

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Fieldman, Rolapp and Associates, Inc., a California Corporation, whose address of record is 19900 MacArthur Blvd., Suite 1100, Irvine, California 92612 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to prepare a General Obligation Bond ballot measure and issue bonds; and

WHEREAS, Consultant represents that it possesses the professional skills to provide financial advisory services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the financial services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Finance Officer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A".

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City,

Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

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 Agreement, and should any agency or instrumentality of the federal or state government, including the courts, 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.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Hoes 4.10.18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
FIELDMAN, ROLAPP AND
ASSOCIATES, INC.,
A California Corporation

BY: Anna Sarabian
(Signature)

ANNA SARABIAN
(Typed Name)

Its: Principal
(Title)

BY: [Signature]
(Signature)

Thomas G. Schwan
(Typed Name)

Its: Senior Vice President
(Title)

Taxpayer I.D. No. 95-292-0834

ADDRESS: 19900 MacArthur Blvd.,
Suite 100, Irvine 92612

TELEPHONE: 949-660-7300

FAX: 949-~~474~~-8773

E-MAIL: asarabian@feldman.com



SCOPE OF SERVICES

This Scope of Services (the "Scope") and proposed Not-to-Exceed Amount is for the specific project: 2018 Ballot Measure and potential subsequent bond financing(s).

Our Scope of Services is comprised of two phases, pre-election and post-election. For a potential November 2018 bond election, preparation is required well in advance of the election date. As illustrated in the General Obligation Bond Election Flow Chart we present on the next page, there are a lot of steps that need to be followed and the timeframe is quite rigid. **The City needs an experienced team that can guide it through the process and ensure the success of the election.**

The pre-election phase involves a lot of team work and analyses to gauge voter sensitivity to various potential tax rate levels, especially in light of recent "anti-tax" moods and built-in opposition to ballot measures in general. In addition, already existing tax measures in your service area should also be taken into account when evaluating the voters' willingness to support your measure.

Before the City submits any bond documents, FRA will assist in developing and analyzing a questionnaire with the election/polling consultant(s). After the initial polling, we will refine our tax analysis. We will also work with bond counsel to prepare future ballot language and will prepare tax rate/maximum bonding capacity analyses prior to City Council approval. Depending on the analyses we prepare, the total bond amount will carry much of the weight in the 75-word ballot statement.

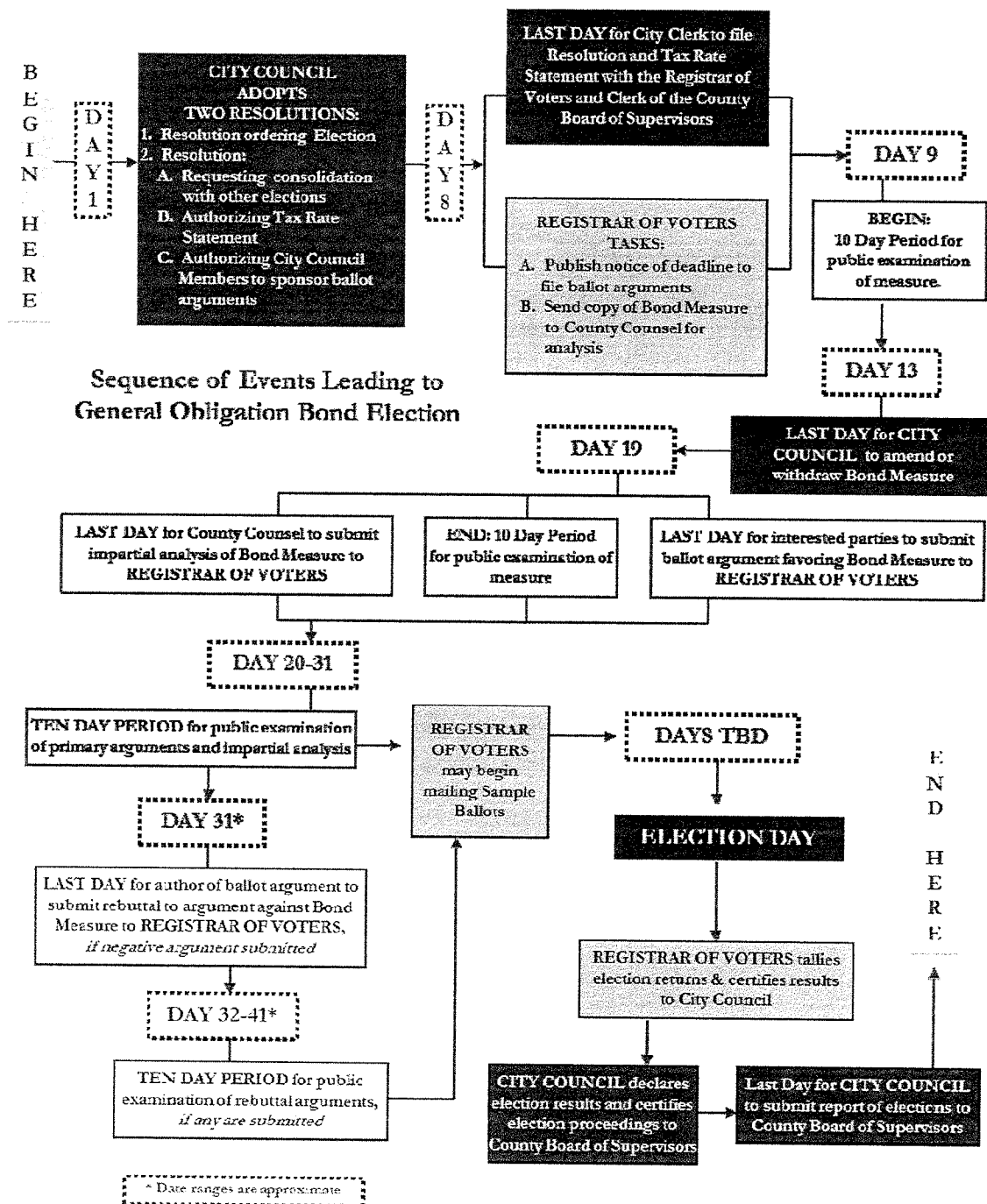
A major recent change in election ballot language is a result of Assembly Bill 195 ("AB 195") which requires that the 75-word ballot statement include estimates of an average or range of proposed tax rates as well as the annual ad valorem tax that will be generated from the new bond. This change has two negative effects as it (i) creates voter confusion and suspicion on the actual cost of the proposed bond, and (ii) reduces the number of words that is typically used to talk about the facilities that will be financed with the bond. We will work with the City, Bond Counsel and the Election Consultant to craft AB 195-compliant ballot language

