

**CITY OF SANTA ROSA  
PROFESSIONAL SERVICES AGREEMENT  
WITH JONES HALL, A PROFESSIONAL LAW CORPORATION  
AGREEMENT NUMBER \_\_\_\_\_**

This "Agreement" is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Santa Rosa, a municipal corporation ("City"), and Jones Hall, A Professional Law Corporation ("Consultant").

**R E C I T A L S**

- A. City desires to issue wastewater revenue bonds to finance improvements to the City's wastewater enterprise ("Bonds").
- B. City desires to retain a qualified law firm to provide such advice as more particularly set forth in Exhibit A to the Agreement.
- C. Consultant represents to City that it is a firm composed of highly trained professionals and is fully qualified to conduct the services described above and render advice to City in connection with said services.
- D. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced such terms to writing.

**AGREEMENT**

**NOW, THEREFORE**, City and Consultant agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall provide to City the services described in Exhibit A ("Scope of Services"). Consultant shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Consultant and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Consultant and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

**2. COMPENSATION**

- a. City shall pay Consultant for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B.
- b. The payments prescribed herein shall constitute all compensation to Consultant for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Consultant, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Consultant, its agents and employees. In no event shall City

be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

c. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of one hundred twenty thousand dollars (\$120,000). Compensation to be paid hereunder is authorized as a funding expense to be paid from the bond proceeds at closing, or the Chief Financial Officer is otherwise authorized to pay compensation from Charge Number 130801.

### **3. DOCUMENTATION; RETENTION OF MATERIALS**

a. Consultant shall maintain adequate documentation to substantiate all charges as required under Section 2 of this Agreement.

b. Consultant shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate and shall make such documents and records available to authorized representatives of City for inspection at any reasonable time.

c. Consultant shall maintain the records and any other records related to the performance of this Agreement and shall allow City access to such records during the performance of this Agreement and for a period of four (4) years after completion of all services hereunder.

### **4. INDEMNITY**

a. Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the negligence, recklessness or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the limits of such insurance limit the liability of Consultant hereunder. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

### **5. INSURANCE**

a. Consultant shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Consultant in exchange for City's agreement to make the payments prescribed hereunder. Failure by Consultant to (i) maintain or renew coverage, (ii) provide City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Consultant, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement.

Notwithstanding the foregoing, any failure by Consultant to maintain required insurance coverage shall not excuse or alleviate Consultant from any of its other duties or obligations under this Agreement. In the event Consultant, with approval of City pursuant to Section 6 below, retains or utilizes any subcontractors or subconsultants in the provision of any services to City under this Agreement, Consultant shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages set forth in the Insurance Requirements in Attachment One.

b. Consultant agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Consultant agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

## **6. ASSIGNMENT**

Consultant shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion. Consultant agrees that the City shall have the right to approve any and all subcontractors and subconsultants to be used by Consultant in the performance of this Agreement before Consultant contracts with or otherwise engages any such subcontractors or subconsultants.

## **7. NOTICES**

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Molly MacLean  
Santa Rosa City Attorney's Office  
100 Santa Rosa Ave, Rm 8  
Santa Rosa, CA 95404

Consultant Representative:

Christopher Lynch  
Jones Hall, A Professional Law  
Corporation  
475 Sansome Street, Suite 1700  
San Francisco, CA 94117

## **8. INDEPENDENT CONTRACTOR**

a. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Consultant's employees or by any third party, including

but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Consultant, in the performance of Consultant's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Consultant for accomplishing such results. To the extent that Consultant obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Consultant's sole discretion based on the Consultant's determination that such use will promote Consultant's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Consultant use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Consultant's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Consultant. Consistent with all the California Rules of Professional Responsibility, Consultant may represent, perform services for, or be employed by such additional persons or companies as Consultant sees fit .

## **9. ADDITIONAL SERVICES**

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid on an hourly basis at the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

## **10. SUCCESSORS AND ASSIGNS**

City and Consultant each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

## **11. TERM, SUSPENSION, TERMINATION**

a. This Agreement shall become effective on the date that it is made as set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

b. City shall have the right at any time to temporarily suspend Consultant's performance hereunder, in whole or in part, by giving a written notice of suspension to Consultant. If City gives such notice of suspension, Consultant shall immediately suspend its activities under this

Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement at any time, in its absolute discretion and without cause, by giving a written notice of termination to Consultant. Consultant shall have the right to terminate this Agreement on 30 days' written notice to the extent permitted by the California Rules of Professional Responsibility. Upon such termination, Consultant shall submit to City an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. City shall pay Consultant for any services for which compensation is owed; provided, however, City shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by this Agreement. Consultant shall promptly deliver to City all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of City without additional compensation to Consultant.

## **12. TIME OF PERFORMANCE**

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Consultant shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of City no later than January 1, 2020, unless otherwise agreed by City.

