifically modified herein.

MISCELLANEOUS.

Reliance on Client Information. Acacia may conclusively rely on the accuracy and completeness of the information provided to Acacia by the Client or the Client’s representatives, including current and historical information with respect to the operations, assets, liabilities, and financial condition of the Client (the “Information”), and the Client acknowledges that Acacia has not been retained to (nor will it) independently verify any of such Information.

Independent Contractor Status. The legal relationship of the Client and Acacia created by this Agreement is one of independent contractors only and no employer/employee, master-servant, co or joint venturers, licensor-licensee, partnership or other such relationship is intended or shall be deemed or construed.

No Liability. The Client agrees that neither Acacia nor any of its controlling persons, affiliates, partners, directors, officers, employees, agents, advisors or consultants shall have any liability to the Client or any person asserting claims on behalf of or in right of the Client for any losses, claims, damages, liabilities or expenses arising out of or relating to this Agreement or the services to be rendered by Acacia hereunder, unless and until it is finally judicially determined that such losses, claims, damages, liabilities or expenses resulted directly from the gross negligence or willful misconduct of Acacia.

Successors and Assigns. The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto and of the Indemnified Persons, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon their respective successors and assigns. Other than pursuant to Paragraph 3, nothing in this Agreement is intended to confer upon any other person (including stockholders, employees or creditors of the Client) any rights or remedies hereunder or by reason hereof.

Blue Pencil/Waiver. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Any of the terms and conditions of this Agreement may be waived at any time and from time to time in a writing signed by the party entitled to the benefit thereof, but a waiver in one instance shall not be deemed to constitute a waiver in any other instance. A failure to enforce any provision of this Agreement shall not operate as a waiver of this provision or of any other provision hereof.

Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Client and Acacia with respect to the subject matter hereof and supersedes all prior understandings or agreements between and among the parties with respect thereto, whether

oral or written, express or implied. This Agreement may not be amended or modified except in a writing signed by each of the parties hereto. No party may assign this Agreement to any entity other than an affiliated or related entity without the prior written consent of the other parties.

Counterparts. This Agreement may be executed in any number of counterparts, by original, facsimile or electronic signature, each of which shall be deemed to be an original and all of which together shall be deemed to be the same agreement.

Governing Law. THIS AGREEMENT AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL MATTERS ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF).

[Signature page to follow]

If the foregoing correctly sets forth the understanding and agreement among Acacia and the Client, please so indicate in the space provided for that purpose below, whereupon this Agreement shall constitute a binding agreement as of the Effective Date.

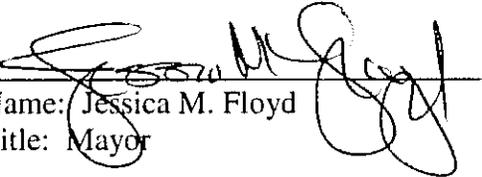
Sincerely,

ACACIA FINANCIAL GROUP, INC.

By:   
Name: Kim M. Whelan  
Title: Co-President

Accepted by:

CITY OF WOODBURY

By:   
Name: Jessica M. Floyd  
Title: Mayor

[signature page to engagement letter]

