



## ENGAGEMENT AGREEMENT

This non-exclusive professional services agreement dated July 23, 2018, is made by and between the Eagle Urban Renewal Agency, an independent body corporate and politic organized and existing under the laws of the state of Idaho, referred to as the "Agency or EURA" located at P.O. Box 1957 Eagle, ID 83616 AND Clearwater Financial, LLC located at PO Box 505 Eagle, ID 83616, referred to as the "Consultant."

1 **Services.** The Agency hereby employs the Consultant to perform the following services in accordance with the terms and conditions set forth in this agreement. These services will include:

a) **Bond, note, loan or other finance related services:**

- i. "Coordination Services" that consists of coordination of the process; method of sale advice and management; bidding of various services and financing packages; bond rating preparation and coordination; assistance with state-wide finance programs; and other related services as necessary.
- ii. "Financing Services" that consists of advising the Agency on bond structuring related items such as: rate, term, covenants, finance options, credit analysis, and other services as deemed necessary. This also includes if necessary, debt incurring capacity, tax impact analyses and other related calculations.
- iii. "Data Analytics" that consists of information of the Agency such as: population, assessed values, largest employers, largest rate payers, property/revenue diversification and other information needed for financing purposes.

b) **Time and material services:**

- i. "Planning Services" that consist of coordination with the Agency and its representatives; the creation and coordination of the finance team if necessary including bond counsel, trustees, paying agents, etc.
- ii. "Banking Services" that consist of assisting the Agency in bidding, maximizing, and understanding its various retail banking options.
- iii. "Budget and Audit Services" that consist of analyzing the Agency's current financial statements and providing advice to assist in the budgeting and auditing processes. This service is also linked to the planning process so that the Agency is accomplishing its long-term goals.
- iv. "Investment Services" that consist of assisting the Agency with analyzing investment options for municipal funds, reserve funds, bond proceeds, and other funds; developing investment policies; escrow verification; and other related services. This service is also linked to the planning process so that the Agency is accomplishing its long-term goals.
- v. "Contract Negotiation Services" that consist of assisting the Agency in bidding and analyzing necessary consultant services. This may include finance team members, banking services,

general contractors, real estate brokers and agents, architects, engineers, public service providers, auditors and accountants, and other necessary contracted services.

- vi. "Research and Analytic Services" that consists of all research, data collection, and analysis shall be for the Agency.

The Consultant will consult with the Agency and its representatives as needed to fulfill the terms of this agreement. All services to be provided by the Consultant will be performed pursuant to direction from the Board directly or via the Chairman of the EURA Board. Services will be performed with promptness and diligence and at a level of proficiency to be expected by a consultant with the background and experience that the Consultant has represented it has. The Agency shall provide such access to its information as may be needed to fulfill the terms of this agreement. Consultant represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required to perform the services under this Agreement. Consultant agrees to comply with all applicable Eagle City Code and any amendments thereto, the laws of the State of Idaho, any other applicable ordinances, and the applicable laws of all Federal, State, and local governments and/or regulatory agencies in the performance of the services hereunder.

**2. Terms of Agreement.** This agreement will begin when this agreement is fully executed by both the Agency and the Consultant. The time frames for delivery of services will be measured from the execution of this agreement. This agreement will end on September 30, 2018 with the intent of encompassing the project(s) and financing(s) the Agency is seeking to complete. After this initial period, this Agreement will be automatically renewed upon identical terms for successive one year periods through September 30, 2022 unless either party provides written notice of their desire not to renew this Agreement prior to the automatic renewal.

The cost for each separate 1(a) bond, note, loan or other finance related services issued is as follows:

**General Obligation Bonds/Notes/Loans:**

\$0 to \$999,999	\$10,000
\$1,000,000 to \$9,999,999	\$10,000 + 3.50 per 1,000 of bonds
\$10,000,000 and above	\$32,000 + 3.00 per 1,000 of bonds

**Revenue Bonds/Notes/Loans:**

\$0 to \$999,999	\$15,000
\$1,000,000 to \$9,999,999	\$15,000 + 5.00 per 1,000 of bonds
\$10,000,000 and above	\$60,000 + 4.00 per 1,000 of bonds

**Local Improvement Agency and Urban Renewal Tax Increment Bonds:**

\$0 to \$999,999	\$20,000
\$1,000,000 to \$9,999,999	\$20,000 + 5.00 per 1,000 of bonds
\$10,000,000 and above	\$70,000 + 4.00 per 1,000 of bonds

The cost for 1(b) time and material services is as follows:

The Consultant will charge a per hour rate of:

Base Rate	\$ 300
Discount	<u>(\$100)</u>
Discounted rate	\$ 200

The Agency will pay the Consultant a mobilization deposit of \$6,000 upon execution of this agreement. Thereafter, the cost associated with 1(a) services will be paid by the Agency to the Consultant once the financing is successfully sold, closed and proceeds are delivered to the Agency. The mobilization deposit of \$6,000 will be subtracted from

the final amount due to the Consultant at the closing of a financing. The Consultant will submit an invoice for payment to the Agency for services rendered at least 2 days before closing. The Agency will pay the Consultant the amount due as indicated within thirty (30) days after closing. These costs can be billed through the financing.

