

**PROFESSIONAL SERVICES AGREEMENT
UNDERWRITER**

THIS AGREEMENT is entered into this ____ day of _____ 2017, between the CITY OF STOCKTON, a municipal corporation ("City"), and **Stifel, Nicolaus & Company, Inc.** whose address is **One Montgomery Street, Suite 3700, San Francisco, CA 94104** and telephone number is **(415) 364-6877** ("Consultant").

RECITALS

A. Consultant is qualified to and experienced in facilitating collaboration, teamwork and strategic planning efforts for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in **Exhibit A.** Consultant shall provide said services at that time, place and in the manner specified by the City.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A. Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement

3. **Term.** This Agreement shall commence on the date written above and shall expire on June 30, 2022; provided, however the parties may agree to change either the commencement or expiration date.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A (Scope of Services).** The payments shall be made on per transaction basis pursuant to a Bond Purchase Agreement and as described in **Exhibit B** and are negotiable per transaction.

a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time

limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All reports, drawings, designs, plan review comments and work product of Consultant shall be adequate and sufficient to meet the purposes for which they are prepared.

6. **Ownership of Work.** All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the

performance of its services under this Agreement. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** and shall otherwise comply with the other provisions of **Exhibit C**.

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Consultant: Anna C. Van Degna, Managing Director	City: City Manager
Stifel, Nicolaus & Company, Inc.	City of Stockton
One Montgomery Street, Suite 3700	425 N. El Dorado Street
San Francisco, CA 94104	Stockton, CA 95202

14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

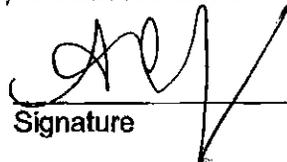
THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

STIFEL, NICOLAUS & COMPANY, INC.

Kurt Wilson, City Manager

By:



Signature

ATTEST:

Anna Van Degen

Print name

City Clerk

Title: Managing Director

APPROVED AS TO FORM:

[If Consultant is a corporation signature(s) must comply with Corporations Code §313.]

City Attorney

EXHIBIT A
Scope of Services

The nature of services to be provided by the selected firm(s) as Underwriter on a particular transaction will include, but not limited to, the following:

- A. Assist in structuring and managing financing transactions in accordance with the City's financing plan and goals and work with the Chief Financial Officer and other City staff, the City's Municipal Advisor, and other members of the bond team in all aspects of the financing.
- B. Assist the City in the successful structuring, marketing, and sale of debt obligations to achieve the lowest possible borrowing cost consistent with the City's risk profile.
- C. Recommend new money and refunding structures that most efficiently achieve the City's financing objectives while providing feedback regarding investor acceptance and preferences.
- D. Take an active role in all aspects of financing the proposed project. Work with the Municipal Advisor, Bond Counsel, Disclosure Counsel, Trustee, Verification Agent and other specialized consultants on the preparation and approval of the financing documents by the City Council.
- E. Attend City Council and all other pertinent meetings and present materials for the financing transaction.
- F. Take an active role in preparing and coordinating comprehensive presentations to the rating agencies and bond insurers if required.
- G. Assist in assembling the Official Statement in a manner consistent with existing laws, regulations and standards of the securities industry.
- H. Take an active role in preparing debt service estimates, incorporate assumptions on future interest rates, coverage, capitalized interest, the cost of issuance, use of funds and debt service.
- I. Identify significant underwriting concerns that affect the feasibility of the financing, such as security for the bonds and the diversity of the tax base. Work with the Municipal Advisor, Bond and Disclosure Counsel, other members of the bond team, specialized consultants, the Chief Financial Officer and other City staff on the delivery, printing and final approval of legal documents, and the preparation of closing certificates and final Official Statement.

EXHIBIT B

CITY OF STOCKTON

PROPONENT'S FEE SCHEDULE

PROPOSAL TO PROVIDE
FINANCIAL UNDERWRITING SERVICES
FOR THE CITY OF STOCKTON, CALIFORNIA
(PUR 16-033)

SUBMISSION DEADLINE:
2:00 PM PT THURSDAY, APRIL 13, 2017



EXHIBIT B

2.10 Statement of Qualifications Fees

Underwriter's Discount. Stifel's compensation is taken in the form of an underwriting discount and is largely a function of the structure, size and credit quality of the issue, and the volatility of the capital markets. For a public market underwriting, our fees consist of three components: (1) a sales commission or takedown, (2) underwriting expenses, including underwriter's counsel, and, where appropriate (3) a management fee.

The largest component of our discount will be the **takedown**, which compensates our sales force for selling the bonds and is charged as a percentage of par.

The bulk of our **expenses** are regulatory fees charged as a percentage of par, fees for a continuing disclosure compliance report and our underwriter's counsel fee. An itemized estimate of Stifel's expenses assuming one \$25 million financing is presented in the table to the right.

