

**PROFESSIONAL SERVICES AGREEMENT
DISTRICT ADMINISTRATION AND REPORTING**

THIS AGREEMENT is entered into this ____ day of _____, _____, between the CITY OF STOCKTON, a municipal corporation ("City"), and Willdan Financial whose address is 27368 Via Industria, Suite 200 Temecula, CA 92590 and telephone number is (951)587-3500 ("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 in **Exhibit A.**

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

3. **Term.** This Agreement shall commence on the date written above and shall expire 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 rendered pursuant to this Agreement as described more particularly in **Exhibit A.** The payments shall be made on a monthly or quarterly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall be based on Proposal pricing contained in **Exhibit B.**

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. The City shall not be limited in any way in their use of such work at any time, provided that any such use not within the purpose of this Agreement shall be at the City's sole risk and provided that Consultant shall be indemnified and defended against any damages resulting from such use, including the release of this material to third parties for a use not intended by this Agreement. 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.** 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, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all negligent acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's active 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.

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:

Willdan Financial
Stacey Reynolds
27368 Via Industria, Suite 200
Temecula, CA 92590

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. **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.

20. **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.

21. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

22. **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

Kurt Wilson, City Manager

ATTEST:

CONSULTANT

By:



Signature

Mark J. Risco, President & CEO

Print name

City Clerk Title: _____

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 bond and disclosure counsel firm(s) will include, but not limited to, the following:

A. Special District Administration

- 1) Review existing administrative policies and procedures to ensure efficiency and compliance with regulatory code.
- 2) Provide a toll-free number to field inquiries from City staff, property owners and other interested parties regarding Special Tax/assessment installments and related information.
- 3) Provide, upon request from staff, projections of estimated installment amounts for the full term of the respective district.
- 4) Prepare "Notice of Special Tax/Assessment" as required by the California Government Code, Sections 53340.2(b) and 53341.5, as amended. The fee for this service is per notice and is to be paid by the requestor.
- 5) Calculate written prepayment quotes for individual Special Tax/assessment liens, as described in the Rate and Method of Apportionment of Special Tax or by resolution. The fee for this service is to be paid by the requestor.
- 6) Obtain recordation information for prepaid assessments, and coordinate the Release of Lien.
- 7) Perform required bond call spreads, and coordinate the early redemption of outstanding bonds.
- 8) Provide assistance and recommendations for matured districts where monies remain in one or more of the district funds or general ledger accounts.
- 9) Assist, as requested by the City, in preparation of reports in accordance with Government Code Sections 50075. 1 and 50075.3 (GCS 50075), and as established by Senate Bill 165 in September, 2000; and in accordance with Government Code Section 53343. 1 (GCS 53343), as established by Assembly Bill 2851 in September, 2002.

B. Arbitrage Rebate

For debt issued for Special Tax and Assessment Districts

- 1) Review pertinent documents relating to the subject financings to identify relevant exemptions, exceptions, elections, and yield restrictions.
- 2) Load the subject bond issues into our online tracking system and make available for viewing via our Website.
- 3) Collect third-party data and other statistical, financial, and cash flow information required for the reports.
- 4) Review all regulatory provisions, and produce a comprehensive rebate report.
- 5) Complete all IRS Forms, and send to the City with filing instructions.
- 6) Engage, upon request and at additional cost, the services of a tax counsel; whereupon, an independent legal opinion shall be rendered.

- 7) Keep abreast of enforcement actions and changes to the code/regulations that affect arbitrage compliance requirements.
- 8) Assist the City in the event of a rebate calculation audit. Consult, upon request, with respect to the structuring of new bond issues and other matters that will affect any eventual arbitrage liability.