## **13. STANDARD OF PERFORMANCE**

Consultant shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant's profession in California. All products of whatsoever nature that Consultant produces under the terms of this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Consultant's profession, and shall be provided in accordance with any schedule of performance. Consultant shall assign only competent personnel to perform services under this Agreement. Consultant shall notify City in writing of any changes in Consultant's staff assigned to perform the services under this Agreement prior to any such performance. In the event that City, at any time, desires the removal of any person assigned by Consultant to perform services under this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Consultant shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

## **14. CONFLICTS OF INTEREST**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City, or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of City.

## **15. CONFLICT OF INTEREST REQUIREMENTS**

a. **Generally.** The City's Conflict of Interest Code requires that individuals who qualify as "consultants" under the Political Reform Act, California Government Code sections 87200 *et seq.*, comply with the conflict of interest provisions of the Political Reform Act and the City's Conflict of

Interest Code, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. The term "consultant" generally includes individuals who make governmental decisions or who serve in a staff capacity.

b. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code:  
\_\_\_\_\_ yes X no (*check one*)

If "yes" is checked by the City, Consultant shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants"; and
- (2) Cause these individuals to file with the City Clerk the assuming office statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, Consultant shall cause these individuals to file with the City Clerk annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act. The City may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

## 16. MISCELLANEOUS

a. **Entire Agreement.** This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

b. **Modification.** No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

c. **Compliance with Laws.** Consultant shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at [www.dir.ca.gov](http://www.dir.ca.gov)) be paid to any employee performing work covered by Labor Code sections 1720 et seq. Consultant shall pay to the City when due all business taxes payable by Consultant under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Consultant.

d. **Discrimination Prohibited.** With respect to the provision of services under this Agreement, Consultant agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

e. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

f. Waiver of Rights. Neither City acceptance of, or payment for, any service or performed by Consultant, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

g. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

h. Counterparts and Electronic Signatures. This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Consultant wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The City reserves the right to reject any digital signature that cannot be positively verified by the City as an authentic electronic signature.

## **17. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

Consultant hereby represents and warrants to City that it is (a) a duly organized and validly existing professional law corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Consultant hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Consultant in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

**CONSULTANT:**

Name of Firm:

TYPE OF BUSINESS ENTITY (*check one*):

☐ Individual/Sole Proprietor

☐ Partnership

☒ Corporation

☐ Limited Liability Company

☐ Other (please specify: Limited Liability Partnership)

*Signatures of Authorized Person:*

By: \_\_\_\_\_

Print Name: Christopher K. Lynch

Title: Vice President

*Signatures of Authorized Person:*

By: \_\_\_\_\_

Print Name: Davd Fama

Title: Secretary

City of Santa Rosa Business Tax Cert. No.  
06500175

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B – Compensation

**CITY OF SANTA ROSA**

a Municipal Corporation

By: \_\_\_\_\_

Print

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney



# **ATTACHMENT ONE** **INSURANCE REQUIREMENTS FOR** **ATTORNEY SERVICES AGREEMENTS**

- A. Insurance Policies:** Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

**B. Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
  - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute with it; and,
  - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to 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.

**C. Verification of Coverage and Certificates of Insurance:** Consultant shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

**D. Other Insurance Provisions:**

1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Consultant may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **Exhibit A**

### **Scope of Services**

**Bond Counsel Services.** Consultant shall perform all of the following services as bond counsel in connection with the issuance and sale of the Bonds:

- a. Consultation and cooperation with City and City staff to assist in the formulation of a coordinated financial and legal issuance of the Bonds.
- b. Preparation of all legal proceedings for the authorization, issuance and delivery of the Bonds by the City; including (a) preparation of a resolution of the governing board of the City authorizing the issuance and sale of the Bonds and approving related documents and actions, (b) preparation of all financing documents, including a supplemental indenture of trust, (c) preparation of all documents required for the closing of the issue, (d) supervising the closing, and (e) preparation of all other proceedings incidental to or in connection with the issuance and sale of the Bonds.
- c. Advising the City, from the time Consultant is hired as bond counsel until the Bonds are issued, as to compliance with state law as required to ensure that interest on the Bonds is exempt from state personal income taxation and excluded from gross income for federal income tax purposes.
- d. Upon completion of proceedings to Consultant's satisfaction, providing a legal opinion (the "Bond Opinion") approving the validity and enforceability of the proceedings for the authorization, issuance and delivery of the Bonds, and stating that interest on the Bonds is exempt from California personal income taxation and excluded from gross income for federal income tax purposes. The Bond Opinion will be addressed to the City, and may also be addressed to the underwriter of the Bonds and other participants in the financing.
- f. Review those sections of the official statement or other form of offering or disclosure document to be disseminated in connection with the sale of the Bonds involving summary descriptions of the Bonds, the legal proceedings leading to the authorization and sale of the Bonds, the legal documents under which the Bonds will be issued, and federal tax law and securities law provisions applicable to the Bonds, as to completeness and accuracy.
- g. Assist the City in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of the Bonds.
- h. Such other and further services as are normally performed by bond counsel in connection with similar financings.

Consultant's Bond Opinion will be delivered by Consultant on the date the Bonds are exchanged for their purchase price (the "Closing").

