

**CONTRACT FOR CONSULTING SERVICES
BETWEEN CITY OF PENSACOLA AND
RBC CAPITAL MARKETS, LLC**

THIS CONTRACT ("Contract") is made this ____ day of _____, 2021, by and between the City of Pensacola ("City"), a Florida municipal corporation created and existing under the laws of the State of Florida, located at 222 W. Main Street, Pensacola, Florida 32502, and RBC Capital Markets, ("Consultant"), a limited liability company authorized to do business in Florida, located at 100 2nd Ave, Suite 800, Saint Pete, FL 33701, (the City and Consultant collectively referred to hereinafter as the "Parties").

WITNESSETH:

WHEREAS, the City desires specific consulting services relating to Municipal Advisor; and

WHEREAS, the Consultant submitted to the City a statement of work, fees information, insurance requirements, quote documents, and other information related to the consulting services requested (all such documentation hereinafter referred to as the "Proposal"), attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the City has accepted the Proposal; and

WHEREAS, the Parties desire the Consultant to perform the services as described in the Proposal and pursuant to the terms and conditions of this Contract; and

WHEREAS, the Parties desire to enter into this Contract;

NOW, THEREFORE, in consideration of the work to be performed and the payment for the performance of the work, of the mutual covenants and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

Section 1. Recitals.

The recitals contained above are true and correct and are incorporated into this Contract.

Section 2. Consultant's Obligations.

The Consultant shall perform all work and services described in, and in accordance with, the Contract. The Consultant warrants that all services and materials utilized will comply with the Contract requirements and any City specifications provided. Services provided by the Consultant shall be consistent with the practices and standards of the Consultant's profession. The City or its duly authorized representative shall at all times have full opportunity to inspect any materials to be furnished and the work to be done under this Contract. The Consultant shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to the performance of this Contract. The

Consultant shall be responsible for and shall indemnify the City against all damages or loss caused by fire, theft, or other casualty to materials, tools, equipment, and consumables left on City property by the Consultant.

Section 3. Term of Contract.

Subject to the right of termination for cause or convenience, the term of this Contract shall be as specified in the attached Quote Documents and Proposal.

Section 4. Payment.

The Consultant agrees to perform all work and services in Section 2 at the rates, costs, and any not-to-exceed amount provided for in the attached Proposal and Attachment B, Payment Schedule. The amount will be paid by the City based on invoices submitted by Consultant and payments approved by the City, only after written acceptance by the City pursuant to the Contract. Such payment shall be in accordance with the Florida Prompt Payment Act. In the event that the Consultant does not fully perform its obligations under the Contract, the City reserves the right to withhold payments for work not performed, to engage an alternative Consultant to complete work not performed, and to withhold such amounts as may be required to hold the City harmless from any claims or damages, direct, indirect or consequential, that may be sustained on account of the Consultant's acts or omissions in the performance of this Contract.

Section 5. Bond.

Consultant shall provide all bond(s) as required in the Contract. Should the City in the City's sole discretion at any time deem any of the sureties upon such bond to be unsatisfactory or if for any reason such bond shall cease to be adequate security for the City, the Consultant shall within five (5) days of written notice from the City furnish a new or additional bond in full sum and satisfactory to the City. No payment shall be deemed to be due or to be made to the Consultant unless and until such new or additional bond shall be furnished and approved in writing by the City. The premium and all expenses associated with such new or additional bond shall be paid by, and the sole responsibility of, the Consultant.

Section 6. Performance Schedule.

The Consultant shall commence and complete all work and services pursuant to the Contract.

Section 7. Necessary Approvals.

Consultant shall procure all permits, licenses, and certificates and any approvals in performance and completion of this Contract as may be required by federal, state, and local laws, ordinances, rules, and regulations, and in accordance with the Contract.

Section 8. No Waiver.

No waiver, alterations, consent or modification of any of the provisions of the Contract shall be binding unless in writing and signed by the Mayor or his/her designee.

