

**PROFESSIONAL SERVICES AGREEMENT
BOND AND DISCLOSURE COUNSEL**

THIS AGREEMENT is entered into this ____ day of _____ 2018, between the CITY OF STOCKTON, a municipal corporation ("City"), and Orrick Herrington and Sutcliffe, LLP whose address is 400 Capitol Mall, Suite 3000 Sacramento, CA 95814 and telephone number is (916) 329-4904 ("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.** 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 five years after commencement; provided, however the parties may agree to change either the commencement or expiration date.

4. **Compensation.** City shall pay Consultant for services requested by the City and rendered by Consultant pursuant to this Agreement as described more particularly in **Exhibit A.** Payments for services requested and rendered shall be made upon receipt and approval of Consultant's invoice and in accordance with Exhibit B. All fees proposed in Exhibit B are negotiable by the City.

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 documents, 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 documents, 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. 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 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 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 agrees to indemnify and hold City harmless from and against any and all third party claims, suits, and actions, and all associated damages, settlements, losses, liabilities, costs, and expenses, including without limitation reasonable attorneys fees, to the extent finally determined to have resulted from the Consultant's negligent performance of the services set forth in this agreement. Notwithstanding the foregoing, nothing herein shall (i) serve to expand Consultant's scope of professional responsibilities as set forth in the laws and canons of

ethics, (ii) extend any statute of limitations governing any claim arising from Consultant's acts or omissions, or (iii) waive any claims or defenses that Consultant may have against the City or any other party¹². **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 D** and shall otherwise comply with the other provisions of **Exhibit D**.

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: Brandon Dias Orrick, Herrington, & Sutcliffe 400 Capitol Mall, Suite 3000 Sacramento, CA 9584	City: City Manager City of Stockton 425 N. El Dorado Street Stockton, CA 95202
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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.

8. **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

CONSULTANT

John Luebberke, City Attorney

By: _____

Signature

ATTEST:

Brandon Dias
Print name

City Clerk

Title: _____

Partner

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 Consultant will include, but are not limited to, the following:

- A. Provide an objective legal opinion with respect to the authorization and issuance of local agency debt obligations and whether interest paid is tax-exempt under federal and/or state laws and regulations.
- B. Research applicable law; preparing documents; consulting with City staff and the financial team; reviewing proceedings; and performing additional duties as necessary to render the opinion.
- C. Provide continuing legal advice regarding any actions necessary to ensure that interest will continue to be tax-exempt.
- D. Prepare legal documents for the financing, including closing documents and transcripts.
- E. Participate, when requested, in activities associated with rating agency reviews.
- F. Offer continuing legal advice, as needed, on issues related to the sale and the trustee administration of City's obligations.
- G. In cases where a separate disclosure counsel is not retained by the City, bond counsel will provide the City with a "10b-5 Opinion" with respect to the preliminary and final official statements.
- H. Attend City Council meetings when the debt obligation for which counsel is providing services is being considered. Participate in staff meetings, including post issuance reviews, as requested, relating to the issuance of debt.

If selected as separate Disclosure Counsel, the nature of work would include:

- A. Preparation and compilation of the preliminary official statement and the final official statement.
- B. Provision to the City of a "10b-5 Opinion" with respect to the preliminary and final official statements.
- C. Provide all legal opinions, as necessary, to complete the above tasks.

EXHIBIT B
Compensation

Based on the amount of the particular financing, the legal services fee (hereinafter referred to as "FEE") will be negotiated with a starting point being their proposal presented as Exhibit C.

- Reimbursement for actual out-of-pocket expenses shall not exceed 10% of the fee unless otherwise agreed to in advance. The qualified firm must submit documentation for such expenses satisfactory to the City prior to reimbursement of any out-of-pocket expense.
- All fees, other than for district formations, are contingent upon the successful completion of the City's financing.

Fees may be negotiated by the CFO outside of the above schedule to accommodate unusual or special circumstances.

EXHIBIT C Proposal



2.4.4 FEES

Provide a detailed basic fee structure, broken down to provide services for COP's/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.