The Bond Opinion will be based on facts and law existing as of its date, will cover certain matters not directly addressed by such authorities, and will represent Consultant's judgment as to the proper treatment of the Bonds for federal income tax purposes. Consultant's opinion is not binding on the Internal Revenue Service ("IRS") or the courts. Consultant cannot and will not give any opinion or assurance about the effect of future changes in the Internal Revenue Code of 1986 (the "Code"), the applicable regulations, the interpretation thereof or the enforcement

thereof by the IRS. City acknowledges that future legislation, if enacted into law, or clarification of the Code may cause interest on the Bonds that are structured as tax-exempt bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Code may also affect the market price for, or marketability of, the Bonds that are structured as tax-exempt bonds. Consultant will express no opinion regarding any pending or proposed federal tax legislation.

In rendering the Bond Opinion, Consultant will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Consultant without undertaking to verify the same by independent investigation, and Consultant will assume continuing compliance by City with applicable laws relating to the Bonds.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds that are structured as tax-exempt bonds. As a condition of Consultant issuing its opinion, City will be required to make certain representations and covenants to comply with certain restrictions designed to insure that interest on the Bonds that are structured as tax-exempt bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds that are structured as tax-exempt bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Bonds that are structured as tax-exempt bonds. Consultant's opinion will assume the accuracy of these representations and compliance with these covenants. Consultant will not undertake to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of issuance of the Bonds that are structured as tax-exempt bonds may adversely affect the value of, or the tax status of interest on, the Bonds that are structured as tax-exempt bonds. In this regard, City agrees to familiarize itself with the relevant requirements and restrictions necessary for the Bonds that are structured as tax-exempt bonds to qualify for exemption from federal income taxation and to exercise due diligence both before and after issuance of the Bonds in complying with these requirements.

**Disclosure Counsel Services.** Consultant shall perform all of the following services as disclosure counsel in connection with the issuance and sale of the Bonds:

- a. Prepare the Official Statement (both preliminary and final) or other disclosure documents in connection with the offering of the Bonds.
- b. Confer and consult with the officers and administrative staff of the City as to matters relating to the Official Statement.
- c. Attend all meetings of the City and any administrative meetings at which the Official Statement is to be discussed, deemed necessary by Consultant for the proper exercise of their due diligence with respect to the Official Statement, or when specifically requested by the City to attend.
- d. Subject to the completion of proceedings to the satisfaction of Consultant, provide a letter of Consultant addressed to the City and the underwriter that, although Consultant is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement and makes no representation that Consultant has independently verified the accuracy, completeness or fairness of any such

statements, no facts have come to Consultant's attention that cause Consultant to believe that the Official Statement (except for any financial and statistical data and forecasts, numbers, estimates, assumptions and expressions of opinion, and information concerning the Bond Insurance Policy and the Insurer (if any), and information concerning the Depository Trust Company and the book-entry system for the Bonds, contained or incorporated by reference in the Official Statement and the appendices to the Official Statement, which Consultant will expressly exclude from the scope of this sentence) as of the date of the Official Statement or the date of issuance 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.

e. Assist City and the underwriter of the Bonds with (i) review of historical continuing disclosure compliance (ii) the preparation and filing of any remedial filings.

**Excluded Services.** Our duties in this engagement are limited to those expressly set forth above in this Exhibit A, except as expressly set forth in a written amendment to this Agreement. Among other things, Consultant's duties do not include:

a. Preparing blue sky or investment surveys with respect to the Bonds.

b. Except as described above, drafting state constitutional or legislative amendments.

c. Pursuing test cases or other litigation, such as contested validation proceedings, except as set forth above.

d. Making an investigation or expressing any view as to the creditworthiness of the City or the Bonds.

e. After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking under Securities and Exchange Commission Rule 15c2-12.

f. After Closing, unless specifically requested to do so by City, and agreed to by Consultant, providing continuing advice to the City or any other party concerning any actions that need to be taken regarding the Bonds.

g. Addressing any other matter not specifically set forth above that is not required to render Consultant's Bond Opinion.

## **Exhibit B**

### **Compensation For Legal Services**

In consideration for the provision of legal services, City shall compensate Consultant as follows:

For the bond counsel services performed by Consultant pursuant to Exhibit A, the City will pay Consultant a fee equal to \$70,000.

For the disclosure counsel services performed by Consultant pursuant to Exhibit A, the City will pay Consultant a flat fee of \$47,500.

In addition, in an amount not to exceed \$2,500, the City shall pay to Consultant all direct out-of-pocket expenses for travel outside the State of California (if any), messenger and delivery service, photocopying, closing costs, legal publication expenses, transcript preparation and other costs and expenses incurred by Consultant in connection with their services hereunder.

The compensation described above will be paid from proceeds of the Bonds on the closing date upon receipt of an invoice in a form acceptable to City. In the event the Bonds are not issued, the City will pay Consultant a fee for the services described in Exhibit A in an amount determined by the City Manager in his sole discretion to be reasonable in the circumstances.

The fee is not set by law but is negotiable between Consultant and City.