Section 9. Governing Law.

This Contract is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions, or proceedings arising out of this Contract.

Section 10. Venue.

Venue for any claim, actions, or proceedings arising out of this Contract shall be Escambia County, Florida.

Section 11. No Discrimination.

Consultant shall not discriminate on the basis of any class protected by federal, state, or local law in the performance of this Contract.

Section 12. Assignment.

The rights and privileges conferred by this Contract shall not be assigned or transferred without the written consent of the City, which consent shall not be unreasonably withheld.

Section 13. No Other Agreements.

The Parties agree the Contract contains all the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either Party.

Section 14. Remedies for Failure to Perform or Breach of Contract.

The City reserves the right to seek all remedies available under law in the event of a failure to perform or other breach of this Contract by the Consultant, and the failure of the City to employ a particular remedy shall not be regarded by the Parties as a waiver of that or any other available remedy.

Section 15. Termination for Convenience.

The City may terminate this Contract without cause upon thirty (30) days prior written notice.

Section 16. Public Records Act.

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference.

Section 17. Mandatory Use of E-Verify System.

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed and sealed the day and year first above written.

CONSULTANT

CITY OF PENSACOLA, FLORIDA

RBC Capital Markets, LLC
(Consultant's Name)

Mayor, Grover C. Robinson, IV

By _____
Member

Attest: _____
City Clerk, Ericka L. Burnett

Julie Santamaria
(Printed Member's Name)

Approved as to Substance:

By: _____
Member

Amy Lovoy, Finance Director

Thomas Carlson
(Printed Member's Name)

Legal in form and execution:

(SEAL)

City Attorney

Attachment "A"

PUBLIC RECORDS: Consultant shall comply with Chapter 119, Florida Statutes. Specifically, Consultant shall:

- A.** Keep and maintain public records required by the City to perform the service.
- B.** Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C.** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if Consultant does not transfer the records to the City.
- D.** Upon completion of the Contract, transfer, at no cost, to the City, all public records in possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Contract, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Contract, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Consultant to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Contract by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE PUBLIC RECORDS COORDINATOR AT:

THE OFFICE OF THE CITY CLERK, (850) 435-1715

PUBLCRECORDS@CITYOFPENSACOLA.COM

222 WEST MAIN STREET, PENSACOLA, FL 32502

Attachment "B"
PAYMENT SCHEDULE

1. Compensation of Consultant/Vendor/Contractor will be based on (check the appropriate method):
 - ☐ Lump Sum/Flat Fee
 - ☐ Hourly Rate(s)
 - X Other: Greater of calculation based on dollar per thousand of debt issued or minimum fee

2. Compensation of Consultant/Vendor/Contractor as described in #1 above will be as follows (attach an additional page if necessary):
 - ☐ Lump Sum/Flat Fee: _____
 - ☐ Hourly Rate(s) are: _____
 - X Other: See Attachment A of Proposal

3. Costs to be reimbursed by the City include (list reimbursable costs or attach reimbursable cost schedule):
See Attachment A of Proposal

4. Invoice(s) of Consultant/Vendor/Contractor will be paid as follows (check the appropriate method):
 - X One-time, lump sum at the end of the work/project
 - ☐ After submission of monthly or periodic invoices
 - ☐ Other: _____

EXHIBIT A

PROPOSAL

DRAFT



MUNICIPAL ADVISOR AGREEMENT

May 11, 2020

Ms. Amy Lavoy
Finance Director
City of Pensacola
222 West Main Street
Pensacola, FL 32502

Dear Ms. Lavoy:

1. **Retention of RBC Capital Markets, LLC.** RBC Capital Markets, LLC ("RBC CM") appreciates the opportunity to serve as municipal advisor to the City of Pensacola, Florida (the "Client" or "you") in association with the issuance of obligations in the form of municipal securities or loan(s) (the "Obligations"). Upon your acceptance, this engagement letter (the "Agreement") will serve as our mutual agreement with respect to the terms and conditions of our engagement as your municipal advisor, effective on the date this Agreement is executed by the Client (the "Effective Date").
2. **Scope of Services for Municipal Securities.** RBC CM is engaged by the Client as its municipal advisor to provide the services set forth below (the "Scope of Services") regarding the Obligations:
 - (a) Analyze the financing and structuring alternatives available to the Client if and as requested by the Client, taking into account its borrowing capacity, future financing needs, policy considerations, and such other factors as we deem appropriate to consider.
 - (b) Recommend a plan for the issuance of the Obligations, consistent with the goals and needs of the Client, that may include: (1) the type of Obligations; (2) the date of issue; (3) principal amount; (4) interest structure (e.g., fixed rate, variable rate, etc.); (5) interest payment dates; (6) a schedule of maturities; (7) any early redemption options; (8) security provisions; (9) method of sale (e.g., public sale, direct purchase by a bank or other investor, etc.); (10) as applicable, the investment of proceeds of the Obligations via state and local government obligations (SLGS), competitively bid open market securities or guaranteed investment contracts; and (10) other matters that we consider appropriate to best serve the Client's interests.
 - (c) Advise you of current conditions in the relevant debt market, market supply and demand issues, and other general market information and economic data which might reasonably be expected to influence interest rates, sale or bidding conditions or timing of issuance.
 - (d) Organize and coordinate the financing team selected by you. If requested, we will recommend qualified paying agents, escrow agents and verification agents, as the particular transaction may require, each of whom will be retained and compensated by you. We will assist in the preparation of soliciting underwriter proposals upon request and provide assistance to you for the hiring of the underwriter(s).
 - (e) Work with counsel on the transaction, including bond counsel whom you retain, who will be recognized municipal bond attorneys, whose fees will be paid by you, and who will prepare the proceedings, provide legal advice concerning the steps necessary to be taken to issue the Obligations, and issue an unqualified opinion (in a form standard for the particular type of financing) approving the legality of the Obligations and (as applicable) tax exemption of the interest paid thereon. In addition, bond counsel, disclosure counsel or underwriter's counsel (as applicable) will issue an opinion to the effect that the disclosure document does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Generally, working with counsel will mean coordinating with the attorneys and reviewing as municipal advisor such counsel's preparation of appropriate legal proceedings and documents, including documents concerning any required election.

- (f) As applicable, assist in the Client's preparation of any preliminary official statement and the official statement or equivalent document as the particular transaction may require (such as a private placement memorandum).
- (g) Make recommendations as to the need for credit rating(s) for the proposed Obligations and, should the Client seek a rating, coordinate the process of working with the rating agency or agencies and assist in the preparation of presentations as necessary.
- (h) Analyze the value and costs of obtaining municipal bond insurance, a liquidity facility or other credit enhancement for the Obligations and, should the Client seek any such credit enhancement, coordinate the process and assist in the preparation of presentations as necessary.
- (i) Attend meetings of governing bodies of the Client, its staff, representatives or committees as requested.
- (j) Coordinate with all parties to consummate the sale and delivery of the Obligations in a timely manner.
- (k) After closing, deliver to the Client and the paying agent(s) definitive debt records, including a schedule of annual debt service requirements on the Obligations.
- (l) You acknowledge that advice and recommendations involve professional judgment on our part and that the results cannot be, and are not, guaranteed. Further:
 - i. Unless otherwise provided in the Scope of Services described herein, RBC CM is not responsible for the information included in any preliminary or final official statement, or for certifying as to the accuracy or completeness of any preliminary or final official statement, other than with respect to any information about RBC CM provided by RBC CM for inclusion in such documents.
 - ii. The Scope of Services does not include tax, legal, accounting or engineering advice with respect to any Issue or in connection with any opinion or certificate rendered by counsel or any other person at closing, and does not include review or advice on any feasibility study.
 - iii. The Scope of Services does not include providing advice or services with respect to investment advisory services, brokerage services or derivative products.
 - iv. If the Client designates RBC CM as its independent registered municipal advisor ("IRMA") pursuant to the Municipal Advisor Rule (the "MA Rule") of the Securities and Exchange Commission (the "SEC") with respect to the activities and aspects described in the Scope of Services, the Client agrees to disclose to RBC CM the existence of any such IRMA designations. Any reference to RBC CM, its personnel and its role as IRMA in the written representation of the Client contemplated under the MA Rule is subject to prior approval by RBC CM. RBC CM is not responsible for verifying that it is independent (within the meaning of the MA Rule as interpreted by the SEC) from any party.

