

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE  
CITY OF MILPITAS AND JONES HALL, APLC**

This Agreement is made and entered into as of \_\_\_\_\_, \_\_\_\_ **2019** (“Effective Date”) by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Jones Hall, APLC** a California Corporation with its principal place of business at **475 Sansome Street, San Francisco, CA 94111** (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

A. City is a public agency of the State of California and is in need of professional services for the following project:

**BOND COUNSEL AND DISCLOSURE COUNSEL 2019 WASTEWATER REVENUE BONDS**

(hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit A.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of **Ninety-Eight Thousand Dollars and Zero Cents (\$98,000)**. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within thirty (30) days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement term and for four (4) years from the date of final payment under the Agreement for inspection by City.

5. Term.

The term of this Agreement shall be from **October \_\_\_\_\_, 2019 to September \_\_\_\_\_, 20\_\_** unless earlier terminated as provided herein. The City reserves the right to review the Consultant's performance at the end of each year and cancel all or part of the Agreement.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit D (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars and Zero Cents (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any

subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

13. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

14. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

15. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

c. The Consultant understands and accepts that at all times; the Agreement is subject to appropriation of funds by the Milpitas City Council. The Agreement may terminate without penalty, liability or expense of any kind to the City at the end of Agreement term. The City has no obligation to make appropriations for the Agreement in lieu of appropriations for new or other contracts. City budget

decisions are subject to the discretion of the Mayor and City Council. Consultant's assumption of risk of possible non-appropriation is a part of the consideration for the Agreement. This section controls against any and all other provisions of the Agreement.

16. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

17. Organization

Consultant shall assign **James Wawrzyniak Jr.** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

18. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

19. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Walter Rossmann, Director of Finance

CONSULTANT:

Jones Hall, APLC

475 Sansome Street, Suite 1700

San Francisco, CA 94111

James Wawrzyniak, Jr., Shareholder

and shall be effective upon receipt thereof.

20. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

21. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

22. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

23. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

24. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

25. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

26. Time of Essence

Time is of the essence for each and every provision of this Agreement.

27. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

28. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

29. Wage Theft Prevention

a. Consultant, and any subconsultant it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

b. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONSULTANT OR ITS SUBCONSULTANTS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONSULTANT AFFIRMS THAT IT OR ITS SUBCONSULTANT(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONSULTANT OR ITS SUBCONSULTANT(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

c. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Consultant or a subconsultant it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Consultant shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Consultant or its subconsultant(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Consultant or its subconsultant is subject to a payment or other alternative plan, the Consultant or its subconsultant shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

d. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

e. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

f. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MILPITAS  
AND JONES HALL, ALPC**

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

**CITY OF MILPITAS**

*Approved By:*

\_\_\_\_\_  
Steven G. McHarris, Interim City Manager

\_\_\_\_\_  
Date

*Approved As To Form:*

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

*Approved:*

\_\_\_\_\_  
Walter C. Rossmann, Risk Manager/Director  
of Finance

**JONES HALL, ALPC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
DIR Registration Number (If Applicable)



## **EXHIBIT A**

### **Scope of Services**

The City of Milpitas, together with the Milpitas Municipal Financing Authority, is proceeding to authorize the issuance of long-term bonds for the purpose of financing improvements relating to the City's wastewater system (the "Bonds"); and whereas, in connection with the drafting of the documents and resolutions required to accomplish the authorization and issuance of the Bonds, the City requires the advice and assistance of bond counsel and disclosure counsel; and

#### **Scope of Services:**

##### **1. Identification of Client.**

The Consultant shall represent the City as Bond Counsel and Disclosure Counsel in connection with the proceedings for the authorization, issuance and sale of the Bonds. The Consultant will not represent, and will owe no duties to, any other party, including but not limited to financial advisor, trustee, bond insurer and underwriter(s) of the Bonds.

Consultant assumes that all other parties involved in the financing will retain such counsel, as they deem necessary and appropriate to represent their interests in this transaction. The Consultant further assumes that all other parties understand that in this transaction the Consultant will represent only the City, the Consultant is not counsel to any other party, and the Consultant is not acting as an intermediary among the parties. The Consultants' services as bond counsel and disclosure counsel are limited to those contracted for in this Agreement; the City's execution of this Agreement will constitute an acknowledgment of those limitations. Consultants' representation of the City will not affect, however, their responsibility to render an objective final legal opinion.

