

PROFESSIONAL SERVICES AGREEMENT UNDERWRITER

THIS AGREEMENT is entered into this ____ day of _____ 2017, between the CITY OF STOCKTON, a municipal corporation ("City"), and **Citigroup Global Markets Inc.** whose address is **One Sansome Street, 27th Floor, San Francisco, CA 94104** and telephone number is **(415) 951-1745** ("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 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, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. 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. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

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: Jonathan Ash, Director
Municipal Securities Division
Citigroup Global Markets Inc.
One Sansome Street, 27th Floor
San Francisco, CA 94104

City: City Manager
City of Stockton
425 N. El Dorado Street
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

CITIGROUP GLOBAL MARKETS INC.

Kurt Wilson, City Manager

By: _____

Signature

ATTEST:

JONATHAN ASH

Print name

City Clerk

Title: _____

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) 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.

- J. The Underwriter will be responsible for structuring the bond issue, obtaining bond ratings, and pursuing credit enhancements (such as bond insurance), if appropriate, reviewing the Official Statement, assisting in the investment of the bond proceeds, and purchasing the bonds from same. This work is to be done in close cooperation with the Municipal Advisor, Bond and Disclosure Counsel, the other members of the bond team and specialized consultants, the Chief Financial Officer, and other City staff.
- K. Follow the City's policies, either oral or written for liability, designation and retention procedures, pricing procedures, allocation procedures, and the process of selling debt.
- L. Assist the City in the post-financing evaluation process; including the timely submittal of all required reports.

EXHIBIT B

Response to Request for Proposals to
Provide Financial Underwriting Services



Prepared by



CITIGROUP GLOBAL MARKETS INC.

One Sansome Street, 27th Floor
San Francisco, CA 94104

April 13, 2017

2.10. Statement of Qualifications Fees

- A) RFP – FINANCIAL UNDERWRITING SERVICES
- B) PUR 16-033
- C) APRIL 13, 2017

EXHIBIT B

2.10. Statement of Qualifications Fees

Provide a detailed basic fee structure, broken down to provide services for COPs/Revenue bonds, Assessment/Mello Roos bonds (both rated and non-rated), and a break-down of any other charges related to your firm's Statement of Qualifications. The finalist's fee structure may be subject to negotiation.

Please refer to the table below for our fee proposal, which is enclosed under a separate cover as requested. We believe fee and pricing execution must be evaluated together to gauge the true cost of underwriting services to the City: a cut-rate fee with poor pricing will cost the City more and take away more dollars than market level fees and tight pricing. While we believe our proposal to be fair, we do not want fee or participation splits alone to preclude our participation in the City's transaction and would therefore welcome the opportunity to discuss and negotiate with the City. Please note that we have used an illustrative par amount of \$50 million and a hypothetical 30-year amortization that would produce level debt service. We are happy to revise per the City's instruction and request.



Jonathan Ash
Director

One Sansome Street, 27th Floor
San Francisco, CA 94104
415-951-1745
jonathan.a.ash@citi.com