3. Scope of Services for Loans with Bank or Governmental Agency/Authority.

- (a) As requested, analyze the risks and benefits of a loan with a bank or governmental agency/authority loan versus the issuance of municipal securities via the public debt markets.
- (b) Recommend a plan for the structure of the loan, including: (1) the debt repayment structure and maturity dates; (2) loan amount; (3) interest structure (e.g., fixed or variable rate, etc.); (4), payment dates and early redemption dates, if applicable; (5) security provisions; and (6) as applicable, the investment of loan proceeds via state and local government obligations (SLGs), competitively bid open market securities or guaranteed investment contracts; and (7) other matters that we consider appropriate to best serve the Client's needs.
- (c) Recommend: (1) lenders who are or may be active in the market for tax exempt municipal loans; (2) participate in the drafting for your review and approval appropriate request for bids or qualification for lenders to submit bids to provide a loan; and (3) facilitate the distribution of requests for bids or qualifications.

- (d) Analyze and negotiate the term sheets obtained and advise you and recommend the terms that meet your financial objectives.
- (e) Attend meetings of governing bodies of the Client, its staff, representatives or committees as requested.
- (f) Coordinate with all parties to consummate the closing of the loan in a timely manner.

4. Amendment to Scope of Services.

The Scope of Services may be changed only by written amendment or supplement to the Scope of Services described herein. The parties agree to amend or supplement the Scope of Services described herein promptly to reflect any material changes or additions to the Scope of Services.

5. RBC CM's Regulatory Duties When Servicing the Client under MSRB Rule G-42.

RBC CM must make a reasonable inquiry as to the facts that are relevant to the Client's determination whether to proceed with a course of action, or that form the basis for any advice provided by RBC CM to the Client. Municipal Securities Rulemaking Board ("MSRB") Rule G-42 also requires that RBC CM undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. RBC CM is also required to use reasonable diligence to know the essential facts concerning the Client and concerning the authority of each person acting on the Client's behalf. If the review of a recommendation of another party is requested by the Client and is within the Scope of Services of the Agreement, RBC CM must determine based on information obtained through reasonable diligence, whether the proposed securities transaction or financial product is or is not suitable for the Client. To the extent our services involve advising you with respect to a bank loan or a loan with a governmental agency or authority, certain rules and regulations of the Securities and Exchange Commission and MSRB may not apply to the activities of RBC CM.

The Client agrees to assist RBC CM in carrying out these regulatory duties, including providing to RBC CM accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties. In addition, the Client agrees to notify RBC CM if the Client requests that RBC CM review any recommendation of a third party.

6. Term of this Engagement.

The term of this Agreement begins on the Effective Date and ends, unless earlier terminated as provided below, on 9/30/2023 (the "Termination Date"). The Agreement shall automatically renew for subsequent three year periods unless terminated as described in this section. This Agreement may be terminated with or without cause by either party upon the giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination.

7. Compensation.

The fees due to RBC CM hereunder shall be as set forth in Appendix A hereto. In addition, RBC CM shall be entitled to reimbursement of expenses incurred in connection with any services provided hereunder as set forth in Appendix A.

