



December 11, 2019

Mr. Paul Melikian
Assistant City Manager
City of Reedley
845 G. Street
Reedley, CA 93654

RE: Agreement to Provide Continuing Disclosure Services for the City of Reedley

Dear Mr. Melikian:

Enclosed is the agreement to provide Continuing Disclosure Services for the City of Reedley. If acceptable, please sign the signature page and email a scanned copy back to me at ddavies@willdan.com.

We look forward to serving the City of Reedley and working with you and your staff. If you have any questions regarding this agreement, please contact me at your earliest convenience at (800) 755-6864.

Very truly yours,
Willdan Financial Services

Dave Davies, Senior Project Manager
Federal Compliance Group

Enclosures

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 11th day of December 2019, by and between **WILLDAN FINANCIAL SERVICES ("WFS")**, a corporation, and the **City of Reedley**, hereinafter referred to as "Client."

WHEREAS, Client desires to employ WFS to furnish ongoing professional services in connection with Continuing Disclosure Services, hereinafter referred to as the "Project."

NOW, THEREFORE, in consideration of the mutual premises, covenants and conditions herein contained, the parties agree as follows:

SECTION I – BASIC SERVICES

WFS shall provide to the Client the basic services described in detail in "Exhibit A," Scope of Services, attached hereto and incorporated herein by this reference.

SECTION II – ADDITIONAL SERVICES

If authorized, WFS shall furnish additional services, which are in addition to the basic services. To the extent that the additional services have been identified in this Agreement, they are itemized in "Exhibit A" and will be paid for by Client as indicated in Section III hereof. As further additional services are requested by Client, this Agreement may be modified and subject to mutual consent by execution of an addendum by authorized representatives of both parties, setting forth the additional scope of services to be performed, the performance time schedule and the compensation for such services.

SECTION III – COMPENSATION

WFS shall be compensated for basic services rendered under Section I, as in accordance with the terms and conditions indicated in "Exhibit B," Fees for Services; and WFS will be compensated for any additional services rendered under Section II as more particularly described in a fully approved and executed addendum to this Agreement. If no addendum is executed, then WFS shall be compensated at its then-prevailing hourly rates for such additional services.

WFS may submit monthly statements for basic and additional services rendered. It is intended that Client will make payments to WFS within thirty (30) days of invoice. All invoices not paid within thirty (30) days shall bear interest at the rate of one and one-half (1½) percent per month or the then-legal rate allowed.

SECTION IV – INDEMNITY; INSURANCE REQUIRED

A. **Indemnity.** WFS shall indemnify and hold harmless Client, its officers, officials, directors, employees, designated agents, and appointed volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described herein, to the extent caused in whole or in part by the negligent acts, errors, or omissions of WFS, any subconsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence or willful misconduct of Client or Client's officers, agents, or employees.

The parties shall cooperate with each other with respect to resolving any claim, liability or loss for which indemnification may be required hereunder, including by making, or causing the indemnified party to make, all commercially reasonable efforts to mitigate any such claim, liability or loss. Neither party shall have an obligation to indemnify the other party for any losses to the extent they are caused, contributed to or exacerbated by the actions or failure to act of the indemnified party, including without limitation, the failure to take actions to mitigate such losses.

B. **Insurance.** Without in any way limiting WFS' liability pursuant to the indemnification described above, WFS shall maintain, during the term of this contract, the following insurance:

Coverage	Minimum Limits
General Liability Comprehensive General Liability, including: Premises and Operations Contractual Liability Personal Injury Liability Independent Contractors Liability (if applicable)	\$1,000,000 Combined Single Limit, per occurrence and general aggregate
Automobile Liability Comprehensive Automobile Liability (including owned, non-owned and hired autos)	\$1,000,000 Combined Single Limit, per occurrence
Workers' Compensation and Employer's Liability Workers' Compensation Insurance Employer's Liability	Statutory, \$1,000,000
Professional Liability Professional Liability Insurance	\$1,000,000 per claim and annual aggregate

SECTION V – INDEPENDENT CONTRACTOR STATUS

WFS shall be an independent contractor and shall have responsibility for and control over the details and means of providing the services under this Agreement.

SECTION VI – OWNERSHIP AND MAINTENANCE OF DOCUMENTS

WFS may rely upon the accuracy of any documents provided to WFS by Client. All documents, including without limitation, reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, schedules, spreadsheets, or other documents furnished by WFS pursuant to this Agreement, regardless of media (e.g., paper, electronic, magnetic, optical, Mylar, etc), are instruments of WFS' services in respect to this Project and not products. All such documents shall remain the property of WFS provided, however, that a copy of the final documents shall be made available to Client upon request. These documents are not intended, nor represented to be suitable for reuse by Client or any others on extensions of this Project or on any other project. These documents shall not be changed or reused without the prior written consent of WFS. Any modification or reuse without specific written verification and adoption by WFS for the specific purposes intended will be at user's sole risk. Client agrees to save, keep and hold harmless WFS from all damages, costs or expenses in law and equity including costs of suit and attorneys' fees resulting from such unauthorized reuse. Client further agrees to compensate WFS for any time spent or expenses incurred by WFS in defense of any such claim, in accordance with WFS' prevailing fee schedule.

