

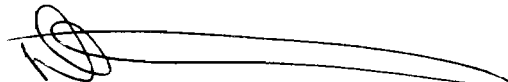
RESOLUTION NO. 2005-26

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING A CONTRACT WITH JONES HALL, A PROFESSIONAL LAW
CORPORATION TO PROVIDE DISCLOSURE COUNSEL SERVICES RELATIVE TO
ISSUANCE OF BONDS FOR EAST FRANKLIN CFD NO. 2002-1, CFD NO. 2003-1
(POPPY RIDGE), AND THE LAGUNA RIDGE CFD NO. 2005-1**

WHEREAS, the City of Elk Grove will be participating in the issuance of bonds for the East Franklin CFD No. 2002-1, CFD No. 2003-1 (Poppy Ridge) and the Laguna Ridge CFD No. 2005-1. These bonds will fund public infrastructure in the East Franklin Specific Plan area and the Laguna Ridge Specific Plan area.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager or his designee to execute a contract with Jones Hall, a Professional Law Corporation to provide disclosure counsel services relative to the issuance of bonds for the East Franklin Community Facilities District (CFD) No. 2002-1, CFD No. 2003-1 (Poppy Ridge) and the Laguna Ridge CFD No. 2005-1.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 2nd day of February 2005.



DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

CITY OF ELK GROVE



CONTRACT FOR
JONES HALL, A PROFESSIONAL LAW CORPORATION
CONSULTANT

Disclosure Counsel – CFD Bond Issuance



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CONSULTANT

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CONTRACT FOR

JONES HALL, A PROFESSIONAL LAW CORPORATION - CONSULTANT

THIS CONTRACT is made and entered into between City of Elk Grove, a Municipal Corporation ("City") and Jones Hall, a Professional Law Corporation ("Consultant"). City and Consultant agree as follows:

1. SCOPE, TERM AND STANDARDS:

A. **CONTRACT.** Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the SCOPE OF WORK AND STANDARDS FOR SERVICES, attached hereto and incorporated herein by this reference as Exhibit A, as requested by the City. Consultant shall, at its own cost, make any revisions of its own work as required by the City and re-do, at its own cost, any work which the City finds unsatisfactory due to Consultant's errors or omissions. Consultant represents and warrants that it has the qualifications, experience, and facilities to properly perform said services in a thorough, competent, and professional manner. This document shall be known as the "Contract." This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If either party to this contract deems that any portion of the Contract Documents shall be in conflict with any other portion, the Parties shall first attempt to informally reach an interpretation of those provisions so as to reconcile them. If after five (5) business days the Parties are unable to reach an informal resolution, the City shall issue in writing an interpretation resolving the conflicting provisions, which shall be provided to Consultant. The interpretation provided by the City shall become final and binding on the parties three (3) business days after it was provided to Consultant, and shall thereafter be an integrated term of this Contract and neither party shall be considered to be the drafter of the provision.

B. **CONSULTANT IS INDEPENDENT CONTRACTOR.** Consultant enters into this Contract as, and shall at all times remain as to the City, an independent contractor and not as an employee of the City. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. The Consultant shall have no power or authority except by this Contract to bind the City in any respect. All



employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the City. The personnel performing the services under this Contract on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Contract. Consultant shall not at any time or in any manner represent that it or any of its officers, or employees, or agents are in any manner officers, employees, of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. The City shall not be responsible, obligated, or liable in any way to pay any salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against the Consultant and/or the City by any such employees, agents, contractors or subcontractors, or any other person arising from performance of this Contract. Additionally, Consultant shall be solely responsible, obligated, and liable for any and/or all salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against Consultant and/or the City by any such employees, agents, contractors or subcontractors, or other person arising from performance of this contract, and Consultant shall indemnify, defend and hold harmless the City against such claims to the extent caused by Consultant's errors, omissions or negligence.