The **management fee** compensates us for the banking work needed to structure the transaction, guide the preparation of the legal documents, and conduct financial analysis. The amount of the management fee would range from \$0 to a maximum of \$25,000, depending on extent and duration of up-front analysis, the complexity of the transaction, and the degree that responsibilities are divided with the City's Financial Advisor.

Underwriter's Counsel. Stifel requires an underwriter's counsel for all senior managed engagements. Underwriter's counsel not only represents the underwriter, but also provides valuable comments and thoughts on documents and the financing process as a whole. They are an integral part of the team and draw upon their experience to help communicate various nuances of the financing between bond counsel and disclosure counsel.

Takedowns by Rating and Credit Type. Please find below our suggested takedowns by rating category and credit type. We suggest these takedowns to motivate our salesforce to develop the largest possible investor universe for your financing and thereby generate the best pricing for your bonds.

General Fund (Lease / COP) Takedowns ¹			Land Secured (CFD / AD) Takedowns			Utility / Enterprise Revenue Takedowns		
Rating Category	Takedown	% of par	Rating Category	Takedown	% of par	Rating Category	Takedown	% of par
Non-rated	\$10.00	1.000%	Non-rated	\$10.00	1.000%	Non-rated	\$6.25	0.625%
BBB rated (Insured)	\$10.00	1.000%	BBB rated (Insured)	\$7.50	0.750%	BBB rated (Insured)	\$5.00	0.500%
A Rated (Insured)	\$7.50	0.750%	A Rated (Insured)	\$6.25	0.625%	A Rated (Insured)	\$3.50	0.350%
						AA Rated	\$2.50	0.250%

Takedown give in (\$/\$1,000) or as a percentage of par

¹These takedowns are for the inaugural post-bankruptcy general fund transaction. Subsequent issues may warrant lower takedowns.

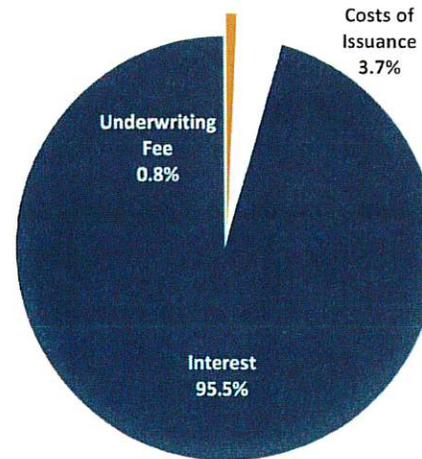
Detailed Basic Fee Structure

Expense	\$/bond	Amount (\$)
Underwriter's Counsel*	\$1.000	\$25,000.00
Continuing Disclosure Report	0.024	600.00
Out-of-Pocket/Marketing Expenses	0.100	2,500.00
Ipreo Bookrunning System*	0.031	772.50
Ipreo Wire Fees	0.002	60.00
Ipreo Order Monitor/Dealer EOE*	0.030	750.00
Blue Sky Survey	0.020	500.00
DTC Setup*	0.032	800.00
CDIAC Fee*	0.200	5,000.00
CUSIP Numbers	0.027	670.00
Day Loan*	0.025	625.00
Total Expenses	\$1.491	\$37,277.50

*Varies by par

EXHIBIT B

The Real Cost of Underwriting. From a dollars and cents standpoint, the upfront underwriting discount is only a small portion of the overall borrowing cost for a public agency issuer. As shown to the right, 96% of the borrowing cost consists of the interest rate set on the bonds; the remaining 4% consists of upfront financing & legal fees. Ultimately our underwriting fee only consists of less than 1% of the overall borrowing cost. What this means is that approximately 1 basis point improvement in execution can more than outweigh a \$1 higher underwriter's discount.



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DISCLOSURE. As outlined in the SEC's Municipal Advisor Rule, Stifel, Nicolaus & Company, Incorporated ("Stifel") is providing the attached material and all information and advice contained therein in response to a request for proposals or request for qualifications (the "RFP") by a municipal issuer or obligated person with respect to a specific issue of municipal securities. Stifel has not acted, and will not act, as your municipal advisor with respect to the issuance of the municipal securities that is the subject to the RFP.

Stifel is providing information and is declaring to the proposed municipal issuer and any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as an underwriter (by definition also including the role of placement agent) and not as a financial advisor, as defined therein, with respect to the referenced proposed issuance of municipal securities. The primary role of Stifel, as an underwriter, is to purchase securities for resale to investors in an arm's-length commercial transaction. Serving in the role of underwriter, Stifel has financial and other interests that differ from those of the issuer. The issuer should consult with its' own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in the future. Where indicated, this presentation may contain information derived from sources other than Stifel. While we believe such information to be accurate and complete, Stifel does not guarantee the accuracy of this information. This material is based on information currently available to Stifel or its sources and is subject to change without notice. Stifel does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and /or counsel as you deem appropriate.

EXHIBIT C
Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. ***(Not required if consultant provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used**).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.