At least 88 days before an election, a stated project list must be presented and upon approval, the City Council must adopt a resolution of election. Lastly, a Tax Rate Statement will be prepared by FRA and the City and the bond authorization amount must be estimated. During this time, FRA will coordinate and organize all interested parties, generate preliminary bonding numbers, and present agenda items at all necessary City Council meetings for approval and further explanation. What this means is that all final documents (tax rate statement, ballot arguments, etc.) will need to be submitted by the second week in August, 2018, at the latest, which means mid to late July approval by the City (or during the first meeting in August of 2018, at the latest).

Upon a successful election, FRA would work immediately with the City to issue bonds under a new authorization. Pending a successful issuance, FRA will assist the City in

complying with post-election disclosure requirements such as annual audit reports. FRA's duties as an independent municipal advisor remain unchanged during the pre-election and post-election phases as we will continue to provide objective analysis in every stage of the financing process. The detailed scope of work and list of duties we will perform during the pre-election and the post-election phases can be found on the following pages.

GENERAL OBLIGATION BOND ELECTION FLOW CHART





Detailed Steps of Pre-Election Duties

Duties	Description
GO Bond Strategy	FRA shall review the City's overall financing needs and assist in the GO Bond Strategy and provide support to both the City and Election/Polling Consultant. FRA shall calculate the amount of debt that can be supported by the tax rates for the range of possible amount tested in the poll.
Calculate the Tax Rates and Maximum Authorization	FRA shall calculate the amount of debt that can be supported by the tax rates for the range of possible amount tested in the poll and any other tax rates the City would like to consider. FRA shall analyze the impact of alternative bond scenarios on tax rates in order to recommend a proposed bond amount and issuance schedule.
GO Bond Survey Support	FRA shall assist the City with development of the survey and analyze the survey results.
Recommend GO Bond Structure which includes analysis of Assessed Value	FRA shall recommend a GO Bond structure that is consistent with sound municipal finance practices. FRA shall review historical Assessed Value trends and make recommendations for conservative projections for future growth. A structure will be recommended based both on the City's need for funds and for achieving the lowest possible borrowing cost.
Prepare Ballot Language/Statement	FRA shall assist the City, Bond Counsel and Election Consultant in preparing the ballot language.
Preparation of Tax Rate Statement	FRA shall prepare the Tax Rate Statement and seek input from the City, Bond Counsel and Election Consultant.
Monitor the Election and Transaction Process	FRA shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue. FRA shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. FRA shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.



Detailed Steps of Post-Election Duties

1. INITIAL MEETING AND SET-UP OF PROJECT MANAGEMENT PROTOCOLS

Our aim in this stage of the work is to ensure that everyone has a clear understanding of the financing and policy goals of the City. Ensuring that everyone has a thorough grasp of the City's goals will empower the financing team to work smoothly and efficiently.

- a) The City, Financial Advisor and other Finance Team Members will confer in a "kick-off" meeting regarding the financing and agree on deadlines for deliverables and other matters necessary to ensure timely completion of the financing.
- b) The City and Financial Advisor shall establish a periodic report format to keep the City advised of developments in the financing.
- c) Bi-weekly or as needed conference calls will be established to check progress, discuss developments and review financial documents.