C. NO PAY FOR ADDITIONAL SERVICES WITHOUT WRITING.

Consultant shall not be compensated for any services rendered in connection with its performance of this Contract, which are in addition to those set forth herein or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Manager or the City Manager's designee (hereinafter "City Manager" shall include the City Manager's designee). Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's express written authorization signed by the City Manager is given to Consultant for the performance of said services.

D. TERM

Except as provided in Sections 6 and 19, below, this Contract shall terminate no later than December, 2007.

E. INTENDED USE OF CONSULTANT'S PRODUCT AND MATERIALS.

It is expressly intended by the parties that the Consultant's work product and materials, whether or not in writing, shall be used for the purposes of preparing an official statement (both preliminary and final) and other disclosure documents in connection with CFD bond issuance.

2. EMPLOYMENT STATUS OF PERSONNEL

A. AGENT OF CITY. For the purposes of performing the services provided for in this Contract, and for the purpose of giving official status to the performance thereof where necessary, every Consultant officer and employee engaged in the performance of any service under this Contract shall be deemed to be an agent of City while performing such services, provided that such services are within the



scope of this Contract and are purely municipal functions. Notwithstanding the agency relationship established by this subsection, City shall not be liable for any act or omission of any Consultant officer or employee performing the services provided for in this Contract, unless specifically provided for in this Contract.

B. EMPLOYEES OF CONSULTANT. Any persons employed by Consultant for the performance of services pursuant to this Contract shall remain employees of Consultant, shall at all times be under the direction and control of Consultant, and shall not be considered employees of City. All persons employed by Consultant to perform services pursuant to this Contract shall be entitled solely to the right and privileges afforded to Consultant employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to City employees.

C. INDEPENDENT INVESTIGATION. The Consultant agrees and hereby represents it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

D. COMPLIANCE WITH EMPLOYMENT LAWS. The Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

E. UNLAWFUL DISCRIMINATION PROHIBITED. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

3. TIME OF PERFORMANCE:

The services of Consultant are to commence upon execution of this Contract by City, and shall be undertaken and completed in a prompt and timely manner, in accordance with the Scope of Work referenced in Exhibit A.

4. COMPENSATION:

A. TERMS. Compensation to the Consultant shall be as set forth in Exhibit B attached hereto and made a part hereof. Total compensation to Consultant shall not exceed \$210,000.00 without the advance written consent of City.

B. TIME FOR PAYMENT. Payments shall be made within thirty (30) days after receipt of each invoice as to all undisputed fees. If City disputes any of Consultant's fees, it shall give written notice to Consultant within 20 days of receipt of an invoice of any disputed fees set forth on the invoice.



5. SUPERVISION, LABOR AGREEMENTS AND PERSONNEL:

A. CONSULTANT SUPERVISES PERSONNEL. The Consultant shall have the responsibility for supervising the services provided under this Contract, hiring of personnel, establishing standards of performance, assignment of personnel, determining and affecting discipline, determining required training, maintaining personnel files, and other matters relating to the performance of services and control of personnel. The City Manager may use any reasonable means to monitor performance and the Consultant shall comply with the City Manager's request to monitor performance.

B. LABOR RELATIONS. Consultant shall be responsible for negotiating and administrating all labor relations agreements and personnel rules and procedures between Consultant and its employees rendering services pursuant to this Contract.

C. PERFORMANCE NOT SUBJECT TO EMPLOYMENT AGREEMENTS.

The City acknowledges that the Consultant may be obligated to comply with bargaining agreements and/or other agreements with employees and that the Consultant is legally obligated to comply with these Contracts. It is expressly the intent of the parties and it is agreed by the parties that the Consultant's performance shall not in any manner be subject to any bargaining agreement(s) or any other agreement(s) the Consultant may have covering and/or with its employees.

D. APPROVAL OF STAFF MEMBERS. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City Manager of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance.

