

PROFESSIONAL SERVICES CONTRACT WITH EADIE AND PAYNE, LLP FOR MEASURE A AUDIT SERVICES

This contract is entered into and effective on _____, by and between the CITY OF STOCKTON, hereinafter referred to as "CITY," and EADIE AND PAYNE, LLP, hereinafter referred to as "FIRM"

Section 1 SCOPE OF SERVICES

Subject to the terms and conditions set forth in this Agreement, FIRM shall provide CITY agreed upon procedures audit services for an additional review of Measure A as described in Exhibit A, entitled "RFP - Scope of Services," attached to this Agreement and incorporated by reference. FIRM shall not be compensated for services outside the scope of services as set forth in Exhibit A unless, prior to the commencement of such services: (a) FIRM notifies CITY and CITY agrees that such services are outside of the scope of services to be performed; (b) FIRM estimates the additional compensation required for the additional services; and, (c) CITY, after notice, approves the additional services and amount of compensation.

Section 2 COMPENSATION

CITY shall pay FIRM for services rendered pursuant to this Agreement at the times and in the manner as set forth in Exhibit B, entitled "Cost Proposal," attached to this Agreement and incorporated by reference. Payments specified in Exhibit B shall be the only payments to be made to FIRM for services rendered pursuant to this Agreement unless, pursuant to Section 1 above, CITY approves additional compensation for additional services. Total compensation for services shall not exceed \$86,000 for services related to fiscal years ending 2015, 2016, and 2017, or \$146,000 for the combined five years including services related to fiscal years ending 2018 and 2019.

FIRM will submit monthly invoices to CITY as described and set forth in Exhibit B for services completed. All invoices will be itemized to reflect the categories of employees performing the requested tasks, the billing rate for each employee, and the hours for services.

All invoices sent by FIRM to CITY shall be paid within thirty (30) days of receipt, provided supporting narrative and hours billed against the specific task allocations in the contract's scope of work are included and acceptable to the CITY.

Section 3 TERMS AND CONDITIONS OF AGREEMENT

1. Time for Commencement and Completion of Services: FIRM shall commence services on the date first set out above, and shall prosecute the services related to fiscal years ending 2015, 2016, and 2017 to completion, unless the agreement

is terminated, as provided for herein or modified by CITY and agreed to by FIRM. CITY will have the option of two (2) single extensions for services related to fiscal years ending 2018 and 2019.

2. Facilities and Property: CITY agrees to make its facilities accessible to FIRM as required for FIRM's performance of its services.

3. License, Permits, and Compliance with Law: Prior to performing any services for CITY, FIRM, if not already in possession of a valid City of Stockton business license shall obtain one at its own expense and maintain it for the duration of this Agreement. In addition, FIRM represents that prior to commencing any services 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 and shall comply with any and all applicable local, state, and federal laws in performing the contract services.

4. Relationship of Parties, No Third-Party Beneficiaries: FIRM is an independent contractor under this Agreement. This Agreement gives no rights or benefits to anyone not named as a party to this Agreement, and there are no third party beneficiaries to this Agreement. In the exercise of rights and obligations under this Agreement, FIRM acts as an independent contractor and not as an agent or employee of CITY. CITY shall not control where and how services are performed. CITY shall not reimburse FIRM for business expenses or supplies and shall not provide FIRM with vacation, pension, insurance, or sick leave. FIRM shall provide FIRM'S own office, tools, and supplies and shall be free to engage in contracts with other persons or agencies, either public or private. FIRM shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and FIRM expressly waives any and all claims to such right and benefits.

5. Subcontracts: FIRM may use the services of independent contractors to perform a portion of its obligations under this Agreement with prior approval by CITY. Independent contractors and subcontractors shall be provided with a copy of this Agreement and shall agree to be bound by its terms. FIRM shall be the responsible party with respect to all actions of its independent contractors and subcontractors, and shall obtain such insurance and indemnity provisions from contractors and subcontractors as FIRM shall determine to be necessary.

6. No Discrimination: In performing the services under this Agreement, FIRM shall not discriminate in the employment of its employees and the engagement of any subcontractors on the basis of race, religion, color, national origin, ancestry, disability, marital status, pregnancy, medical condition, gender, sexual orientation, or political opinions or affiliation or any other criteria prohibited by law.