C. Municipal Market Disclosure

With regard to the preparation and dissemination of the Annual Financial Information Statements, the Firm will, upon direction by the staff of the City, provide one or all of the following services:

- 1) Review pertinent documents relating to the debt issue, including the official statement, financial statements and annual reports.
- 2) Collect third-party data and other information required to be included in the Annual Financial Information Statement directly from trustees, fiscal agents, state and county agencies and others, as applicable.
- 3) Create a draft of the Annual Financial Information Statement for review by the City prior to dissemination.
- 4) Finalize and disseminate the Disclosure Reports to the Municipal
- 5) Securities Rulemaking Boards EMMA portal website at emma.msrb.org
- 6) Notify City staff of rating changes, or other events enumerated in Rule 15c2-12(b) which would require a MEN to be posted to EMMA
- 7) Act as disclosure agent on all debt issued by Assessment and Special Tax Districts and as Dissemination Agent for all other debt issued.

D. Delinquency Management

In order to assist the City of Stockton to comply with its foreclosure covenants to bondholders for each district, Provider will monitor delinquent installment payments and, at the City's instruction, provide the following Delinquency Management services:

- 1) Send a delinquency reminder letter after the first installment of the tax bill becomes delinquent.
- 2) Send a 30-day delinquency demand letter after the second installment of the tax bill becomes delinquent.
- 3) Cause the removal of the delinquent installments for the current and/or prior tax year(s) from the County tax roll, in compliance with SB 1471.
- 4) Send a 21-day delinquency foreclosure letter. Foreclosure letters shall contain a brochure providing answers to frequently asked questions.
- 5) Send those parcels that are delinquent to the City-retained foreclosure attorney to collect the delinquent installments and other authorized costs through foreclosure.
- 6) Provide a toll-free telephone number to field inquiries from staff, parcel owners, lenders, and other interested parties concerning delinquencies.
- 7) Assist foreclosure counsel to initiate and prosecute judicial foreclosure proceedings.
- 8) Provide payoff quotes for stripped delinquent installments for interested parties upon request. Fees for this service are paid by the requesting party, and may be charged to a credit card; there is no charge to the City.

Exhibit B:
Fee Proposal

3.0.7 Proposal Fee

Outlined below are costs to provide the following services for which work plans were provided within Willdan Financial Services' ("Willdan") technical proposal.

- Administration Services for:
 - Community Facilities Districts (CFDs), which are also referred to as Mello Roos; and
 - Assessment Districts
- Continuing Disclosure
- Delinquency Management
- Arbitrage Rebate

Administration Services

The following annual fees for Administration Services reflect application of the corresponding work plan identified within our technical proposal. The fees have been grouped by district type and are based on the time estimated that will be spent on average each year for the administration of the districts. Upon contractual approval, the City may choose to allocate the per district annual cost reflected below in a manner that corresponds with your internal accounting procedures.

The annual administration fees are subject to increase, which will not exceed the most recent annual change in the Consumer Price Index (CPI) within the applicable areas, as calculated by the United States Department of Labor. Fees are payable as the work progresses, on a quarterly basis.

CFD Administration Fees for Services		
CFD No.	Name	Annual Fee
99-02	Arch Road East	\$ 1,250
2001-1	Spanos Park West	5,500
2001-1	Downtown Parking*	750
2003-1	Camera Estates	2,000
2006-1	Riverbend	3,000
2006-3	Northbrook Woodside Improvement Area 1	1,500
Estimated Total		\$ 14,000
<i>Payoff Quote (per request**)</i>		<i>\$ 500</i>

*District was not identified within the Request for Proposal (RFP) but was annually administered by Willdan in fiscal year 2017/2018.

**The requesting party pays the fee for this service. There is no charge to property owners and/or the City.

Assessment District Administration Fees for Services		
AD No.	Name	Annual Fee
84-1	Stockton Airport Business Park, Phase V	\$ 500
84-2RR	Arch Road Industrial Park Reassessment District	0
90-5	1999 West Eighth Street Reassessment District	4,500
97-01R	Little John Creek Refunding 2001	1,000
2000-1R	Morada Ranch Refunding	4,500
2002-1R	Morada Ranch North Refunding	3,000
2002-03R	Waterford Estates East Refunding	1,250
2014-1	Mosher Reassessment District	5,000
RAD 2016-1	March Lane / Holeman Road	1,500
RAD 2016-2	Waterford E Refunding	1,000
Estimated Total		\$ 22,250

Please note that the Arch Road Industrial Park Reassessment District will mature in September of 2018 and a fee will not be charged for fiscal year 2018/2019 or thereafter.