2. PREPARE AND MONITOR SCHEDULE

To ensure milestones are met in a timely manner and that the preparation for a bond measure or the issuance of bonds occurs according to schedule, our firm will work with the rest of the Finance Team to draft a schedule of responsibilities. Thereafter, we will coordinate the team to make certain that financing activities are occurring according to schedule.

- a) Financial Advisor will prepare a financing schedule to meet the City's goal of issuing bonds.
- b) Financial Advisor will monitor and ensure that all members of the Finance Team have completed their assigned tasks within the pre-established time frames.

3. REVIEW FINANCING DOCUMENTS

FRA will review documents and will review the highlights and notable points with City staff, saving time for the staff.

- a) Financial Advisor will work with the City and the finance team to ensure that the documents are accurate.
- b) Financial Advisor will work with the City and the finance team to ensure that all documents are delivered prior to the City Council agenda deadlines.

4. STRUCTURING OF THE BOND ISSUE

FRA will review the various financing structures and alternatives that are available to the City and will assist the City in choosing the one that provides the administrative and financial points that best fit with the City at the best price. As part of that analysis, FRA will assist the City with determining the optimal term of the financing and the number of series of bonds to be issued. In addition, FRA will evaluate the method of sale and provide a recommendation to the City on whether to sell the bonds competitively or on a negotiated basis.

The Financial Advisor will review current market conditions, City's financial data, County data, and the City's policies in order to make a recommendation as to the appropriate



structure for the transaction.

Financial Advisor will confer with the Rating Agencies and Bond Insurance Companies to determine additional finance structures that would best suit the City.

- a) Financial Advisor will prepare Bond sizing analysis and prepare sensitivity analysis to rising interest rates.

5. MEETINGS WITH RATING AGENCIES AND BOND INSURERS *(if applicable)*

FRA will take the lead with the City to procure debt at the best price by ensuring the market is aware of the City's strong rating.

- a) Financial Advisor will prepare presentations to Rating Agencies and Bond Insurance Companies.
- b) Financial Advisor will prepare presentations to the City Council and City Staff.
- c) Financial Advisor will coordinate meetings or conference calls with Rating Agencies and Bond Insurance Companies.
- d) Financial Advisor will attend City Council Meetings for Resolution of Issuance and, if needed, for a City Council Workshop.

6. SELLING THE BONDS

- a) Financial Advisor will coordinate marketing plan with underwriter.
- b) Financial Advisor will post Preliminary Official Statement and Official Statement to interested parties.
- c) Financial Advisor will facilitate calls before and at pricing of the bonds.
- d) Financial Advisor will review pricing and make recommendations to the City.

7. CLOSING ACTIVITIES

- a) Financial Advisor will prepare press-release.
- b) Financial Advisor will prepare closing memorandum with wire instructions and coordinate with the Trustee and Underwriter to ensure the smooth closing of the transaction.
- c) Financial Advisor will review all closing documents for accuracy and completeness.
- d) Financial Advisor will coordinate with the financing team on all closing activities.

FRA is excited by the opportunity to serve the City. Our scope of services extends far beyond that of a transactional Financial Advisor. This involves implementing an entire Plan of Finance for the City including i) Assessed Value Review, ii) Tax Rate Analysis and iii) Exploration of Future Needs. After we have explored all financing options and reviewed them, we then execute on our Plan of Finance.



PROPOSED FEE

We propose that no fees will be paid to FRA until a bond sale takes place: 100% of our fees will be paid from bond proceeds. We will keep track of our time for the services we provide during the pre-election stage and accrue the time at the hourly rates listed below on a fully contingent basis. Upon successful election, we would expect to be reimbursed for the pre-election services we have accrued (capped at a not-to-exceed amount of \$15,000) from the costs of issuance associated with the first general obligation bond financing in addition to the transaction fee associated with that bond issuance and related to the services we provide during the post-election phase.

SCHEDULE OF HOURLY RATES	
Executive Officer	\$335 Per Hour
Principal	\$305 Per Hour
Senior Vice President	\$290 Per Hour
Vice President	\$240 Per Hour
Assistant Vice President	\$205 Per Hour
Senior Associate	\$160 Per Hour
Associate	\$135 Per Hour
Analyst	\$90 Per Hour
Administrative Assistant	\$70 Per Hour
Clerical	\$40 Per Hour

We propose a transaction fee of \$45,000 which would apply to each general obligation bond transaction pursued by the City. This fee does not include expenses associated with the transaction. All services performed pursuant to debt issuance shall be fully contingent on, and payable at the closing of the debt issue(s) undertaken. If no bonds are issued, we would expect to be reimbursed for services provided through November 2018 per the hourly fee schedule provided above. Such services will be capped at a total not-to-exceed amount of \$7,500.

Expenses

All verifiable out of pocket expenses shall be billed at a not-to-exceed amount of \$2,700 per transaction. Reimbursable expenses include overnight mail, conference calls, copying and printing/postage.