The Consultant will submit an invoice for payment to the Agency for 1(b) time and material services at least 2 days before the end of each calendar month for services rendered. The Agency will pay the Consultant the amount due as indicated within thirty (30) days.

Like the mobilization deposit, all 1(b) time and material services costs will be tracked and will be subtracted from the final amount due to the Consultant at the closing of a financing. If no financing is closed the mobilization and 1(b) time and materials services costs will be retained. If this Agreement is terminated prior to the closing of any financing, then Consultant will calculate the amount of Time and Materials services that have been performed up to the date of termination then deduct that total from the mobilization deposit paid and return the remaining funds to the EURA.

If additional expenses such as in-state and out-of-state travel, meals, communications, print, software, data sources, and other out-of-pocket expenses are required; these costs must first be approved by the Agency in writing and will be paid by the Agency to the Consultant. These costs can also be billed through the closing of a financing.

**3. Employment of Others.** The Agency may from time to time request that the Consultant arrange for the services of others. All costs to the Consultant for those services will be paid by the Agency, but in no event shall the Consultant employ others for these services without the prior written authorization of the Agency. The Consultant may arrange for the services of others in connection with the delivery of terms of this agreement. Any such costs will be paid by and are the sole responsibility of the Agency.

**4. Other Services.** If other services not mentioned in this contract are needed and agreed upon by both the Agency and the Consultant, pricing for other services shall be set forth by amendment to this agreement. Any other additional charges must be mutually agreed to by the Agency and the Consultant.

**5. Independent Contractor.** Both the Agency and the Consultant agree that the Consultant will act as an independent contractor in the performance of its duties under this contract. Accordingly, the Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of the Consultant's activities in accordance with this contract, including but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fee as required. Consultant shall provide, at Consultant's sole expense, all equipment, tools, materials, and/or supplies necessary to accomplish the services to be provided herein.

**6. Confidential Information.** The Consultant agrees that any information received by the Consultant during any furtherance of the Consultant's obligations in accordance with this contract, which concerns the personal, financial or other affairs of the Agency will be treated by the Consultant in full confidence and will not be revealed to any other persons, firms or organizations without the Agency's written consent. The Agency agrees that any information received in connection with the services of this agreement may represent trade secrets of the Consultant and will be treated by the Agency as Confidential Information. Confidential Information shall include all information furnished by the Consultant to the Agency or its representatives, whether orally, in writing, electronically or in other tangible form, and identified as confidential or proprietary at the time of disclosure by the Consultant or otherwise disclosed in a manner such that a reasonable person would understand its confidential nature. Where the Confidential Information has not been reduced to written or other tangible form at the time of disclosure, and such disclosure is made orally or visually, the Consultant agrees to identify it as confidential or proprietary at the time of disclosure. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the Consultant shall remain the property of Consultant and shall contain any and all confidential or proprietary notices

or legends which appear on the original. The Agency shall not disclose or reveal any Confidential Information to any person other than its representatives who are actively and directly participating in the activities related to the intent of this agreement or who otherwise need to know the Confidential Information for the purpose of the intent of this agreement. In addition, prior to any such disclosure, such representatives shall be made aware of the confidential nature of the confidential information and shall be bound by the non-disclosure terms of this agreement. In any event, the Agency shall be responsible for any breach of these terms by any of its representatives. The confidential nature of the provided services and information does not terminate with this agreement. Notwithstanding all of the foregoing, the Agency is a public entity and subject to the open meeting and public records laws of the State of Idaho. If the Idaho public records laws require the disclosure of Confidential Information or other information received from or generated by Consultant, it is understood by the Consultant that this information will be shared as the law dictates and is necessary.

**7. Non-Competition.** During the term of this agreement, the Consultant will not engage in business or other activities which are, directly or indirectly, competitive with the activities of the Agency.