##### **2. Duties of Consultants as Bond Counsel.**

Consultants shall do, carry out and perform all of the following Bond Counsel services as are necessary for the issuance and sale of each series of the Bonds:

- a. Consultation and cooperation with attorneys, financing consultants and other consultants, underwriters, staff and employees of the City, and assisting such consultants, underwriters, staff and employees in the formulation of a coordinated financial and legal Bond issuance by the City.
- b. Preparation of all legal proceedings for the authorization, issuance and delivery of Bonds by the City; including preparation of resolutions authorizing the issuance of such Bonds, fixing the date, denominations, numbers, maturity and interest rates, providing the form of the Bonds and authorizing their execution, authentication and registration; certifying the terms and conditions upon which the same are to be issued; providing for the setting up of special funds for the disposition of proceeds of the sale of the Bonds and providing all other details in connection therewith, including special covenants and clauses for the protection of the interests of the Bondholders; preparation of the resolution selling all or any part of the authorized Bond issue; preparation of all documents required for Bond delivery and supervising such delivery; preparation of all other proceedings incidental to or in connection with the issuance, sale and delivery of the Bonds.

- c. Upon completion of proceedings to the satisfaction of Consultants, providing a legal opinion, as traditionally issued by Bond Counsel and satisfactory in form and content to the City Attorney and other parties to the transaction, approving in all regards the legality of all proceedings for the authorization, issuance and delivery of each series of Bonds, which opinion shall be addressed to the City and any other party so requiring and shall inure to the benefit of the purchasers of the Bonds.
- d. Supervising the closing of the Bonds to ensure that all closing conditions as set forth in the bond purchase agreements for the Bonds have been satisfied.
- e. Any and all legal consultation requested by the City concerning the Bonds.
- f. Such other and further services as are normally performed by Bond Counsel in connection with the issuance of bonds or obligations of a similar character to the Bonds.

### **3. Duties of Consultants as Disclosure Counsel.**

In addition to their duties as Bond Counsel to the City, Consultants shall do, carry out and perform all the following services as Disclosure Counsel to the City in connection with the issuance of the Bonds:

- a. Participating in the preparation of the Official Statement by consulting with representatives of the City, the City's municipal advisor, the underwriter(s) and others, gathering information about the wastewater system and the City for disclosure in the Official Statement, and having primary responsibility for drafting the Official Statement.
- b. Drafting the continuing disclosure undertakings of the City related to the Bonds in accordance with SEC Rule 15c2-12.
- c. Rendering an opinion to the City and the underwriter(s) of the Bonds stating that based upon Consultants' participation in the preparation of the Official Statement, nothing has come to their attention to lead them to believe that the Official Statement (except for any financial statements and the financial and statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion included therein, and The Depository Trust Company and its book-entry system and information in the Appendices, as to which Consultant is not required to express a view) as of the date of the Official Statement or the date of closing of the Bonds contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.
- d. Such additional legal services as are customarily rendered by disclosure counsel on comparable financing transactions.

**4. Responsibilities of the City.** The City shall cooperate with the Consultant and shall furnish the Consultant with certified copies of all proceedings taken by the City, or other deemed necessary by

Consultant to render an opinion upon the validity of such proceedings. All costs and expenses incurred incidental to the actual issuance and delivery of Bonds, including the cost and expense of preparing certified copies of proceedings required by Consultant in connection with the issuance of the Bonds, the cost of preparing the Bonds for execution and delivery, all printing costs and publication costs, and any other expenses incurred in connection with the issuance of Bonds, shall be paid by the City.

**5. Independent Contractor.** The Consultant will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Consultant be considered an agent, partner, or employee of the City.

**6. Assignment.** Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the City.

**7. Conflicts; Prospective Consent.** Attorneys represent many political subdivisions and investment banking firms as bond counsel, disclosure counsel and/or underwriter's counsel, including Stifel, Nicolaus & Company, Incorporated, the city of San Jose and the city of Santa Clara. It is possible that during the time that Attorneys are representing the City with respect to the Bonds, Attorneys will also be representing, on other transactions, other political subdivisions and/or other investment banking firm(s) as bond counsel, disclosure counsel and/or underwriter's counsel. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent the City as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of the City with respect to the issuance of the Bonds, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other clients with respect to Attorneys' representation of them will materially limit Attorneys' representation of the City with respect to the issuance of the Bonds. Execution of this Agreement signifies the City's consent to Attorneys' representation of other clients consistent with the circumstances described in this paragraph.