7. Insurance Requirements: FIRM shall comply with the insurance requirements set forth in Exhibit C, attached to this Agreement and incorporated by reference. In addition, FIRM, in accordance with the provisions of Section 3700 of the California Labor Code, shall secure at its own expense and maintain during the life of this Agreement, Workers' Compensation coverage for its employees as necessary to protect

FIRM and its employees under the Workers' Compensation Insurance and Safety Act. Such insurance shall be in a standard form and shall relieve CITY of all responsibility for such claims and or liability. FIRM shall, prior to undertaking the work contemplated herein, supply CITY with a certificate of insurance evidencing that said insurance coverage is in full effect.

8. Indemnity and Hold Harmless: With the exception that this section shall in no event be construed to require indemnification by FIRM to a greater extent than permitted under the public policy of the State of California, FIRM shall, indemnify, protect, defend with counsel approved by CITY and at FIRM'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 FIRM 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 FIRM or FIRM'S officers, agents, employees, volunteers or subcontractors. FIRM 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 FIRM to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by FIRM 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 FIRM to a greater extent than permitted under the public policy of the State of California, the parties agree that FIRM'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 FIRM or FIRM'S officers, agents, employees, volunteers or subcontractors. FIRM'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. FIRM 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 FIRM 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 FIRM for amounts paid in excess of FIRM'S proportionate share of responsibility for the damages within 30 days after FIRM 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 FIRM 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 FIRM 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, FIRM 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 FIRM, regardless of whether such claim may be covered by any applicable workers compensation insurance. FIRM'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 FIRM under workers' compensation acts, disability acts, or other employee benefit acts.

9. Standard of Performance: FIRM shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession. All services and/or products of whatever nature that FIRM delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person practicing the profession of FIRM and its agents, employees, and subcontractors assigned to perform the services contemplated by this Agreement.

10. Ownership and Use of Documents and Electronic Media Deliverables: All completed reports and other data or documents provided or prepared by FIRM in accordance with this Agreement are the property of CITY, and may be used by CITY at its own risk.

11. Resolutions of Disputes, Forum, and Attorneys' Fees: The laws of the State of California shall govern the interpretation of and the resolution of disputes under this Agreement. Any dispute arising from this Agreement shall be adjudicated in the courts of San Joaquin County in the State of California. If any claim, at law or otherwise is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

12. Termination: This Agreement shall continue until terminated as provided for herein. CITY may terminate this Agreement at any time by providing written notice to FIRM. FIRM may terminate this Agreement by providing thirty (30) days written notice to CITY. In the event CITY shall give such notice of termination, FIRM shall immediately cease rendering services pursuant to this Agreement.

In the event CITY shall terminate this Agreement: (a) CITY shall have full ownership and control of all writings which have been delivered by FIRM pursuant to this Agreement and all drafts of reports and writings which form the basis for any writing or report which would have been otherwise delivered to CITY pursuant to this Agreement; (b) CITY shall pay FIRM the reasonable value of services rendered by FIRM pursuant to this Agreement; provided, however, CITY shall not in any manner be liable for lost profits which might have been made by FIRM had FIRM completed the services required by this Agreement. In this regard, FIRM shall furnish the CITY such financial information as in the judgment of the CITY representative is necessary to determine the reasonable value of the services rendered by FIRM.

13. Notices: All notices, requests, demands and other communications

hereunder shall be deemed given only if in writing signed by an authorized representative of the sender, and delivered by facsimile with a hard copy mailed first class, postage prepaid, or when sent by a courier or express services guaranteeing overnight delivery to the receiving party, and addressed to the respective party as follows:

To CITY: **Kurt Wilson, City Manager**
City of Stockton, Office of the City Manager
425 N. El Dorado Street
Stockton, CA 95202

To FIRM: **Eden C. Casareno, CPA**
Eadie and Payne, LLP
1839 W. Redlands Blvd.
Redlands, CA 92373

14. Entire Agreement: This document, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement.

15. Severability: If any portion of this Agreement or its application to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. Headings, Assignment and Waiver: The headings in this Agreement are inserted for convenience only and shall not constitute a part of it. Neither party to this Agreement shall assign its duties and obligations hereunder without the prior written consent of the other party. A waiver of any part or any provision of this Agreement, or a waiver of any breach of this Agreement, must be provided in writing and shall not be construed as a waiver of any other provision or any succeeding breach of the same or any other provisions herein.

17. Auditing: CITY reserves the right to periodically audit all charges made by FIRM to CITY for services under this Agreement. Upon request, FIRM agrees to furnish CITY, or a designated representative, with necessary information and assistance.

