

CITY OF STOCKTON
STANDARD AGREEMENT

Agreement Number:

1. This Agreement is entered into between the City of Stockton ("City") and Moss Adams LLP ("Contractor") to provide Internal Audit Services as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8:
Commences on: July 1, 2019 Terminates on: June 18, 2024

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ 421,000 annually
based on budget approval

4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Insurance
- (c) Exhibit C – General Terms and Conditions
- (d) Exhibit D – Professional Services Special Terms & Conditions
- (e) Exhibit E – Compensation Schedule
- (f) Exhibit F – Timeline

IN WITNESS WHEREOF, the authorized parties have executed this Agreement.

CONTRACTOR

Moss Adams LLP
Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):

Mark Steranka

06-26-19

Authorized Signature Date

Mark Steranka, Partner
Printed Name and Title of Person Signing

999 Third Avenue, Suite 2800, Seattle, WA 98104
Address

CITY OF STOCKTON

[Signature]
Kurt O. Wilson, City Manager

July 23, 2019
Date

ATTEST:
[Signature]
Eliza Garza, City Clerk



APPROVED AS TO FORM:
John M. Luebberke, City Attorney

BY: *[Signature]*

2019-06-18-1103 NP

EXHIBIT A
STATEMENT OF WORK

1. Project Objectives

The City seeks to establish a contract for internal audit services. The Contractor should exercise the powers and duties assigned to the City Auditor pursuant to Article XV of the City Charter.

2. Project Scope

The Contractor shall provide internal audit services as requested by the City, subject to Council Audit Committee approval which include, but are not limited to the following:

A. The Contractor shall provide internal City Auditor services:

- 1) Provide a senior representative to be assigned the powers and duties of the City Auditor under the terms of Agreement.
- 2) Review all calls reported through the City's Ethics Hotline.
- 3) Respond to phone calls, citizen inquiries and emails to the City Auditor and when appropriate refer to City staff.
- 4) Coordinate with City staff to schedule Council Audit Committee Meetings.
- 5) Propose and update an annual audit plan at the beginning of each calendar year for the subsequent fiscal year beginning in July; prepare the audit plan based on regular citywide risk assessments and include proposed scope and cost for each recommended audit; present annual audit plan to City Manager for preliminary review of scope, followed by review by the Council Audit Committee and final presentation to the City Council for approval.
- 6) Provide status reports, either written or oral, at each Council Audit Committee meeting; also provide status reports at City Council or other meetings upon request.

- 7) Coordinate with City staff to complete financial audits, such as the annual external financial audit by an accounting firm (Comprehensive Annual Financial Report (CAFR)).
- 8) Research findings associated with annual external financial audits and perform follow-up work associated with such findings.

B. The Contractor shall conduct citywide risk assessments.

- 1) Review administrative and financial policies, procedures, and practices.
- 2) Examine current methods, procedures, and practices used to safeguard City assets; confirm that City staff is complying with approved policies, procedures and practices.
- 3) Assess the City's overall control environment.
 - a) Management's philosophy and operating style regarding integrity and ethical values.
 - b) Staff's philosophy and operating style regarding integrity and ethical values.
 - c) The assignment of authority and responsibility for ensuring protection of City assets and policy compliance.
 - d) Existing policies and procedures.
- 4) The City's ongoing identification and assessment of risk.
 - a) The City's approach to risk identification and risk mitigation (proactive versus reactive).
 - b) The alignment of the City's objectives with the assessment of risk.
- 5) The City's control activities (for protection of assets and compliance with policies).
 - a) Separation of duties.
 - b) Authorization and approval.
 - c) Custodial and security arrangements.
 - d) Review and reconciliation.
 - e) Variance analysis.
 - f) Adequate documentation.
 - g) Physical inventories.
- 6) Senior management, mid-management and supervisory responsiveness to identified problems/weaknesses.

- a) The timeliness with which internal control deficiencies are identified and communicated
 - b) Appropriateness of management's selection of risk response – avoidance, acceptance, reduction, or sharing of an identified risk
- 7) Identify the strengths, weaknesses, challenges and key areas of risk
 - 8) Make recommendations for improvement, identify future audit priorities and prepare preliminary audit plans
- C. The Contractor shall conduct internal control audits according to Generally Accepted Government Auditing Standards (Yellow Book) as selected from the annual audit plan by the Council Audit Committee:
- 1) Perform sampling procedures to test and evaluate areas of the City's internal controls, taking into account risk, control weaknesses, size, and complexity of operations.
 - 2) Make use of and build upon the internal control evaluation work done by the City's independent CPA firm during that firm's annual financial statement audit.
 - 3) Review any recommendations regarding the internal controls with the appropriate executives, Chief Financial Officer and the City Manager.
 - 4) Prepare reports which analyze significant findings, recommend changes for strengthening internal controls and reducing identified risks, including, but not limited to, the following:
 - a) Report of the findings that outlines the specific deficiencies in the internal control framework and the possible impact posed (level of risk) due to the identified weaknesses.
 - b) Report with recommendations that will address the weaknesses identified in the City's internal control framework.
 - 5) Present draft results of this audit project and the preliminary audit plan to the City Manager with the final report to the Council Audit Committee, including estimated costs by audit project and a recommended future audit approach.

