

**THE CITY OF STOCKTON
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is entered into as of January 1, 2017, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter "CITY"), and EMANUELS JONES AND ASSOCIATES, INC. (hereinafter "Consultant"). City and Consultant may be collectively referred to as the "Parties."

In consideration of the mutual covenants and conditions set forth herein, this agreement is made between the Parties:

1. EFFECTIVE DATE AND TERM

This agreement shall commence on January 1, 2017 and shall renew annually on January 1, 2018 and January 1, 2019 to remain in effect until December 31, 2019. With the mutual agreement of the Consultant, the City has the authority to exercise two one-year extensions to the agreement to renew on January 1, 2020 to remain in effect until December 31, 2020 and January 1, 2021 to remain in effect until December 31, 2021.

2. SERVICES

Consultant shall perform lobbying services as outlined in Exhibit A on behalf of The City of Stockton before officials, officers, commissions, boards, authorities, councils, committees, or departments of the executive and legislative branch of the State of California and before any other organization or body as necessary to effectively represent the interests of the City of Stockton pursuant to this agreement.

Consultant shall at all times faithfully, competently and to the best of his or her ability, experience, and talent, perform the tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

3. COMPENSATION

The City of Stockton agrees to pay Consultant \$7,250 per month for the initial year of the contract. Monthly rates for subsequent years will be subject to negotiation, with any increase not exceeding 5% in any given year.

Consultant shall be reimbursed for the actual cost of travel expenses incurred directly in the course of provided services. Travel expenses will be approved by The City of Stockton in advance and Consultant will submit documentation to adequately support any claim for reimbursement.

Consultant may, if authorized on behalf of the City of Stockton, prepare and submit lobbying disclosure documents in compliance with the Fair Political Reform Act for a fee of \$75 per filing per registered entity.

4. CITY MANAGEMENT

The City's Manager shall represent City in all matters pertaining to the administration of this Agreement and shall be authorized to act on the City's behalf.

5. CHANGES

This Agreement, including but not limited to the scope of Services and Compensation, may be amended in whole or part only by an agreement in writing signed by both City and Consultant.

6. SUSPENSION OR TERMINATION OF AGREEMENT

The City may at any time, for any reason, without cause, suspend or terminate this Agreement by serving upon the consultant at least 60 days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this agreement, unless the notice provide otherwise. In the event this Agreement is terminated, The City shall pay to Consultant the monthly fees through the termination date of the contract. Upon termination of the Agreement; the Consultant shall submit an invoice to The City for final payment.

7. DEFAULT OF CONSULTANT

The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City can terminate this Agreement immediately by written notice to the Consultant.

8. INDEMNITY AND HOLD HARMLESS

Insurance shall be provided as set forth in Exhibit B.

With the exception that this section shall in no event be construed to require indemnification by CONSULTANT to a greater extent than permitted under the public policy of the State of California, CONSULTANT shall, indemnify, protect, defend with counsel approved by CITY and at CONSULTANT'S sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents employees and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law or ordinance, or CITY Policy, by CONSULTANT or CONSULTANT'S officers, agents, employees, volunteers or subConsultants. CONSULTANT shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this

indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of CONSULTANT to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by CONSULTANT under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by CONSULTANT to a greater extent than permitted under the public policy of the State of California, the parties agree that CONSULTANT'S duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by CONSULTANT or CONSULTANT'S officers, agents, employees, volunteers or subConsultants. CONSULTANT'S duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY'S liability, breach of this Agreement, or other obligation or fault has been determined. CONSULTANT shall be immediately obligated to pay for CITY'S defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse CONSULTANT for amounts paid in excess of CONSULTANT'S proportionate share of responsibility for the damages within 30 days after CONSULTANT provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures CONSULTANT is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by CONSULTANT to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, CONSULTANT shall indemnify, defend, and hold harmless CITY its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of CONSULTANT, regardless of whether such claim may be covered by any applicable workers compensation insurance. CONSULTANT'S indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers' compensation acts, disability acts, or other employee benefit acts.