Client acknowledges that its right to utilize the services and instruments of services of WFS will continue only so long as Client is not in default of the terms and conditions of this Agreement and Client has performed all obligations under this Agreement. Client further acknowledges that WFS has the unrestricted right to use the services provided pursuant to this Agreement, as well as to all instruments of service provided pursuant to this Agreement.

Client agrees not to use or permit any other person to use any instruments of service prepared by WFS, which are not final and which WFS does not sign. Client agrees to be liable for any such use of non-final instruments of service not signed, stamped or sealed by WFS and waives liability against WFS for their use.

WFS shall be entitled to rely upon, with no obligation to verify, the completeness and accuracy of all information, data, reports, studies, plans and specifications provided by Client or by Client's attorney(s), engineer(s), accountant(s), consultant(s) or employee(s) to Consultant. Client shall make no claim against WFS alleging that WFS should not have relied upon such information provided by Client to WFS.

WFS' records, documents, calculations, test information and all other instruments of service shall be kept on file in legible form for a period of not less than two (2) years after completion of the services covered in this Agreement.

SECTION VII – SUSPENSION OF SERVICES

Client may, at any time, by thirty (30) days' written notice, suspend further performance by WFS. All suspensions shall extend the time schedule for performance in a mutually satisfactory manner and WFS shall be paid for all services performed and reimbursable expenses incurred prior to the suspensions date.

SECTION VIII – TERMINATION

Either party may terminate this Agreement at any time by giving thirty (30) days' written notice to the other party of such termination. If this Agreement is terminated as provided herein, WFS will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of WFS covered by this Agreement, less payments of compensation previously made.

SECTION IX – COMPLIANCE WITH LAW

Each party hereto will use reasonable care to comply with applicable laws in effect at the time the services are performed hereunder, which to the best of their knowledge, information and belief apply to their respective obligations under this Agreement.

SECTION X – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assigns of the parties; but either party, without written consent of the other party, shall not assign it.

SECTION XI – ATTORNEYS' FEES

In the event that any judgment is entered in any action upon this Agreement, the party hereto against whom such judgment is rendered agrees to pay the amount equal to the reasonable attorneys' fees of the prevailing party in such action and that such amount may be added to and made a part of such judgment.

SECTION XII – ALTERNATIVE DISPUTE RESOLUTION

If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:

A. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

B. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually-acceptable neutral person not affiliated with either of the parties (the "neutral"), seeking assistance in such regard if they have been unable to agree upon such appointment within forty (40) days from the initial meeting. The parties shall share the fees of the neutral equally.

C. In consultation with the neutral, the parties will select or devise an alternative dispute resolution procedure ("ADR") by which they will attempt to resolve the dispute, and a time and place for the ADR to be held, with the neutral making the decision as to the procedure, and/or place and time (but unless circumstances require otherwise, not later than sixty (60) days after selection of the neutral) if the parties have been unable to agree on any of such matters within twenty (20) days after initial consultation with the neutral.

D. The parties agree to participate in good faith in the ADR to its conclusion, as designated by the neutral. If the parties are not successful in resolving the dispute through the ADR, then the parties may agree to submit the matter to binding arbitration or a private adjudicator, or either party may seek an adjudicated resolution through the appropriate court.

SECTION XIII – RECORDS

Records of WFS' direct labor costs, payroll costs, and reimbursable expenses pertaining to the Project covered by this Agreement will be kept on a generally recognized accounting basis and made available during normal business hours upon reasonable notice.

WFS' records will be available for examination and audit if and as required.

SECTION XIV – MISCELLANEOUS PROVISIONS

This Agreement is subject to the following special provisions:

A. The titles used in this Agreement are for general reference only and are not a part of the Agreement.

B. This Agreement shall be interpreted as though prepared by both parties.

C. Any provision of this Agreement held to violate any law shall be deemed void, and all remaining provisions shall continue in full force and effect.

D. This Agreement shall be interpreted under the laws of the State of California.

E. This Agreement comprises a final and complete repository of the understandings between the parties and supersedes all prior or contemporary communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement.

F. Any notices given pursuant to this Agreement shall be effective on the third business day after posting by first class mail, postage prepaid, to the address appearing immediately after the signatures below.