## **EXHIBIT B**

### **Schedule of Charges/Payments**

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials Agreement.

The Consultant will provide Bond Counsel services and Disclosure Counsel services for one series of Bonds issued for the wastewater system; and

**Compensation.** Compensation will be payable on a series-by-series of Bonds basis as follows:

(a) Bond Counsel Services. For the Bond Counsel services described above, the City will pay Consultant a flat fee of \$60,000 for each series of Bonds, contingent on the closing of each such series of Bonds.

(b) Disclosure Counsel Services. For the Disclosure Counsel services described above, assuming each series of Bonds has a separate Official Statement and Continuing Disclosure undertaking, the City will pay Consultant a flat fee of \$35,000 for each series of Bonds.

(c) Expense Recovery. In addition to the foregoing fees, Consultant will receive an amount not to exceed \$3,000 for each series of Bonds for preparation of official transcripts of the Bond proceedings, messenger and delivery services, costs of legal publication, photocopying and related matters.

Said fees and expenses shall be payable solely from the proceeds of each series of Bonds and shall be entirely contingent upon the successful closing thereof. The compensation set forth is not set by law but is negotiable between the Consultant and the City.

## EXHIBIT C

### Activity Schedule

This agreement will go into effect immediately and will terminate upon issuance of the Bonds (or earlier termination by a party). Bonds are anticipated to be issued in November 2019.

#### **Termination of Agreement.**

- (a) Termination by City. This Agreement may be terminated at any time by the City with or without cause upon written notice to Attorneys.
- (b) Termination by Attorneys. This Agreement may be terminated by Attorneys upon 15 days' written notice to City if City fails to follow written legal advice given by Attorneys.
- (c) Termination Upon Issuance of Bonds. This Agreement shall terminate upon the issuance of the Bonds.
- (d) Consequences of Termination. In the event of termination, all finished and unfinished documents shall at the option of the City become its property and shall be delivered to the City by Attorneys.

## **EXHIBIT D**

### **Insurance Requirements**

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement 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 and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

**Liability Insurance; Costs of Regulatory Agency Investigations.** The Consultant must maintain at their own expense at all times during the term of this Agreement policies of insurance, acceptable to the City, covering its workers’ compensation injuries, public liability and professional liability. In the event any investigation, inquiry or other action is instituted by the Securities and Exchange Commission, the Internal Revenue Service or other governmental regulatory agency into the Certificates under federal securities law or federal tax law, the City and Consultant shall meet and confer to discuss the extent to which it is appropriate for the Consultant to represent the common interests of the City and the Consultant in responding to such investigation, inquiry or other action, and the extent to which the cost thereof shall be borne by Consultant.

#### **Commercial General Liability (CGL):**

\_\_\_ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 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.

X   Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 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.

       Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 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.

#### **Automobile Liability:**

  X   Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 per accident for bodily injury and property damage.

       Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 per accident for bodily injury and property damage.

       Garage keepers’ extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

#### **Professional Liability (Errors and Omissions):**

The Employer’s Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

  X   Insurance appropriate to the Contractor or Consultant’s profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

       (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

       Insurance appropriate to the Contractor or Consultant’s profession, with limit no less than \_\_\_\_\_ per occurrence or claim, \_\_\_\_\_ aggregate

#### **Workers’ Compensation Insurance:**

  X   Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

X  
Contractor/Consultant Signature

**Builder's Risk (Course of Construction):**

     Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

**Surety Bonds:**

     Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

**Contractor's or Consultant's Pollution Legal Liability:**

     Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain the following provisions:

X **Additional Insured Status:**

The insurance policies are to contain, or be endorsed to contain the following provision:



The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**X Primary Coverage:**

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the Contractor's or Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

**Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)**

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

**X Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain, or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

**X Waiver of Subrogation:**

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or 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 has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

**Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

**THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS**

**Deductibles and Self-Insured Retentions ("SIR"):**

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

**Acceptability of Insurers:**

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

**Claims Made Policies: (note - should be applicable only to professional liability, see below)**

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**Subcontractors:**

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

**Verification of Coverage:**

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances**

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

**Failure to Comply:**

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

**Applicability of Coverage:**

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.