Additional Districts

When additional districts are added, fees shall be negotiated with City at that time. For budgeting purposes, the fee range to annually administer new special districts upon implementation is estimated to be \$1,250 to \$4,500.

Delinquency Monitoring Services

As the service is rendered, the following fees are invoiced to the City. They are ultimately paid by, or on behalf of, the delinquent property owners.

Services	Fees
Fees Ultimately Reimbursed to Agency by Property Owner:	
Delinquency Reminder Letter	\$ 15
Delinquency Demand Letter	\$ 45
Foreclosure Letter	\$ 65
Effect Removal from Tax Roll and Record Subsequent Notice of Satisfaction	\$ 125
Payment Plan	\$ 200
Subsequent Foreclosure Services	\$ 300
Fees Paid Directly to Willdan by Requestor:	
Delinquency Demand Payoff ⁽¹⁾	\$ 50
Zero Demand ⁽¹⁾	\$ 50

⁽¹⁾ This fee is waived for the property owner (except for escrow purposes). This fee complies with Section 8833 of the California Streets and Highways Code and/or Section 53356.2 of the California Government Code, which requires recording of a Notice of Intent to Remove Delinquent Special Assessments and/or Special Taxes from the County tax roll. It DOES NOT include the County tax roll removal charge, or similar fee, if any.

Arbitrage Compliance Services

Arbitrage Services	Fee
Engagement Fee (One-time fee)	\$250
Base Fee, Annual Report – Fixed Rate Bonds	\$1,150
Commingled Funds Analysis / Parity Reserve Allocation	\$200 per fund
Data Analysis in Excess of 12 Months	\$150 per year
Transferred Proceeds Analysis	\$200 per fund
IRS Audit Assistance	\$150 per hour
Online Compliance Management System	No Charge
Preparation of IRS Form 8038T (Payment)	No Charge

Continuing Disclosure Services

Disclosure Services	Fee
Setup Fee	\$ 250 per issue
Base Annual Report Fee	
Non-land Based Issues	\$ 1,450 per report
Land Based Issues	\$ 1,250 per district
Dissemination	\$ 100 per report
Additional Fees (if applicable)	
Incremental Annual Fee for Bonds Issued on Parity	\$ 450 per issue
Supplemental/Amended Reports	\$ 450
Notice of Occurrence of Listed Events	\$ 250 per notice
Annual Third-Party Expenses	At Cost
Continuing Disclosure Compliance Review, if requested	\$ 200 per issue/per year

Additional Services

Additional services may be authorized by the City and will be billed at our then-current hourly overhead consulting rates. Our current hourly rates are listed below.

Title	Hourly Rate
Group Manager	\$ 210
Principal Engineer	200
Principal Consultant	200
Senior Project Manager	165
Project Manager	145
Senior Project Analyst	130
Senior Analyst	120
Analyst	100
Assistant Analyst	75
Property Owner Services Representative	55
Support Staff	50

Reimbursable Expenses

Willdan will be reimbursed for out-of-pocket expenses. Examples of reimbursable expenses include, but are not limited to the following: postage, travel expenses, mileage (current prevailing federal rate), maps, electronic data provided from the county and/or other applicable resources, construction cost periodicals, and copying (currently 6¢ per copy). Any additional expense for reports or from outside services will be billed to the City. Charges for meeting and consulting with counsel, the City, or other parties regarding services not listed in the scope of work above will be at our then-current hourly rates.

In the event that a third party requests any documents, Willdan may charge such third party for providing said documents in accordance with Willdan's applicable rate schedule.

EXHIBIT C – 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.)

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:

2. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
3. 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.