G. WFS shall not be liable for damages resulting from the actions or inactions of governmental agencies, including, but not limited to: permit processing, environmental impact reports, dedications, General Plans, and amendments thereto; zoning matters, annexations, or consolidations; use or Conditional Use Permits; project or plan approvals; and building permits.

H. WFS' waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any subsequent breach of any other term, condition, or covenant.

I. Client acknowledges that WFS is not responsible for the performance of services by third parties, provided that said WFS has not retained third parties.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions, and provisions above stated, as of the day and year first above written.

Willdan Financial Services

By: 

Scott Dippolito

Title: Vice President

Address: 27368 Via Industria, Suite 200
Temecula, California 92590

Date: 1/16/2020

City of Reedley

By: 

Paul Melikian

Title: Assistant City Manager

Address: 845 G. Street
Reedley, California 93654

Date: 1/15/2020

Exhibit A

SCOPE OF SERVICES

Task 1: Define Compliance Needs and Provide Implementation Schedule

Objective: Collect bond documents relating to the debt issue, including but not limited to, the formation documents, official statement, financial statements, Annual Continuing Disclosure Information Statement.

Description: WFS will review the bond documents and establish an annual reporting schedule.

Deliverable: Reporting schedule and instruction relating to online tracking systems.

Task 2: Compile Data Necessary to Complete Disclosure Report

Objective: Collect data and other third-party information required to be included in the Disclosure Report directly from Client, trustees, fiscal agents, state and county agencies and others.

Description: Review the information for accuracy and appropriateness.

Task 3: Report Preparation and Review

Objective: Create a draft of the Disclosure Report for review, as applicable.

Description: WFS will discuss with Client staff any relevant issues and provide suggestions regarding industry standards.

Deliverable: Disclosure Report.

Task 4: Report Dissemination

Objective: Provide timely Disclosure Report filings to the municipal market.

Description: Once authorization to disseminate has been received, WFS will post the report on EMMA and provide confirmation of the date and time of the posting.

Deliverable: Upload completed and approved Disclosure Report to EMMA, or the currently recognized public repository, and post on the tracking system at www.willdan.com.

Task 5: Notices of Occurrence of Listed Events and Supplemental Reporting

Objective: Provide timely Notice of Occurrence of Listed Events to the municipal market and supplement annual filings, as necessary.

Description: WFS will prepare Notices of Occurrence of Listed Events covering events enumerated in Rule 15c2-12(b). WFS will also prepare Supplemental Disclosure Reports, as necessary.

Deliverable: Upload Notices of Occurrence of Listed Events and Supplemental Disclosure Reports to EMMA, or the currently recognized public repository. Provide confirmation of the date and time of the posting.

Task 6: Investor Support

Objective: Present a unified message to the municipal market.

Description: WFS will respond to investor calls either directly or after consultation with your staff.

Deliverable: Investor Call Support.

Task 7: Ongoing Regulatory Education

Objective: Ensure communication with the secondary market meets current regulatory requirements and is mindful of enforcement actions and investor concerns.

Description: WFS will monitor information releases from the SEC and the MSRB regarding enforcement actions and regulatory changes. If requested, WFS will review draft disclosure documents for new issues.

Deliverable: Upon request.

Exhibit B

Client Responsibilities

The Client will submit to WFS:

- Financial and Operating Information, including but not limited to: Bond documentation, Adopted Budget, Audited and Unaudited Financial Statements (if audited financials are not available), bank statements/transactional data, and fund balances.
- Timely review of draft Disclosure Report.
- Authorization to disseminate Disclosure Report.
- All information relating to any change to the credit ratings or the occurrence of Listed Events as identified in the Continuing Disclosure Agreement or Certificate within three business days from the date of occurrence of such event.
- All Ratings Reports sent to Client by any Rating Agencies. Authorization for Rating Agencies, Trustees, and any other third parties to send information directly to WFS.

Exhibit B

FEES FOR CONTINUING DISCLOSURE REVIEW SERVICES

Disclosure Services	Fee
Base Remedial Continuing Disclosure Report Fee	\$1,450
Each Additional Year of Data Presented	\$350
Dissemination per Report	\$100
Notice of Occurrence of Listed Events	\$250 per Notice
Retrospective Continuing Disclosure Compliance Review	\$250 per bond issue/per year

The estimated fee for the disclosure review is approximately \$3,000 excluding the cost of any remedial filings. If, once the work has begun, we should determine that the actual fee is likely to differ by a significant amount, then we will inform you of such.