8. Limitation of Liability.

- (a) In the absence of willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of RBC CM or any of its associated persons, RBC CM and its associated persons shall have no liability to the Client for any act or omission in the course of, or connected with, rendering services hereunder, or for any error of judgment or mistake of law, or for any loss arising out of any issuance of any Obligations, or investments of bond proceeds, or for any financial or other damages resulting from the Client's election to act or not to act, as the case may be, contrary to any advice or recommendation provided by RBC CM to the Client. No recourse shall be had against RBC CM for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of the Client arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with any Issue or otherwise relating to the tax treatment of any Issue, or in connection with any opinion or certificate rendered by counsel or any other party. Nothing in this Agreement shall be deemed to abrogate or otherwise reduce any of the fiduciary or other duties of RBC CM, nor otherwise affect any rights of client under any applicable law.

(b) Official Statement. Client acknowledges that it is responsible for the contents of any preliminary official statement, official statement or any other document related to the issuance of the Obligations as contemplated herein ("Offering Documents"). Client will take all reasonable steps to ensure that the governing body has reviewed and approved the contents of the Offering Documents.

9. Required Disclosures.

MSRB Rules G-10 and G-42 require that RBC CM provide you with disclosures of pertinent regulatory information, potential and actual conflicts of interest and information regarding certain legal events and disciplinary history. Such disclosures are provided in RBC CM's Disclosure Statement delivered to the Client together with this Agreement.

10. Know Your Client, Anti-Money Laundering, and Terrorist Financing Rules and Regulations.

The Client agrees to provide information to satisfy "Know Your Client," "Anti-Money Laundering" and Terrorist Financing" rules and regulations, in each case, in accordance with RBC CM's requirements.

11. Waiver of Jury Trial.

EACH PARTY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES. PARTIES AGREE TO WAIVE CONSEQUENTIAL AND PUNATIVE DAMAGES.

12. Choice of Law.

This Agreement shall be construed and given effect in accordance with the laws of Florida.

13. Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of the Client and RBC CM, their respective successors and permitted assigns; provided however, neither party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

14. Entire Agreement.

This instrument, including all appendices hereto, contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. This Agreement may not be amended, supplemented or modified except by means of a written instrument executed by both parties.

15. Severability.

If any provision of this Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any provisions of any constitution, statute, rule or public policy, or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

16. No Third Party Beneficiary.

This Agreement is made solely for the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

17. Authority.

The undersigned representative of the Client represents and warrants that she has full legal authority to execute this Agreement on behalf of the Client. The following individual has the authority to direct RBC CM's performance of its activities under this Agreement on behalf of the Client:

Amy Lavoy, Finance Director

18. Counterparts.

This Agreement may be executed in counterparts, each of which shall be an original, but which taken together, shall constitute one and the same instrument.

RBC CAPITAL MARKETS, LLC

By: _____
Name: Julie Santamaria
Title: Director
Date: 5/11/2021

ACCEPTANCE

ACCEPTED THIS 1ST DAY OF JUNE, 2021

CITY OF PENSACOLA

BY: _____
AMY LAVOY, FINANCE DIRECTOR

ATTEST:

Appendix A

FEE SCHEDULE

In consideration for the services rendered by RBC CM, the Client agrees that RBC CM's fee for each issue of Obligations or loan will be as follows:

1. In connection with the issuance of debt, RBCCM shall be paid at closing in accordance with the following schedule, with a minimum fee of \$7,500 per transaction.

<u>Amount of Obligations/Loan Issued</u>	<u>Fee per \$1,000</u>
\$1 - \$40,000,000	\$1.75
\$40,000,001 and Higher	\$1.25

2. The parties acknowledge that there may be special projects requested by the Client which may not result in the issuance of Obligations. Fees for these special services shall be negotiated on a case by case basis and shall be agreed to in writing by both parties.

RBC CM will bill the Client at closing a fee for each issue of Obligations or loan calculated on the above schedule as well as any actual "out-of-pocket" expenses incurred on behalf of the Client. Such expenses will be reimbursed subject to Client approval.