David Houston
Managing Director, Head of Water Group

1850 Maple Glen Road
Sacramento, CA 95864
(916) 488-4750
david.houston@citi.com



Cameron Parks
Director, Co-Head of Water Group

444 South Flower Street, 27th Floor
Los Angeles, CA 90071
(213) 486-7130
cameron.parks@citi.com

Spread Component	COPs/Revenue Bonds		Assessment/ Mello Roos Bonds (Rated)		Assessment/ Mello Roos Bonds (Unrated)	
	\$/1000	Total	\$/1000	Total	\$/1000	Total
Takedown	3.551	177,567.50	4.551	227,567.50	6.051	302,567.50
Management Fee	-	-	-	-	-	-
Underwriter's Expenses	0.937	46,840.44	1.037	51,840.44	1.237	61,840.44
Total	4.488	224,407.94	5.588	279,407.94	7.288	364,407.94
Breakdown of Expenses						
Underwriter's Counsel Fee	0.650	32,500.00	0.750	37,500.00	0.950	47,500.00
Interest on Day Loan	0.014	694.44	0.014	694.44	0.014	694.44
Dalcomp/IPREO	0.070	3,500.00	0.070	3,500.00	0.070	3,500.00
CDIAC	0.100	5,000.00	0.100	5,000.00	0.100	5,000.00
CUSIP	0.017	846.00	0.017	846.00	0.017	846.00
DTC	0.016	800.00	0.016	800.00	0.016	800.00
DAC	0.020	1,000.00	0.020	1,000.00	0.020	1,000.00
Out of Pocket Expenses	0.050	2,500.00	0.050	2,500.00	0.050	2,500.00
Total Expenses	0.937	46,840.44	1.037	51,840.44	1.237	61,840.44

Estimated fees shown. Citi would request reimbursement at cost based on final structure. Does not include costs of in-person investor roadshow, internet roadshow, travel for pricing or IPREO Gameday order viewing. If the City wishes to utilize these services Citi would request reimbursement at cost.

EXHIBIT B

In the table below, we present a sample amortization schedule including takedowns by maturity.

Maturity	COPs/Revenue Bonds		Assessment/Mello Roos Bonds (Rated)		Assessment/Mello Roos Bonds (Unrated)	
	Hypothetical Par	Takedown \$/\$1000	Hypothetical Par	Takedown \$/\$1000	Hypothetical Par	Takedown \$/\$1000
2018	755,000	1.50	755,000	2.50	755,000	4.00
2019	790,000	1.75	790,000	2.75	790,000	4.25
2020	830,000	2.00	830,000	3.00	830,000	4.50
2021	870,000	2.25	870,000	3.25	870,000	4.75
2022	915,000	2.75	915,000	3.75	915,000	5.25
2023	960,000	2.75	960,000	3.75	960,000	5.25
2024	1,010,000	2.75	1,010,000	3.75	1,010,000	5.25
2025	1,060,000	3.00	1,060,000	4.00	1,060,000	5.50
2026	1,110,000	3.00	1,110,000	4.00	1,110,000	5.50
2027	1,170,000	3.00	1,170,000	4.00	1,170,000	5.50
2028	1,225,000	3.25	1,225,000	4.25	1,225,000	5.75
2029	1,290,000	3.25	1,290,000	4.25	1,290,000	5.75
2030	1,350,000	3.25	1,350,000	4.25	1,350,000	5.75
2031	1,420,000	3.25	1,420,000	4.25	1,420,000	5.75
2032	1,490,000	3.25	1,490,000	4.25	1,490,000	5.75
2033	1,565,000	3.50	1,565,000	4.50	1,565,000	6.00
2034	1,645,000	3.50	1,645,000	4.50	1,645,000	6.00
2035	1,725,000	3.50	1,725,000	4.50	1,725,000	6.00
2036	1,810,000	3.50	1,810,000	4.50	1,810,000	6.00
2037	1,900,000	3.50	1,900,000	4.50	1,900,000	6.00
2038	1,995,000	3.75	1,995,000	4.75	1,995,000	6.25
2039	2,095,000	3.75	2,095,000	4.75	2,095,000	6.25
2040	2,200,000	3.75	2,200,000	4.75	2,200,000	6.25
2041	2,310,000	3.75	2,310,000	4.75	2,310,000	6.25
2042	2,425,000	3.75	2,425,000	4.75	2,425,000	6.25
2043	2,550,000	4.25	2,550,000	5.25	2,550,000	6.75
2044	2,675,000	4.25	2,675,000	5.25	2,675,000	6.75
2045	2,810,000	4.25	2,810,000	5.25	2,810,000	6.75
2046	2,950,000	4.25	2,950,000	5.25	2,950,000	6.75
2047	3,100,000	4.25	3,100,000	5.25	3,100,000	6.75
Total	50,000,000		50,000,000		50,000,000	

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.