FEES FOR CONTINUING DISCLOSURE SERVICES

Disclosure Services	Fee
Engagement Fee for New Issues	\$250 per Issue
Base Annual Report Fee	
Revenue Bonds	\$1,450
Tax Allocation Bonds	\$1,950
Dissemination per Report	\$100
Incremental Fee per Parity Issue	\$450
Supplemental/Amended Reports	\$250 - \$950 per Report
Notice of Occurrence of Listed Events	\$250 per Notice
Annual Third-Party Expenses	At Cost
CDIAC Report Preparation and Filing	
CDIAC Yearly Status Report (due annually in October)	\$300 per Report
CDIAC Yearly Transparency Report (due annually in January) (while proceeds are outstanding)	\$950 per Report
CDIAC Yearly Transparency Report (due annually in January) (once proceeds are fully expended)	\$250 per Report

Billed invoices are required to be paid within 30 days.

Exhibit B

Reimbursable Expenses

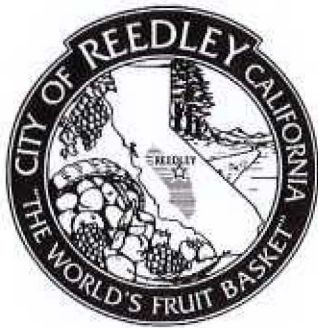
Any additional expense from outside services will be billed to the Client. Charges for meeting and consulting with counsel, the Client, or other parties regarding services not listed in the scope of work above will be at our then-current hourly rates (see "Hourly Rates" section).

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

Hourly Rates

Additional authorized services will be billed at WFS' then-current hourly consulting rates. Our current hourly rates are presented below.

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



REEDLEY CITY COUNCIL

- ☒ **Consent**
- ☐ **Regular Item**
- ☐ **Workshop**
- ☐ **Closed Session**
- ☐ **Public Hearing**

ITEM NO: 5

DATE: January 14, 2020

TITLE: APPROVE AND AUTHORIZE CITY MANAGER OR DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WILLDAN FINANCIAL SERVICES FOR ONGOING CONTINUING DISCLOSURE SERVICES PERTAINING TO CITY DEBT INSTRUMENTS

SUBMITTED: Paul A. Melikian, Assistant City Manager

APPROVED: Nicole R. Zieba, City Manager

RECOMMENDATION

Request Council approve and authorize City Manager or designee to execute a professional services agreement with Willdan Financial Services for ongoing continuing disclosure services pertaining to City debt instruments at an estimated cost of \$3,000 per year.

EXECUTIVE SUMMARY

Staff recommends that Willdan Financial Services be utilized to handle a majority of the City's ongoing required continuing disclosure activities at an approximate cost of \$3,000 per year. Continuing disclosure activities, required for all outstanding debt issuances, are currently performed by City staff. However, the increased complexity and number of requirements are problematic to manage going forward. Since it is critical that these complex disclosures are accurate and timely, more cities in California are electing to utilize specialized resources like Willdan to perform them, and maintain a reliable system to adequately manage continuing disclosure.

BACKGROUND

Governmental entities issuing bonds have an obligation to meet specific continuing disclosure standards set forth in agreements at the time of bond issuance to comply with Federal Securities and Exchange Commission (SEC) Rule 15c2-12. This rule, which is under the Securities Exchange Act of 1934, sets forth certain obligations of bond issuers to provide material event disclosures and annual financial information on a continuing basis, in order for investors to have access to this information in the secondary market.

In addition, SB 1029, which enacted California Government Code 8855(i), effective January 1, 2017, mandates tracking of state and local government borrowing and spending of bond proceeds in effort to increase transparency and improve public knowledge. SB 1029 requires state and local government debt issuers to report to the California Debt and Investment Advisory Commission (CDIAC) specified information about proposed and outstanding debt. For instance, anytime the City issues debt, it must submit a Report of Proposed Debt Issuance and a Report of Final Sale to the CDIAC. The City is also required to provide a separate annual report to CDIAC for each issue of outstanding debt.

The SEC's Municipalities Continuing Disclosure Cooperation initiative in 2014, along with other recent federal regulatory actions, have highlighted the importance of maintaining a reliable system to adequately manage continuing disclosure.

On November 12, 2019, the City Council adopted Resolution 2019-100 to a revised Capital Financing and Debt Management Policy that includes written guidelines, allowances, and restrictions to guide debt issuance practices, management of a debt portfolio, and adherence to various laws and regulations. The revisions incorporated requirements from SB 1029, which requires certain elements be included in a debt management policy adopted by local agencies in the State. In addition, the existing disclosure provisions were strengthened given the enhanced focus on disclosure and transparency since adoption of the original policy.

FISCAL IMPACT

The estimated annual cost of \$3,000 will have minimal impact to City funds, and will be paid proportionally from the funds that have outstanding debt.

ATTACHMENT

Professional Services Agreement