9. INDEPENDENT CONSULTANT

Consultant is, and shall at all times remain, as to the City, a wholly independent Consultant. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant, except as set forth in this Agreement. Consultant shall

not at any time or in any manner represent that he is in any manner an officer or employee of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing Services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect the performance of his or her Service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

The Consultant represents and warrants that prior to commencing any work under this Agreement, it shall obtain and maintain at its own expense during the life of this Agreement any other licenses, permits, qualifications, and approval required to practice its profession and perform the contract services.

In performing the services under this Agreement, the Consultant shall not discriminate in the employment of its employees and the engagement of any subConsultants on the basis of race, color, national origin, ancestry, sex or any other criteria prohibited by law.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly, from the Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

12. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

Consultant shall not, without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the Services performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

Consultant shall promptly notify City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, or party regarding this Agreement and the work performed thereunder. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. The Consultant may hire at its own expense the services of independent Consultants to perform a portion of its obligations under this Agreement with prior approval by the City. Independent Consultants and subConsultants shall be provided with a copy of this Agreement and shall agree to be bound by its terms. The Consultant shall be the responsible party with respect to all actions of its independent Consultants and subConsultants, and shall obtain such insurance and indemnity provisions from its Consultants and subConsultants, as the Consultant shall determine to be necessary.

14. OWNERSHIP OF DOCUMENTS AND DATA

All completed reports and other data or documents provided or prepared by the Consultant in accordance with this Agreement are the property of the City, and may be used by the City at its own risk.

15. AUDITING

The City reserves the right to periodically audit all charges made by the Consultant to the City for services under this Agreement. The Consultant agrees that City or its delegate will have the right to review, obtain and copy all records pertaining to the performance of this Agreement. The Consultant agrees to provide City or its delegate with any relevant information requested and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspection and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. The Consultant further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

16. COVERING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the County of San Joaquin.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force of effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. DISPUTE RESOLUTION

All claims, disputes, or any other matters in controversy between the Parties arising out of or in any way related to this Agreement shall first attempt to be resolved by informal telephonic or written communication between the Parties. In the event that informal techniques do not resolve a dispute, all Parties agree that any dispute will be submitted to mediation, prior to pursuing any other remedies provided by law.

19. ATTORNEY'S FEES

In any action between the Parties arising out of or connected with this Agreement, including any arbitration proceeding, the prevailing party in such action shall be awarded, in addition to any damages, injunctions, or other relief, its costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

20. INTERPREATION, SEVERABILITY

The headings used in this Agreement are used for the convenience only and shall not be construed in interpreting this Agreement. Whenever the context so requires, the masculine shall include the feminine and neuter, and the singular shall include the plural and conversely.

If any portion of this Agreement shall be held invalid or inoperative, then, so far as in reasonable and possible:

1. The remainder of this Agreement shall be considered valid and operative; and
2. Effect shall be given in the intent manifested by the portion held invalid or inoperative.

21. NOTICE

Any notices or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective as follows:

- 1) be personal delivery, effective upon receipt by the addressee; or

2) by certified US mail, return receipt requested, effective seventy-two (72) hours after deposit in the mail:

The City of Stockton
City Manager
Kurt Wilson
425 N. El Dorado St
Stockton, CA 95202
(209) 937-8212

Emanuel Jones and Associates
David A. Jones
President
1400 K Street, Suite 306
Sacramento, CA 95814
Phone (916) 444-6789

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be effective as of the date first above written.

ATTEST

CITY OF STOCKTON, a municipal
corporation

BONNIE PAIGE
CITY CLERK

DATE: _____

By _____

By _____
KURT O. WILSON, CITY MANAGER
"CITY"

EMANUELS JONES & ASSOCIATES,
INC.