6. TERMINATION:

A. 90 DAYS NOTICE. Either Party, upon ninety (90) days written notice, may terminate this Contract, without cause, at any time. In the event of such termination, Consultant shall be compensated for non-disputed fees under the terms of this Contract up to the date of termination. If the City has advanced payment, Consultant shall refund unused fees as of the date of the termination.

B. OBLIGATIONS SURVIVE TERMINATION. Notwithstanding any termination of this Contract, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined. All of the indemnification, defense and hold harmless obligations in this Contract shall survive termination.



7. CHANGES:

The City or Consultant may, from time to time, request changes in the scope of the services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by both Parties in writing. Mutually agreed changes shall be incorporated in written amendments to this Contract. Any increase in the amount of Consultant's compensation and/or changes in Exhibit A and or Exhibit B must be authorized in advance by the City Manager.

8. PROPERTY OF CITY:

A. MATERIALS PREPARED EXCLUSIVE PROPERTY OF CITY.

It is mutually agreed that all materials prepared by the Consultant under this Contract are upon creation and shall be at all times the exclusive property of the City, and the Consultant shall have no property right therein whatsoever. City agrees that Consultant shall bear no responsibility for any modifications made to, or reuse of, the materials prepared by the Consultant if used for purposes other than those expressly set forth in the Intended Use of Consultant's Products and Materials section of this Contract. Consultant shall not disseminate any information or reports gathered or created pursuant to this Contract without the prior written approval of City including without limitation information or reports required by government agencies to enable Consultant to perform its duties under this Contract and as may be required under the California Public Records Act excepting therefrom as may be provided by court order. Consultant will be allowed to retain copies of all deliverables.

B. CONSULTANT TO DELIVER CITY PROPERTY.

Immediately upon termination, or upon the request by the City, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials and property of the City as may have been prepared or accumulated to date by the Consultant in performing this Contract. Consultant will be allowed to retain copies of all deliverables to the City.

9. CONFLICTS OF INTEREST

A. CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Contract. Consultant further covenants that in the performance of this Contract, Consultant shall take reasonable care to ensure that no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract. Consultant agrees to include language similar to this Section 9(A) in all contracts with subcontractors and agents for the work contemplated herein.



B. CITY understands and acknowledges that Consultant is, as of the date of execution of this Contract, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

10. CONFIDENTIAL INFORMATION

A. ALL INFORMATION KEPT IN CONFIDENCE. All information gained by Consultant in performance of this Contract shall be considered confidential and shall not be released by either party without the other's prior written authorization, including without limitation, that information which is a public record and subject to disclosure pursuant to the California Public Records Act Government Code §6250, et. seq. Neither the City nor the Consultant, its officers, employees, agents, or subcontractors, shall without written authorization given by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Contract or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary", provided Consultant or City gives notice to the other party of such court order or subpoena.

B. REIMBURSEMENT FOR UNAUTHORIZED RELEASE. If City or Consultant or any of its officer, employees, or subcontractors does voluntarily provide information in violation of this Contract, the other party has the right to reimbursement and indemnity from party releasing such information for any damages caused by the releasing party's, including the non-releasing party's attorney's fees and disbursements, including without limitation expert's fees and disbursements.

C. COOPERATION. City and Consultant shall promptly notify the other party should Consultant or City, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed thereunder or with respect to any project or property located within the City. City and Consultant each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. Consultant and City agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by Consultant or City. However, City and Consultant's right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

11. PROVISION OF LABOR, EQUIPMENT AND SUPPLIES

A. CONSULTANT PROPERTY. Consultant shall furnish all necessary labor, supervision, equipment, communications facilities, and supplies necessary to perform the services required by this Contract. City acknowledges that all equipment and other tangible assets used by Consultant in providing these services are the property of Consultant and shall remain the property of Consultant upon termination of this Contract.



B. SPECIAL SUPPLIES. City shall be responsible for supplying any special supplies, stationary, notices, forms or similar items that it requires to be issued with a City logo. All such items shall be approved by the City Manager and shall be provided at City's sole cost and expense.