- D. The Contractor shall conduct internal audits of City operations, processes and performance according to Generally Accepted Government Auditing Standards (Yellow Book) as selected from the annual audit plan by the Council Audit Committee:
- 1) Provide an opportunity for feedback and response by departments under audit along with the City Manager's Office.
 - 2) Provide regular reports on the status of ongoing internal audits.
 - 3) Provide written reports with results of audits and publish audits to the City Auditor's Web page; based on the audit work performed, written reports and oral PowerPoint presentations must be provided; the presentations shall address the audit findings and conclusions, audit recommendations that will improve the efficiency and effectiveness of the organizations or programs audited, and corrections needed to address any operational deficiencies or non-compliance issues found.
 - 4) Work with management to implement recommendations.
- E. Audit Findings
- 1) Conduct follow-up and verification of audit findings pursuant to closing findings as complete.
 - 2) Provide city staff with tools to track open audit findings and facilitate resolution of findings when complete.

3. **Specifications**
N/A
4. **Major Deliverables**
N/A
5. **Tasks That Support the Deliverables**
N/A
6. **Internal and External Standards and Guidelines**
N/A
7. **Criteria of Acceptance for Deliverables**
N/A

8. **Notices**

Pursuant to Exhibit C -- General Terms and Conditions, Paragraph 15 -- Notices, the mailing address for all required notices is as follows:

Contractor: Moss Adams LLP
Mark Steranka
3121 W. March Ln. Suite 200
Stockton, CA 95219

City: City of Stockton
Attn: City Manager
425 N. El Dorado Street
Stockton, CA 95202

9. **Key Personnel**

Mark Steranka will serve as the Moss Adams lead for the internal audit services and is hereby appointed as City Auditor by virtue of the Agreement.

10. **Option to Renew.**

N/A

EXHIBIT B
INSURANCE

NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

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 (or equivalent) covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) 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 broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or 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 officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL 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, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract. Blanket coverage acceptable.

Primary Coverage

For any claims related to this contract, the Consultant's insurance coverage shall be endorsed as primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or 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.

Self-Insured Retentions (if applicable)

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. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (note – applicable only to professional liability)

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. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of contract work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton before work commences. However, 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.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies (except for professional liability policy), upon request.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor 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.

Certificate Holder Address

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

City of Stockton
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202

EXHIBIT C**GENERAL TERMS AND CONDITIONS**

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

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

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have ninety (90) 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 Contractor fails or neglects to submit within ninety (90) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All final reports, and all other deliverables completed by Contractor or its approved subcontractors, in performance of this Agreement, and delivered to City, excluding any Consultant Material (defined below) contained or embodied therein (hereinafter, "Deliverables"), shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree 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 Contractor shall replace them at its own expense. Contractor and its approved subcontractors 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. Consultant shall own its working papers and accounting-related general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials or other intellectual property or information which may have been discovered, created, received, developed or derived by Consultant either prior to or as a result of providing services under the Contract (collectively, "Consultant Materials"). The City shall have a non-exclusive, non-transferable license to use Consultant Materials for its own internal use and for the purposes for which they are delivered to the extent they form part of Materials.

6. Timeliness. Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

7. Changes. Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. Amendment. No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. Contractor's Status.

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's

control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

10. Subcontractor.

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

11. Termination.

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor 60 days prior to termination, and Contractor may terminate this Agreement at any time by mailing a notice in writing to the City 90 days prior to termination. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 **Funding- Non-Appropriation.** It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12 **Non-Assignability.** The Contractor 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. Contractor shall be solely responsible for reimbursing subcontractors.

13. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, and agents, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, for damages to real or tangible personal property or personal injury (including death) to the extent arising from negligent or wrongful acts or omissions of contractor or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

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

15. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. **Conformance to Applicable Laws.** Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor 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.

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

force and effect during the term of this Agreement.

18. Records and Audits.

Contractor shall maintain all records regarding services this Agreement and the services performed for a period of three (3) 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. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. Limitation on Liability. CONTRACTOR'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO CONTRACT LIABILITY OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT, IN THE AGGREGATE, EXCEED \$2,000,000.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

20. No Third Party Beneficiaries. City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

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

22. Conflicts of Interest. Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor 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 Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

23. Waiver. In the event either City or Contractor 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. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this

Agreement.

24. **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.

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

26. **Severability.** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

27. **Non-Discrimination.** During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

28. **Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

29. **Taxes and Charges.** Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

30. **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

31. **Advice of Attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

32. **Heading Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

33. **Entire Agreement, Integration, and Modification.**

33.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

33.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

35. **Authority.** The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

EXHIBIT D**PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS**

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" shall have the meaning as described in Exhibit C Section 6.

2. **General.** The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Standard of Performance**

In addition to Exhibit C, Contractor agrees as follows:

3.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this

Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

3.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4. Personnel

4.1 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

4.2 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

5. Reports and Information

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, are to be included in the annual retainer costs for providing core audit services covered by this Agreement as specified in Exhibit A and Exhibit E.