APPROVED AS TO FORM

DATE: _____

JOHN LUEBBERKE
CITY ATTORNEY

By _____
DAVID A. JONES, PRESIDENT
"CONSULTANT"

EXHIBIT "A"

SCOPE OF SERVICES

City of Stockton State Legislative and Funding Advocacy

Objectives

- Advocate in Sacramento to accurately and persuasively present the position of the City
- Establish relationships with key legislators and staff
- Provide early intelligence on emerging issues
- Share knowledge of trade-offs impacting legislative framing and funding
- Target funding allocations and grant applications
- Achieve the priority state legislative objectives of the City

Scope

Legislative Program Consultation

- Advise the City in the development of an annual state legislative program
- Provide a recommended government relations strategy
- Provide recommendations for legislative priorities based on opportunities and threats to the City
- Advise the City in the identification of an annual state funding strategy and list of funding priorities

Legislative Advocacy

- Represent the City of Stockton in Sacramento
- Coordinate and execute the City's annual state legislative program
- Coordinate and implement the government relations strategy in Sacramento
- Provide monthly reports outlining progress toward the established legislative priorities and other emerging activities, developments and opportunities
- Maintain a positive working relationship with the City's state delegation and staff, the California State Assembly and Senate, legislative committees, the executive branch and other government officials and facilitate communication with legislative and other governmental officials for the purpose of influencing legislation or administrative action
- Review state executive proposals, legislation under consideration, proposed and adopted administrative rules and regulations and other developments for any items that may impact the City's policies, programs or initiatives
- Maintain an overview of legislative and executive agency activities and upon request secure and provide detailed information on specific state issues
- Provide weekly reports on key issues and legislative activity and upon request provide written status reports on projects and activities
- Prepare letters of support and opposition for state legislators, legislative committees, state agencies, the Governor's Office and other key stakeholders; disseminate letters of support and opposition

- Advise the City and prepare testimony to be presented to legislative committees and administrative agencies and arrange for appointments and accommodations as necessary
- Contact state agencies on the City's behalf when applications are under consideration and take other steps to facilitate the most favorable consideration of applications
- Facilitate any other communication and necessary meetings as needed with state legislators, identified executive agency officials and other staff or officials
- Coordinate, in consultation with the City, with the legislative efforts of partner organizations within the region
- Coordinate requested annual meetings for City Council representatives and City staff such as:
 1. Meeting with state delegation prior to legislative session
 2. Meeting with state delegation to debrief legislative session
 3. Meeting with Governor's Office early in legislative session

Funding Advocacy and Assistance

- Coordinate and execute the City's state funding strategy and pursue listed funding priorities
- Advise and assist in the preparation of state appropriations requests and submit on behalf of the City in accordance with Congressional deadlines
- Advise City on other funding activities and opportunities determined to be of significance to the City
- Pursue funding through the state budgeting process, state agency budgeting process, state agency grant programs and other public sector sources for the development, enhancement, and/or expansion of projects and programs for the City
- Monitor and maintain an overview of legislative and executive agency activities affecting the City's funding needs and opportunities including opportunities to fund special projects
- Review, comment on, and advise City staff in the development and execution of appropriate documents, proposals, grants, or other funding application requirements
- Register on behalf of the City with necessary state officers and agencies, and comply with all reporting requirements mandated by the Lobbying Disclosure Act, and any other legal requirements

EXHIBIT "B"

INSURANCE REQUIREMENTS
(State Legislative Consulting and Advocacy 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 and the results of that work by the Consultant, their agents, representatives, employees or sub-Consultants.

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 (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.

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 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 if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is 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 provide that coverage shall not be canceled, except with notice to the City of Stockton.

- **Waiver of Subrogation**

Consultant hereby grants to the 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 purchase coverage with a lower deductible or retention or 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 claims-made coverage:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- 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.

- ***Special Risks or Circumstances***

The 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 circumstances.

- ***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.

- ***Sub-Consultants***

If the Consultant should subcontract all or any portion of the work to be performed in this contract, the Consultant shall cover the sub-Consultant, and/or require each sub-Consultant to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-Consultant's insurance shall have the same impact as described above.