PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this ___ day of ______ 201__, between the CITY OF STOCKTON, a municipal corporation ("City"), and MGT of America, Inc., a corporation whose address is 2251 Harvard St. Ste 134, Sacramento, CA 95815, and telephone number is 916-595-2646, ("Consultant").

RECITALS

A. Consultant is qualified to and experienced in providing a Cost Allocation Plan and analysis of current allocation practices for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in Exhibit A. Consultant shall provide said services at that time, place and in the manner specified in Exhibit A.

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

3. **Term.** This Agreement shall commence on the date written above and shall expire on 3-31-2019; provided, however the parties may agree to change either the commencement or expiration date.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in Exhibit A. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed $ 127,800 with an annual cap of $42,600.

   a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

   b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may
be granted by City upon receiving a written request thirty (30) days in advance of said
time limitation. The City shall have no obligation or liability to pay any invoice for work
performed which the Consultant fails or neglects to submit within sixty (60) days, or any
extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All reports, drawings, designs, plan
review comments and work product of Consultant shall be adequate and sufficient to
meet the purposes for which they are prepared.

6. **Ownership of Work.** All reports, drawings, designs, plan review
comments, work product, and all other documents completed or partially completed by
Consultant in the performance of this Agreement shall become the property of the City.
Any and all copyrightable subject matter in all materials is hereby assigned to the City
and the Consultant agrees to execute any additional documents that may be necessary
to evidence such assignment. All materials shall be delivered to the City upon
completion or termination of the work under this Agreement. If any materials are lost,
damaged or destroyed before final delivery to the City, the Consultant shall replace
them at its own expense. Consultant shall keep materials confidential. Materials shall
not be used for purposes other than performance of services under this Agreement and
shall not be disclosed to anyone not connected with these services, unless the City
provides prior written consent.

7. **Changes.** City may request changes in the scope of services to be
provided by Consultant. Any changes and related fees shall be mutually agreed upon
between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this
Agreement, Consultant shall have the status of an independent contractor and
Consultant shall not be considered to be an employee of the City for any purpose. All
persons working for or under the direction of Consultant are its agents and employees
and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this
Agreement at any time by mailing a notice in writing to Consultant. The Agreement
shall then be deemed terminated, and no further work shall be performed by Consultant.
If the Agreement is so terminated, the Consultant shall be paid for that percentage of
the work actually completed at the time the notice of termination is received.

10. **Non-Assgnability.** The Consultant shall not assign, sublet, or transfer
this Agreement or any interest or obligation in the Agreement without the prior written
consent of the City, and then only upon such terms and conditions as City may set forth
in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and
hold harmless, the City and its officers, agents and employees from and against all
claims, losses, damage, injury, and liability for damages arising from, or alleged to have
arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City’s acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B and shall otherwise comply with the other provisions of Exhibit B.

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant:  
J. Bradley Burges  
MGT of America, Inc  
2251 Harvard St, Ste 134  
Sacramento, CA 95815  

To City:  
City Manager  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202

14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits.** Prior to the City’s execution of this Agreement and prior to the Consultant’s engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other
representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

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

23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF STOCKTON**

________________________________________
City Manager

ATTEST:

________________________________________
City Clerk

APPROVED AS TO FORM:

________________________________________
City Attorney

**CONSULTANT**

By: ________________________________
Signature

________________________________________
Print name

Title: ________________________________
EXHIBIT A

Scope of Consultant’s Services

Compensation
## Exhibit A

### MGT of America Response to the City of Stockton Request for Proposals PUR 15-007 for Cost Allocation Plan and Analysis

<table>
<thead>
<tr>
<th>CITY OF STOCKTON</th>
<th>MONTH 1</th>
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<th>MONTH 3</th>
<th>MONTH 4</th>
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<td>1. Initial Meeting</td>
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<td>2. Introductory Training</td>
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<td>3. Review and Preparation</td>
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<td>6. Develop Cost Plan Structure</td>
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<td>7. Distribute Costs</td>
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<td>10. Internal Review</td>
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<td>11. Provide Draft Plans</td>
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<td>12. Finalize Plans</td>
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<td>13. Prepare Indirect Cost Rate(s)</td>
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<td>15. Present Results</td>
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<td>16. Follow up Training, Guidance</td>
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<td>18. Project Recap Memo</td>
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### Services to be Provided by the City

We view this engagement as a partnership with the City of Stockton. As with any partnership, all participants play distinct roles. The **consultant's role** is to provide the study's operating framework, technical expertise, and institutional knowledge; perform all data processing; provide recommendations; and assist in the implementation process. The **client's role** is to provide specific information regarding current processes and activities.

### Project Assumptions

Our work plan and cost proposal for this project were developed based on several key assumptions about the project. We welcome the opportunity to meet with the City's project manager to review these assumptions, validate or adjust these assumptions based on more complete information, and adjust the work plan and/or cost proposal accordingly. Following are our key assumptions.

- The City will designate a project manager for this project. This person will function as the primary point of contact for the project, and coordinate and facilitate the reasonably prompt flow of information and communication between the City and MGT.

Page 12
Exhibit A
MGT of America Response to the City of Stockton
Request for Proposals PUR 15-007 for Cost Allocation Plan and Analysis

➢ MGT will have reasonable access to City staff during normal business hours, as well as timely access to city organizational data.

➢ The City will furnish MGT with all the necessary financial reports and other data necessary for the completion of the project. All costs and other data provided by the City will be considered accurate and valid.

Project Deliverables

The City will receive the following project deliverables.

➢ A cost allocation training session at project commencement. This session is designed to provide guidance and assistance to City personnel to ensure full understanding of the methodologies employed in the development of the cost allocation plans and indirect cost rate proposal including all aspects of the development of the cost allocation plans and rate computations.

➢ Draft OMB A-87 central services cost allocation plan and Full Cost allocation plan using a double step-down allocation methodology. This will also include the analysis requested related to solid waste franchise fees and utility billing analysis. Draft FHA ICRP.

➢ Final OMB A-87 cost allocation plan and Full Cost allocation plan using a double step-down allocation methodology. Final FHA ICRP.

➢ Specialty Analysis related to Section 2.2 (G) of the City’s RFP. Best practice indirect cost allocation for franchise fees, and AB 939 fee allocation, and the utility billing indirect cost allocation plan.

➢ Identification of opportunities to recover indirect costs from federal and/or state resources through interviews, meetings, questionnaires and review of the City’s revenue reports.

➢ Calculated fully burdened hourly rates for City staff. A specific number of hourly rates for calculation will to be determined at the outset of the study. This was not specifically called out in the City’s RFP, but our costing clients always appreciate and use this data for a variety of internal and external purposes.

➢ The option to lease MGT’s cost allocation software, for use in updating the Full Cost and OMB A-87 cost plans in future years. This option is not currently included in the costs provided, but can be discussed separately at an appropriate time.

➢ MGT’s Excel model for the preparation of the indirect cost rates and fully burdened hourly rates.

➢ Development of strategies and procedures to be used by City personnel that will optimize potential indirect cost recovery.

➢ Assistance to City personnel to integrate the cost allocation plan data into ongoing city operations.
Exhibit A

MGT of America Response to the City of Stockton
Request for Proposals PUR 15-007 for Cost Allocation Plan and Analysis

- Ongoing training, guidance, and assistance to City personnel to ensure full understanding of the methodologies employed in the development of the plans and the indirect cost rates.

- Assistance to identify additional uses of the cost allocation plans.

- Formal project status reports at intervals requested by City personnel (at least monthly).