**8. Results Not Guaranteed.** The Consultant primary service is to provide added value information and analysis related to the services described above. Much of the information and analysis is based upon historical performance information. While this information may be useful in understanding past performance, past performance is no guarantee of future results. Furthermore, other information and events outside of the services provided by the Consultant may have a significant impact on any results. The Consultant does not guarantee any results.

**9. Assignment.** The Services to be performed by the Consultant are specific in nature and the Agency has engaged the Consultant as a result of the Consultant's expertise relating to such Services. The Agency and the Consultant, therefore, agree not to assign, sell, transfer, delegate or otherwise dispose of this agreement or any right, duty or obligation under this agreement without prior written consent of the other Party.

**10. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho. The Parties consent to the exclusive jurisdiction and venue in the courts of Ada County, Idaho.

**11. General.** This agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. This agreement may not be modified other than by amendment in writing executed by the Agency and the Consultant.

**12. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**13. Insurance and Worker's Compensation.** Consultant shall maintain worker's compensation insurance as required and in accordance with Idaho law. Consultant shall at all times during its Contract or Agreement with EURA maintain liability insurance in which EURA shall be named as an additional insured in the minimum amounts as follows: General Liability (\$2,000,000.00) per incident or occurrence, Professional Liability/errors and omissions (\$1,000,000.00) aggregate, automobile liability insurance (\$1,000,000.00) per incident or occurrence. The limits of insurance shall not be deemed a limitation of the covenants to indemnify, save and hold harmless EURA as set forth herein.

**14. Proprietary Rights.** All data, materials, reports, memoranda, and other documents or products developed under this Agreement for the EURA, whether finished or not, shall become the property of EURA, shall be forwarded to EURA at its request, and may be used by EURA for its business purposes. EURA agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Consultant harmless therefore.

**15. Notice.** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

**To EURA:**

Jason Pierce, Chairman  
Eagle Urban Renewal District  
Eagle City Hall  
660 E. Civic Lane  
Eagle, Idaho 83616

**To Consultant:**

Cameron Arial, Manager  
Clearwater Financial, LLC  
1996 E. Handel Ct.  
Meridian, Idaho 83646

The Parties may change their contact information by providing written notice of the changes to the other party.

**16. Indemnification.** To the extent permitted by Idaho Law the parties agree as follows:

Consultant agrees to indemnify, defend, and hold harmless EURA and its officers, agents, consultants, and employees from and against any and all liability, claims, losses actions, or judgments, including any reasonable costs and attorney's fees incurred therein, for actual damages, losses, or injury to EURA, its persons or property related to the willful, uncured breach by Consultant of its material obligations under this Agreement or negligent or unlawful act, error or omission arising out of any performances or activities of Consultant or its employees under this Agreement.

EURA agrees to indemnify, defend, and hold harmless Consultant and its officers, agents, consultants, and employees from and against any and all liability, claims, actions, or judgments, including any reasonable costs and attorney's fees incurred therein, for actual damages, losses, or injury to Consultant or its employees related to the willful, uncured breach by EURA of its material obligations under this Agreement or negligent or unlawful act, error or omission arising out of any performances or activities of EURA or its employees under this Agreement.

**17. Nonwaiver.** Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

**18. Severability.** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

**19. Attorney Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

**20. Disputes.** In the event that a dispute arises between EURA and Consultant regarding application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement in writing of the specific dispute within ten (10) days after such dispute arises. Nothing contained herein shall impair the right of termination set forth in paragraph 21. If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise as the parties may mutually agree before resorting to litigation. Should the parties be unable to resolve the dispute to their mutual satisfaction within ninety (90) days from when the notice of dispute is provided, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

**21. Termination of Agreement.** Each party reserves the right to terminate this Agreement at any time, for any reason or no reason, by giving at least thirty (30) days' notice in writing to the other party. If this Agreement is

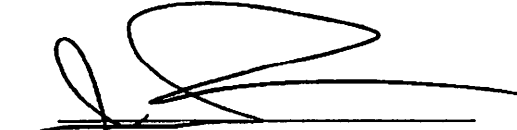
terminated as provided herein, Consultant shall be paid an amount for all time and materials work that has been satisfactorily completed as of the date the notice of termination in accordance with the terms of this Agreement. Upon termination Consultant shall transfer, assign and make available to EURA all property and materials in Consultant's possession or control belonging to and paid for by EURA.

22. Signatures. Both the Agency and the Consultant agree to the above contract.

Signed by Eagle Urban Renewal Agency

Name: Jason Pierce


Title: Chairman

  
Date: 7/23/18

Signed by Clearwater Financial

Name: Cameron Arial

Title: Member/Manager

  
Date: July 23 2018

Attest: Ellen Smith  
Ellen Smith, EURA Secretary