12. COMPLIANCE WITH LOCAL LAW:

A. COMPLIANCE REQUIRED. Consultant shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Contract. Consultant shall observe and comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. Consultant shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the California Business and Professions Code, and Consultant shall provide a copy of the license(s) upon the request of the City. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of consultant to comply with this section.

B. PREVAILING WAGES. In the event it is determined that the Consultant is required to pay prevailing wages for the work performed under this Agreement, the Consultant shall pay all penalties and wages as required by applicable law.

13. REPRESENTATION:

Consultant agrees and represents that it is qualified to properly provide the services set forth in Exhibit A in a manner which is consistent with the generally accepted standards of Consultant's profession. Consultant further represents and agrees that it will perform these services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines.

14. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager. Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

15. ASSIGNABILITY:

Consultant shall not assign or transfer any interest in this Contract whether by assignment or novation. However, claims for money due or to become due Consultant from the City under this Contract may be assigned to a financial institution, but only with prior written consent of the City Manager. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City. The rights and benefits under this agreement are for the sole and exclusive benefit of the City and this Contract shall not be construed that any third party has an interest in the Contract.



16. INTEREST IN CONTRACT:

Consultant covenants that it shall take reasonable care to ensure that neither it, nor any of its employees, agents, contractors, subcontractors have any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder.

17. FINDINGS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order. However, Consultant shall not be deemed for any purposes a confidential employee of the City.

18. LIABILITY OF CONSULTANT:

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

19. INDEMNITY AND LITIGATION COSTS:

A. CONSULTANT IS SKILLED. Consultant represents it is skilled in the services necessary to perform the duties agreed to hereunder by Consultant, and City relies upon the skills and knowledge of Consultant. Consultant shall perform such duties consistent with the standards generally recognized as being employed by agencies or contractors performing similar service in the State of California.

B. CONSULTANT SHALL INDEMNIFY. Consultant is an independent contractor and shall have no authority to bind City nor to create or incur any obligation on behalf of or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Contract or is otherwise expressly conferred in writing by City. City and their elected and appointed officials, officers, agents, employees, and volunteers (individually and collectively, "Indemnities") shall have no liability to Consultant or to any other person for, and Consultant shall indemnify, defend, protect, and hold harmless the Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including reasonable attorneys' fees and disbursement, including without limitation expert's fees and disbursements (collectively "Claims"), which the Indemnities may suffer or incur or to which the Indemnities may become subject by reason of or arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or omission of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, occurring as a result of or allegedly



caused by the performance or failure to perform by Consultant of Consultant's service under this Contract or the negligent or willful acts or omissions of Consultant, its agents, officers, directors, or employees, in performing any of the services under this Contract, except such loss or damage which was caused by the active negligence or willful misconduct of the City.

C. LIMITS OF INSURANCE NOT LIMITING INDEMNIFICATION. If any action or proceeding is brought against the Indemnities by reason of any of the matters against which Consultant has agreed to indemnify the Indemnities as above provided, Consultant, upon notice from the City, shall defend the Indemnities at Consultant's expense. The Indemnities need not have first paid any of the matters as to which the Indemnities are entitled in order to be indemnified. The Consultant should assure that the insurance required to be maintained by Consultant under this Contract shall ensure Consultant's obligations under this paragraph, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of Sections 19(B) and 19(C) shall survive the expiration or early termination of this Contract.

20. CONSULTANT TO PROVIDE INSURANCE:

A. CONSULTANT SHALL MAINTAIN INSURANCE.

Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.

B. CONSULTANT TO PROVIDE EVIDENCE OF INSURANCE.

Prior to execution of this Contract and prior to commencement of any work, the Consultant shall furnish to the City, and the City must approve, original certificates of insurance and endorsements effecting coverage for all policies required by the Contract. The certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificates of insurance and endorsements shall be on standard Acord, Department of Insurance, and Insurance Services Office approved forms or on forms approved by the City. As an alternative to providing the City with approved forms of certificates of insurance and endorsements, the Consultant may provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by this Section. At anytime at the written request of the City, the Consultant agrees to furnish one or more copies of each required policy including declarations pages, conditions, provisions, endorsements, and exclusions. Such copies shall be certified by an authorized representative of each insurer. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant.