We have provided below our basic estimate of fees for bond and/or disclosure counsel services for certain traditional types of financings that the City might pursue. Except for any unusual out of pocket third party costs incurred by Orrick on behalf of the City, all expenses are included in such fees.

The City should note that it is very difficult for us to propose fees without knowing more information about the structure of a particular financing. Generally speaking, the fees reflect the effort involved and expertise required for the particular financing, which will vary with (i) whether a financing is fixed or variable rate, (ii) whether the financing involves refunding prior bonds, (iii) the number of series, indentures, official statements and closings, (iv) the complexity of the financial products involved in the particular financing, and (v) the complexity of the transaction under state law and federal tax law, among other factors. We have provided fee proposals below that should reflect the typical City financing. If selected for a particular engagement, we would discuss with the City whether any reductions or increases in fees are appropriate as a result of any of these or other factors.

We are also happy to discuss alternatives to our proposed fee arrangements with you. We want to work for the City, and our primary objective is to continue our longstanding and ongoing bond and disclosure counsel relationship with you. We view a bond counsel arrangement as a long-term arrangement, where we become an essential part of your financing team. We seek to be rewarded fairly for our contributions to the team's efforts, but also want to ensure that you believe you are paying a fair price for the results we produce. We would accordingly appreciate the opportunity to discuss fees with you directly and reach a mutually satisfying arrangement.

[Basic Fee Structure Schedule Follows]



Type of Transaction	Bond Counsel Fee ⁽¹⁾	Disclosure Counsel Fee ⁽¹⁾⁽²⁾	Bond and Disclosure Counsel Fee ⁽¹⁾⁽²⁾
Lease Revenue Bonds or COPs	\$72,500	\$57,500	\$115,000
Revenue Bonds (including Marks-Roos Bonds)	\$72,500	\$57,500	\$115,000
Assessment or Mello-Roos Bonds	\$65,000	\$50,000	\$97,500
Assessment or Mello-Roos District Formation	\$25,000 ⁽³⁾	N/A	N/A
Equipment Lease Financings	\$40,000	N/A	N/A

⁽¹⁾ Based on a single series of publicly offered, fixed rate, new money bonds without credit enhancement. Bond counsel fee estimate and bond and disclosure counsel fee estimate for lease revenue bonds, COPs, revenue bonds and Marks-Roos bonds assumes that an appropriate existing joint powers authority or financing corporation is used. Multiple series of bonds, variable rate bonds, refunding bonds, bonds issued with credit enhancement and the need to form a joint powers authority or financing corporation are examples of structural factors that could result in increased fees, although typically the increases are not material (\$10,000 - \$20,000 depending on the circumstances). Conversely, fixed rate bonds directly purchased by a commercial bank without an offering document could result in lower bond counsel fees (because there is no need to review an offering document) and no disclosure counsel fees.

⁽²⁾ Except for assessment and Mello-Roos bonds, assumes that an offering document for the same credit has been prepared in the relatively recent past. If an offering document for a new credit (other than a new assessment or Mello-Roos credit) is needed, that is a factor that might result in increased disclosure counsel fees.

⁽³⁾ Based on a single, traditional district without improvement areas formed with waivers and consents from 100% of the property owners and, in the case of Mello-Roos formations, a landowner vote rather than a registered voter vote. Includes review of the rate and method of apportionment or assessment engineer's report but does not include fees for the preparation or review of acquisition agreements, fee reimbursement agreements, joint community facilities agreements or similar arrangements.


Devin Brennan


Brandon Dias

EXHIBIT D – INSURANCE REQUIREMENTS
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.)
5. **Crime Coverage or Fidelity Bond:** covering the dishonest acts of employees furnished by Consultant. The limit shall not be less than **\$1,000,000** each occurrence.

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 Contractor'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 Contractor's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor'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**. Consultant's insurer shall endeavor to provide notice of cancellation to the City of Stockton; 10 days' notice of cancellation for non-payment of premium, 90 days' notice of cancellation for any other reason.

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

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.