FIRM agrees that CITY or its delegate will have the right to review, obtain, and copy all records pertaining to the performance of this Agreement. FIRM 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. FIRM further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

IN WITNESS WHEREOF, CITY and FIRM have executed this Agreement as of the date first above written.

CITY OF STOCKTON,
a municipal corporation

EADIE AND PAYNE, LLP

By _____
KURT WILSON
CITY MANAGER

By _____
EDEN C. CASARENO
PARTNER

ATTEST:

APPROVED AS TO FORM AND
CONTENT:

BONNIE PAIGE
CITY CLERK OF THE
CITY OF STOCKTON

JOHN M. LUEBBERKE
CITY ATTORNEY

EXHIBIT “A”

RFP (PUR 15-026) - Scope of Services

2.1 SCOPE OF SERVICES

Project tasks shall include, but are not limited to, the following. If the Firm feels that additional tasks are warranted, they must be clearly identified in the Firm's proposal.

- A. Read and document key compliance requirements of Measures A and B.
- B. Gain and document an understanding of the City of Stockton's internal control structure relating to Measure A financial transactions in the General Fund.
- C. Obtain Measure A's revenues and expenditures (Marshall Plan) for July 1, 2014 through June 30, 2015 (Fiscal Year 2014-2015) and two (2) subsequent fiscal years. As Measure A is a general Transaction and Use Tax, the revenues and expenditures are made part of the General Fund of the City. The Supplementary Display of Measures A and B Schedule of Sources and Uses as provided in the City's Comprehensive Annual Financial Report follows the Government Finance Officers Association best practices for additional supplementary information for departmental reports.
- D. Test Measure A cash receipts from the California State Board of Equalization (BOE) and trace receipts to BOE record to determine if Measure A revenues were collected in accordance with the tax measure.
- E. Select 25 – 50% of Measure A expenditures to validate the percentage of these expenditures that were spent on the Marshall Plan on Crime and to validate that expenditures were consistent with the Supplementary Display of Measures A and B Schedule of Sources and Uses as provided in the City's Comprehensive Annual Financial Report. Approved Marshall Plan uses include:
 - 1. Rebuilding the Police Department
 - 2. Creating Office of Violence Prevention
 - 3. Implementing Neighborhood Blitz Team
 - 4. 120 new sworn public safety officers positions over an estimated 3-year period
 - 5. 43 civilian public safety positions over estimated 3 years
- F. The Firm may exercise two one-year options to continue to provide these audit services of Measure A transactions (Marshall Plan) in the General Fund.

EXHIBIT "B"

COST PROPOSAL

Proponent's Fee Schedule

	2015 and 2016	2017
Measure A Audit	\$56,000	\$30,000

Schedule of Hourly Charges or Principals and Staff

	Hourly Rate
Partner	\$275
Manager	\$165
Supervisor	\$135
Senior	\$125
Staff	\$115

Our fees are based on the assumption that the accounting records will be in good order. There should be knowledgeable personnel available to assist us in retrieving documents, answer questions concerning the records, and prepare, under our direction, lists and schedules of certain accounts. We should have reasonable access to the personnel and items that we believe are needed to complete our work. Fees for 2017 assume no significant changes in your organization, its structure, accounting system, or accounting staff. Should any such changes occur, we will consult with you regarding the effects, if any, on our fees.

Although we do not anticipate encountering unusual or extraordinary circumstances in our work, there could be additional services required, which are not included in the quoted fee. We will not begin any additional work without consulting with you first. We will also be available for consultation on tax, accounting, or other business matters at our standard rates.

All fees include out-of-pocket expenses and all applicable taxes, if any.

Progress billings will be sent monthly based on the hours of work completed during the course of the engagement at the rates stated in the Firm's dollar cost bid proposal. The final billing will be made after delivery of the Firm's final reports.

Revised 6116116



By Eden C Casareno
Partner-in-charge of
Government Services Eadie
+Payne

EXHIBIT "C"

Insurance Requirements for Professional Services

FIRM 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 FIRM, 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 FIRM 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 FIRM provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the FIRM's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$1,000,000 aggregate. (If Claims-made, see below.)

If the FIRM 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 FIRM. 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 FIRM 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 FIRM'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 **FIRM's insurance coverage shall be 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 FIRM's insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the FIRM's insurance coverage to sole negligence.

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

FIRM hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said FIRM may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. FIRM 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 FIRM 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

FIRM 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 FIRM'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.

FIRM 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 FIRM 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

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