C. CITY MAY OBTAIN INSURANCE AT CONSULTANT'S EXPENSE.

In addition to any other remedy the City may have, if Consultant fails to maintain the insurance coverage as required in this Section 20, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct



the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

D. NO SUSPENSION OF INSURANCE. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City, except in the event of non-payment of premium, in which case no less than ten (10) days prior written notice by certified mail, return receipt requested, must be given to the City.

E. DEDUCTIBLES. Any deductibles exceeding five thousand dollars (\$5,000) must be declared to, and approved by, the City.

F. COVERAGES SHALL NOT LIMIT OBLIGATIONS. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

G. REQUIRED LIMITS. Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance or work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract.

(1) Workers' Compensation and Employer's Liability Insurance

Consultant shall maintain Workers' Compensation insurance as required by Labor Code Section 3700 of the State of California and Employer's Liability Act's, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.



(2) Commercial General and Automobile Liability Insurance.

The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence/five thousand dollars (\$5,000) medical per occurrence, and two million dollars (\$2,000,000) per policy aggregate. As an alternative to the per policy aggregate the Consultant may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least as broad as Insurance Services Office "occurrence form CG 00 01 (ed. 10/03)" covering commercial general liability or its equivalent, and Insurance Services Office "form CA 00 01 (ed. 06/92) covering automobile liability, Code 1 "Any Auto".

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate Certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the insurance requirements stated herein. Commercial general liability coverage shall include independent contractor's coverage, and the Consultant shall be responsible for assuring that all subcontractors are properly insured.

The commercial general and automobile liability insurance coverage shall also include, or be endorsed to include, the following:

a. Provision or endorsement naming the City and each of its officers, employees, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Contract; liability arising out of activities performed by or on behalf of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

b. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

d. Provision or endorsement stating that the 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.



(3) Professional Liability.

The Consultant and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. As an alternative, contractors and subcontractors of the Consultant may maintain in full force during the term of this Contract, professional liability insurance coverage not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) annual aggregate, provided the Consultant and the Consultant's insurance carrier both provide to the City a written statement to the effect that "There are no known claims, reserves, or circumstances that might impair the annual aggregate amount of Consultant's Professional Liability policy." If any professional liability policy is written on a "claims made" basis, such policy, and any succeeding policy must be specifically endorsed to show that "prior acts" occurring at anytime after the inception date of this Contract will be covered. Upon termination of the Contract with the City, the same professional liability insurance requirements will apply for a three (3) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.

21. RECORDS.

Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, parcels abated or serviced and other such information required by City that relates to the performance of services under this Contract. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

22. MISCELLANEOUS PROVISIONS:

A. NONDISCRIMINATION/NONPREFERENTIAL TREATMENT STATEMENT.

In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

B. UNAUTHORIZED ALIENS. Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. & 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this



contract, and should the Federal Government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the Sacramento Superior Court, federal diversity jurisdiction being expressly waived.

D. ASSIGNMENT OR SUBSTITUTION. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant by this Contract. In recognition of that interest, neither any complete nor partial assignment of this Contract, may be made by Consultant nor changed, substituted for, deleted, or added to without the prior written consent of City which consent shall not be unreasonably withheld. Any attempted assignment or substitution shall be ineffective, null, and void, and constitute a material breach of this Contract entitling City to any and all remedies at law or in equity, including summary termination of this Contract. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

E. ENTIRE CONTRACT. This Contract constitutes the entire Contract and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Contract and this Contract supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind without limitation.

F. AMENDMENTS. This Contract may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. CONSTRUCTION AND INTERPRETATION. Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. WAIVER. The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. SEVERABILITY. The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.