6. Findings Confidential

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization (except for need to know basis) without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

EXHIBIT E
COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

1. Project Price

1.1 The maximum the Contractor shall be paid on this Agreement will be determined on an annual basis as approved by the City Council through adoption of the annual Internal Audit Plan. Contractor shall propose independent, fixed price audit projects for consideration for inclusion in each Internal Audit Plan. The City Council will determine the number of audit projects, cost for each project and overall budget allocation each year for the Internal Audit Plan. In addition to specific audit projects determined on an annual basis, Contractor will include **\$29,500** annually in the Internal Audit Plan to provide core internal City Auditor services on retainer. Contractor shall invoice for core internal audit services on a monthly basis. Total compensation shall not exceed the fiscal year budget allocation for the Internal Audit function. The "not to exceed" amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii, iii or iv below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City's needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such as a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the City's travel policy, which is incorporated herein by reference.

iv. Processing time and technology expenses may be passed through at cost and may be billed as a flat charge or a percentage of fees.

Reimbursement shall be made at actual costs with no markup added to the actual cost.

1.3 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the "not to exceed" amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

1.4 If work is completed before the "not to exceed" amount is reached, the Contractor's compensation will be based on the Contractor's invoices previously submitted for acceptable work performed and approved.

2. **Hourly Rates.** The following is a list of hourly billable rates that Contractor shall apply for additional services requested of the Contractor. Contractor shall be compensated based on the hourly rates set forth below, on a time and material basis for those services that are within the general scope of services of this Agreement, but beyond the description of services required under Exhibit A, and all services are reasonably necessary to complete the standards of performance required by this Agreement. Any changes and related fees shall be mutually agreed upon between the parties by a written amendment to this Agreement.

Hourly Billable Rate Schedule

Title	Role on Project	Hourly Billable Rates
Partner	City Auditor	\$400
Senior Manager		\$350
Manager		\$300
Senior Consultant		\$200
Staff		\$150

3. **Invoice to Address.** Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work for the agreed upon price listed in section 2 of this Exhibit. Invoices shall be submitted to the below address:

City of Stockton City Manager's Office
 Attention: Christian Clegg
 425 N. El Dorado Street
 Stockton, CA 95202

RECEIVED

Date Received

JUL 17 2019

CITY MANAGER'S OFFICE

CONTRACT ROUTING FORM

Contract Number 2019-06-18-1103 NP

(For Clerk's Use)

RECEIVED

Date Received

JUL 23 2019

CITY CLERK
CITY OF STOCKTON

CITY OF STOCKTON
CITY CONTRACT TYPE (select one)

- Original
- Amendment/Change Order
- Grant
- Subdivision Agreement
- Other _____

CONTRACT INFORMATION Contract Amount: \$ Based on Budget Approval

Contract Title: Internal Audit Services

Vendor/Other Party: Moss Adams, LLC

Contract Start Date: July 2019 Contract End Date: _____ Contract Term: 5 yrs

COUNCIL APPROVAL REQUIRED? Yes No (provide account # if no) _____

Council approval required for contracts over \$ _____ for FISCAL YEAR: _____

Motion/Resolution/Ordinance No: 2019-06-18-1103 Must be Attached

REQUIRED DOCUMENTS (The following documents shall be submitted with the signed contract when required):

Business License Required? Yes No Business License No. 20-3347(21836) exp 3/3/20

Bonds Required? Yes No

Insurance Required? Yes No

Notary Required? Yes No Recordation Required? Yes No

Mandatory Routing Order

1 DEPARTMENT: City Manager's Office

DEPARTMENT HEAD APPROVAL Christian J. Clegg date: 7-8-19

Project Mgr: Christian Clegg ext: 8205 Staff: _____ ext: _____

Forwarded to: Procurement on: 7-8-19 by: Christian

2 PROCUREMENT

Approved Name/Signature: [Signature]

Forwarded to: Matt B on: 7.11.19 by: TH

3 VENDOR/OTHER PARTY

Signed (2) originals on: 6-26-19

Forwarded to: _____ on: _____ by: _____

4 RISK SERVICES

Insurance on: 7.16.19 by: ms Bonds approved on: _____ by: _____

Forwarded to: CA on: 7.16.19 by: [Signature] RM #: 20-014

5 CITY ATTORNEY

Approved as to Form and Content on: 7-17-19 by: _____

Forwarded to: cm on: 7-17-19 by: [Signature]

6 CITY MANAGER

Signed by City Manager on: [Signature] Forwarded to: CC on: 7/23/19 by: [Signature]

7 CITY CLERK

City Clerk attested on: 7/30/19 Returned (1) original(s) to dept. on: 7/30/19 by: BDH

Retained (1) original(s) for City's file. Hard Copy on file? Yes No OB # _____

8 ORIGINATING DEPARTMENT: _____

Requisition No. _____ Original sent to vendor on: _____ by: _____

Copy of contract to be retained by department. Original on file in the Clerk's office.

Copy of contract sent to Purchasing on: _____ by: _____

9 PROCUREMENT: Purchase Order No. _____ PUR No. _____

2019-06-18-1103NP