J. NOTICES. All invoices, payments, notices, demands, requests, comments, or approvals that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties (deemed to have been received three (3) business days after deposit in the U.S. Mail) at the following addresses:

City: City of Elk Grove
City Manager
8400 Laguna Palms Way
Elk Grove, CA 95758

Consultant Jones Hall, a Professional Law Corporation
650 California Street, 18th Floor
San Francisco, CA 94108

Each party may change the address at which it gives notice by giving ten (10) days advance, written notice to the other party.

K. AUTHORITY TO EXECUTE. The person or persons executing this Contract on behalf of Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

AGREED to this 24th day of January, 2005, by the parties as follows.

Approved as to form:

CONSULTANT

N/A
Counsel for consultant

By: David T. Fama
David T. Fama

Approved as to form:

CITY OF ELK GROVE

By: _____
Anthony B. Manzanetti, City Attorney

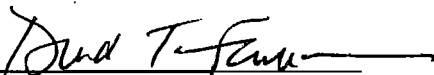
By: _____
John Danielson, City Manager



CERTIFICATE OF COMPLIANCE
WITH LABOR CODE § 3700

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 have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor C. §§1860, 1861.)

CONSULTANT



David T. Fama



EXHIBIT A

Scope of Work

The Consultant will perform the following:

- A. Prepare the Official Statement (both preliminary and final) and 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, as deemed necessary by the us for the proper exercise of our due diligence with respect to matters contained in the Official Statement, or when specifically requested by the City to attend;
- D. On behalf of the City, prepare the bond purchase contract pursuant to which the bonds will be sold to the underwriter and a continuing disclosure certificate of the Issuer to assist the underwriter with complying with the provisions of SEC Rule 15c2-12;

Render to the City and the Underwriter as the purchaser of the Bonds an opinion to the effect that (a) the Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended, and the Bond Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and (b) based upon the information made available to Disclosure Counsel in the course of its participation in the preparation of the Official Statement and without having undertaken to determine independently or assuming any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, but based on the basis of its participation in conferences with representatives of the District, the Underwriter and others, and its examination of certain documents, nothing has come to its attention which would lead it to believe that the Official Statement, as of its date and as of the date of issuance of the Bonds, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except that no opinion or belief need be expressed as to any appendices and any other financial and statistical data contained in the Official Statement).



EXHIBIT B

Compensation and Method of Payment

As is customary in the bond industry, fees are not charge by the hour pursuant to hourly rates, and are wholly contingent upon closing of the bond financing. A fee of \$40,000 will be charged for a first series of CFD bonds. If the financing is for a subsequent series of bonds for the same CFD, or a refunding of a series of previously issued bonds, the fee would be reduced by 10%. Fees for these engagements are charged on a contingent basis, payable only if and when the financing closes. The fees quoted are based upon what is perceive as a typical financing of the type anticipated; fees are sometimes reconsidered by mutual agreement of the parties based on unexpected additional work involved, and consultant will remain flexible as to concerns of the City affecting the fee on any particular financing. The fee is generally all-inclusive, that is, there will be no additional charges for secretarial, copying, travel or any such internal overhead items. Out-of-pocket charges of outside companies are billed at the rate incurred by consultant; however, these items are typically minimal or non-existent. Fees include all reasonable follow-up work done at the request of the City during the engagement, and the City pays only once, at closing of the financing.

If and when the bond financing closes, consultant will submit an invoice to the City and/or the Fiscal Agent and request that payment be made immediately upon closing from bond proceeds as one of the "costs of issuance" that are customarily paid within a day or two of closing. Consultant fees are charged on a contingent basis, payable only if and when the financing closes.

Under no circumstances will the aggregate amount paid under this Agreement exceed the amount specified in Section 4.A. above.

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-26**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 2nd day of February 2005 by the following vote:


AYES 4: COUNCILMEMBERS: Briggs, Leary, Scherman, Soares

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 1: COUNCILMEMBERS: Cooper





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**